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

HEARING

BEFORE THE

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

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

ON

H.R. 2517

TO PROVIDE CERTAIN BENEFITS TO DOMESTIC PARTNERS OF FEDERAL EMPLOYEES

JULY 8, 2009

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

WEDNESDAY, JULY 8, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 3:45 p.m., in room 2154, Rayburn House Office Building, Hon. Stephen F. Lynch (chairman of the subcommittee) presiding.

Present: Representatives Lynch, Norton, Cummings, Connolly, and Chaffetz.

Staff present: William Miles, staff director; Aisha Elkheshin, clerk; Jill Crissman, professional staff member; Margaret McDavid and Jill Henderson, detailees; Daniel Zeidman and Christina Severin, interns; Dan Blankenburg, minority director of outreach and senior advisor; Adam Fromm, minority chief clerk and Member liaison; Howard Denis, minority senior counsel; Chapin Fay, minority counsel; and Alex Cooper, minority professional staff member.

Mr. LYNCH. Good afternoon. The subcommittee hearing will begin. I apologize to all of those in attendance. As you know, we've been busy on the floor, but we will get right down to business now.

I want to first of all thank Ms. Norton for her attendance here while we were on the floor. Unfortunately, she has to now chair her own subcommittee chair panel, and she has asked to place her statement in the record, which we will do.

[The prepared statement of Hon. Eleanor Holmes Norton follows:]

Statement of Congresswoman Eleanor Holmes Norton
At the Subcommittee on Federal Workforce, Postal Service,
And the District of Columbia Hearing on
H.R. 2517 The 'Domestic Partnership Benefits and Obligations Act of 2009'

Because I must preside at another hearing, I offer this brief statement for the record to reaffirm in the strongest terms my commitment to passage of the Domestic Partnership Benefits and Obligations Act, which I have co-sponsored. The early hearing on this bill is warranted by the importance it signifies, to bring the federal sector into overdue leadership on the rights of the lesbian, gay, bisexual and transgender (LGBT) community.

This subcommittee was dismayed and disappointed by repeated bouts of testimony from the Office of Special Counsel during the last administration, revealing an unwillingness to enforce a modest domestic partners executive order. In June, President Obama issued a Presidential Memorandum directing the Office of Personnel Management to take several steps to recognize domestic partners. Despite the step forward, this Memorandum was of little consequence for the equal rights of the LGBT community, particularly our federal LGBT employees, who were justifiably disappointed.

It is long past due for the federal government to do for federal employees what 57 percent of Fortune 500 companies, 19 state governments and the District of Columbia have already offered in domestic partner benefits to public and private employees. The ball has been in the congressional court all along, and for much too long. My own work to protect the equal rights of all Americans, including the privilege to chair the Equal Employment Opportunity Commission, will remain incomplete until, along with others in this Congress, I succeed in helping to secure for the LGBT community the same rights that Congress has afforded minorities, women, and disabled Americans and finally, completing the nation's civil rights agendas.

Mr. LYNCH. The Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia will now come to order.

I welcome our ranking member, Mr. Chaffetz, and members of the subcommittee, the hearing witnesses, and all of those in attendance.

Today's hearing will examine H.R. 2517, the Domestic Partnership Benefits and Obligations Act of 2009. H.R. 2517 is intended to ensure equal treatment to lesbian and gay Federal civilian employees by providing that same-sex partners be entitled to the same benefits as a married Federal employee and his or her spouse. The purpose of the hearing is to examine the merits of this legislation and to discuss its potential implementation and costs.

The Chair, the ranking member and the subcommittee members will each have 5 minutes to make opening statements, and all Members will have 5 legislative days to submit statements for the record.

At this time, I would like to ask unanimous consent that the testimonies from the National Treasury Employees Union, the American Federation of Government Employees, the International Federation of Professional and Technical Engineers, Human Rights Campaign, the Alternative to Marriage Project, and the Parents, Families and Friends of Lesbians and Gays be submitted for the record.

Hearing no objection, it is so ordered.

[The information referred to follows:]

STATEMENT OF COLLEEN M. KELLEY

NATIONAL PRESIDENT

NATIONAL TREASURY EMPLOYEES UNION

July 8, 2009

to the

Subcommittee on the Federal Workforce of the

Committee on Oversight and Government Reform

U.S. House of Representatives

on

HR 2517, the Domestic Partner Benefits and Obligations Act of 2009

STATEMENT OF COLLEEN M. KELLEY

NATIONAL PRESIDENT

NATIONAL TREASURY EMPLOYEES UNION

July 8, 2009

to the

Subcommittee on the Federal Workforce of the

Committee on Oversight and Government Reform

U.S. House of Representatives

on

HR 2517, the Domestic Partner Benefits and Obligations Act of 2009

Thank you Chairman Lynch for this opportunity to present the views of the National Treasury Employees Union (NTEU) on HR 2517, the Domestic Partner Benefits and Obligations Act of 2009. NTEU is the nation's largest independent federal sector labor union, representing workers at 31 government agencies. For over 70 years our union has been in the forefront of defending and advancing better pay, benefits and working conditions for federal employees. I have had the honor of testifying before this Committee many times in the past on matters of concern to federal workers and I thank you for this most recent invitation.

NTEU is grateful Representative Tammy Baldwin (D-WI) along with over 100 of her colleagues has introduced this important legislation. NTEU strongly supports the

Domestic Partnership Benefits and Obligations Act and urges the Subcommittee to act quickly and favorably on it.

Mr. Chairman, under this legislation, NTEU members and all federal workers with domestic partners will be able to participate in employee benefit programs similar to the options allowed for married couples and will be subject to the same employment related obligations and duties that are imposed on married employees and their spouses. This includes the Federal Employees Health Benefits Program (FEHBP), retirement and disability plans, family, medical and emergency leave, Federal Group Life Insurance (FGLI), long term care insurance, Workers Compensation, death and disability benefits, and relocation, travel and related expenses.

The legislation would require federal employees and their domestic partners to be subject to the same duties, obligations and ethics requirements that married federal employees are mandated to follow such as anti-nepotism rules and financial disclosure requirements. The legislation would further allow counting both partners income for means tested, contractually negotiated child care subsidies offered by federal agencies. Mr. Chairman, I want to emphasize this point. This legislation proposes both benefits and obligations. The integrity of the civil service system demands not only that there be fairness in benefits but that nepotism and other abuses not be permitted because of an exemption of domestic partners.

The legislation would deem a person a domestic partner when the employee files an affidavit with the Office of Personnel Management (OPM) that certifies they have a common residence, share responsibility for each other's welfare and financial responsibilities, are not related by blood and are living together on an indefinite basis as each other's sole committed partner. This seems reasonable to us, given the only other likely alternative would be to defer to state law. The various states have such widely different definitions of domestic partners or civil unions, with four states having same sex marriage and several states having no partnership provisions at all, it would be unwieldy for the federal government to use state definitions given the lack of uniformity among the states.

Mr. Chairman, there has long been a very sound principle that has been embraced on a bipartisan basis. That principle is that fair and comprehensive employee benefits in our society are best promoted by the federal government operating as a model employer. Then, the private sector is encouraged but not mandated to adopt these benefits by the good example and the resulting market forces of the nation's largest employer. In this situation, we are seeing the reverse. The federal government is no longer in the forefront but is a laggard. Over 53% of Fortune 500 companies offer domestic partner benefits to their workers. Many public employers offer domestic partner benefits, including 13 states along with 201 local governments. In fact, tens of thousands of private companies, growing numbers of non-profit employers including colleges and universities, and the very entities that are competing with the federal government for the recruitment of the

best and brightest of the workforce are offering domestic partner benefits. Market forces and the good example of the private sector now put this issue before the federal sector.

As the exclusive bargaining representative for over 150,000 federal employees, NTEU is usually the first to hear from those we represent about pay, benefits and working conditions. NTEU union leaders across the country have been aware of the desire and need for these benefits by our members for many years. It is a concern that NTEU members raise frequently at union meetings, conferences and in direct inquires. We have discussed and debated this issue at our National Conventions, passing resolutions in support at every National NTEU Convention going back more than a decade. And increasingly, particularly among new hires, it is not only desire and need but there is an expectation of domestic partner benefits from NTEU members who have received these benefits in the private sector.

I want the members of the Subcommittee to understand that the federal employee support for domestic partner benefits is broad and nationwide. I have heard from a National Park Service employee in West Virginia, an FDIC bank examiner in West Warwick, Rhode Island, a worker at the IRS Service Center in Ogden, Utah, a Customs and Border Protection officer serving on the Mexican border in California and a Social Security Administration employee in Cleveland, Ohio, all of whom have asked if the union can have domestic partner benefits extended to the federal sector. I also want to note that, with some very limited exceptions, domestic partner benefits are not something NTEU can negotiate in collective bargaining. To the degree we can, NTEU is committed

to do so. But we are generally in the situation of having to inform our members that this matter needs to be addressed legislatively. Congress must act and it must act promptly.

There is another reason why it is so important for Congress to move favorably and quickly on this legislation. As has been noted by members of this subcommittee, we have a coming human capital crisis in the federal government. As has been reported by the Office of Personnel Management and as I have previously testified before Congress, more than half of the federal government's employees will become eligible for retirement in the next ten years and approximately 40 percent of the federal workforce is expected to retire. In the next five years alone it will be 30% of the workforce – 600,000 individuals. This coming crisis is so severe, the Chief Human Capital Officers Council has taken up the matter and, working with Federal agencies, begun developing the best practice models for hiring and succession planning. I have previously testified that OPM needs to step up its marketing and outreach particularly to younger workers. I also testified that the looming crisis is not just a matter of retiring senior employees where the response can be moving those next in line up the food chain and stepping up entry level hires. The federal government did very little hiring in the 1990's while at the same time, the federal workforce was reduced by about 400,000 workers. We're not only losing the senior layer of the workforce in the next 10 years. There is no one behind them to do the jobs. Mid-career, mid-level candidates need to be attracted to federal service and many of the quality candidates for these positions are part of a settled domestic partner couple.

Given this reality, it is simply unacceptable that the federal government be unable to offer benefits as good or better than the private firms the government is competing with. It will lose the best candidates in many different circumstances. Most obviously, it is a desirable recruitment tool for an employee with a partner not in the labor force or in a job that does not offer health insurance. Also, with this huge need for recruitment coupled with the goal of not compromising on the quality of employees, this legislation is one obvious tool in casting the widest net possible to find the best candidates. Particularly among jobs requiring highly skilled and specialized candidates, that means a national search and asking applicants to re-locate. It might mean persuading a trademark attorney at General Electric in Connecticut to come to the Patent and Trademark Office in Alexandria, Virginia or a chemist from Eli Lilly to take a job at the Food and Drug Administration laboratory in Cincinnati or Boston. It might be a tough sell for a married couple but at least the agency can offer relocation and related expenses and at least the non-federal spouse can participate in the health insurance plan while searching for a new job in the new location. To ask a highly qualified candidate to re-locate and to expect the candidate's domestic partner to leave his or her employment and employer sponsored health insurance to move to a new city is simply a recipe to miss out on the best and most able candidates.

In summary, Mr. Chairman, the Subcommittee has before it a bill that represents fairness and equality for gay and lesbian employees, is desired and even demanded by federal employees, is a recruiting tool for agencies in the looming retirement crisis in the federal sector and will extend health care and other benefits to Americans currently

uncovered. I can not see why the House would not act favorably and quickly. I urge that you do.

AFGE

STATEMENT OF

JOHN GAGE
NATIONAL PRESIDENT

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE THE

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

ON

DOMESTIC PARTNERSHIP BENEFITS AND OBLIGATIONS ACT OF 2009

JULY 8, 2009

Mr. Chairman and Members of the Committee: On behalf of the members of the American Federation of Government Employees, AFL-CIO (AFGE), which represents more than 600,000 federal employees, I thank you for the opportunity to testify today regarding H.R. 2517, the Domestic Partnership Benefits and Obligations Act of 2009, which would provide the same-gender domestic partners of federal employees the same benefits available to spouses of married federal employees. AFGE strongly supports the measure and Senate bill S. 1102 and recognizes the leadership of Representative Tammy Baldwin (D-WI) in the House and Senator Joseph Lieberman (I-CT).

This legislation is about equity. It is not, as its opponents try to argue, about providing any form of special preference or extra benefit for federal employees who have formalized their exclusive relationships with a same-gender domestic partner as compared with those who marry a person of a different gender. The equalization of benefits would extend to health insurance under the Federal Employees Health Benefits Program (FEHBP), retirement benefits, rights under the Family and Medical Leave Act (FMLA), life insurance under the Federal Employees Group Life Insurance (FEGLI) plan, workers' compensation, death and disability benefits, and reimbursement benefits for relocation, travel, and related expenses. Further, the biological and adopted children of the domestic partner would be treated just like step-children of married federal employees under the benefits listed. Finally, under the legislation, same-gender domestic partners would be subject to the same anti-nepotism and financial rules and obligations as those that apply to married federal employees.

To become eligible for the equitable treatment provided for in the legislation, federal employees would be required to file legal affidavits of eligibility with the Office of Personnel Management (OPM) to certify that they share a home, and financial responsibilities. The employee must affirm the intention to remain in the domestic partnership indefinitely, and must notify OPM within thirty days if the partnership is dissolved. The provisions of the legislation would apply only to same-sex domestic partnerships.

The practice of treating married employees and those in committed same-sex partnerships equitably with regard to health insurance and retirement benefits is well-established in the private sector and in many state and local governments. More than half of the Fortune 500 firms extend equal benefits to spouses and same-sex domestic partnerships. They do so not only because it is fair and appropriate, but also because the market has made such policies an imperative in the competition to attract and retain excellent employees. The federal government should do no less. It should strive to attain the highest level of fairness for its employees, and it has a duty to all taxpayers to adopt employment policies that facilitate the hiring and retention of a workforce of the highest possible quality.

As you know, the impending retirement of the baby boom generation of federal employees has occasioned an enormous amount of hang-wringing among administration officials and career agency managers. Private contractors have been eager to win for themselves as much as possible of the work that has been performed by retiring federal employees, and they are free to offer domestic partner benefits. A central question at the heart of all this anxiety is whether the federal government will be able to recruit the next generation, or whether the most desirable candidates for federal jobs will be lost to the private sector.

Putting aside for a moment the still-enormous pay gap between the federal and non-federal sectors and the fact that FEHBP is poorly run and as a result costs both taxpayers and federal employees more than it should, there is the issue of equitable treatment of GLBT (gay, lesbian, bisexual and transgender) people. When the Human Rights Campaign released its 2006 study of the employment practices of Fortune 500 companies with respect to domestic partners, its president, Joe Solmonese, summarized the findings as follows: "Companies do it (provide equitable benefits to domestic partners) because it's good for business. American corporations understand that a welcoming environment attracts the best talent."[1]

Refusal to provide equitable treatment with regard to the provision of employee benefits is a violation of the merit system principle that promises equal pay for substantially equal work. The economic value of family coverage for health insurance, survivor benefits for retirement, disability, workers' compensation, and life insurance; and full family coverage of relocation costs are substantial to a worker and would have extremely modest costs for the government. The equal pay principle has historically been understood to include all financial compensation, not just salary. Non-cash federal benefits make up almost a third of a typical federal employee's compensation. In many metropolitan areas, the salary gap between federal and non-federal jobs has actually grown in recent years so that it now stands at 22.97 percent on average nationwide. In the Washington-Baltimore locality, the remaining federal pay gap measured by the Bureau of Labor Statistics (BLS) is 36.6 percent. To exacerbate the challenge this poses to efforts by federal agencies to hire the next generation of federal employees by continuing to discriminate between married employees, and those in domestic partnerships is as irrational as it is unfair.

Imagine the perspective of a high-performing federal employee in a job that the federal government admits it has trouble recruiting for, who happens to have a domestic partner and two kids. Perhaps the worker is a Certified Registered Nurse Anesthetist in the VA, or a Defense Department Information Technology specialist with a high security classification, or an experienced DHS contract administrator with the proven ability to identify fraud on the part of contractors, or a skilled electrician who works on repair of highly complex weapons, or a

[1] "Majority of Large Firms Offer Employees Domestic Partner Benefits" by Amy Joyce, June 30, 2006, *The Washington Post.*

Corrections Officer who puts his life on the line every day to keep us and his fellow officers safe from dangerous inmates in federal prisons. Consider that he or she might have a co-worker with identical job responsibilities and performance who happens to have a spouse and a couple of kids.

Because H.R. 2517 is not yet law, the two workers will receive vastly different compensation in return for their work for the federal government. One would enjoy subsidized family coverage from FEHBP, worth approximately $8,561.80 per year, and that subsidy is not taxed. The employee with the domestic partner and kids, in contrast, is eligible for only single coverage from FEHBP. As of 2008, the difference between what the government pays for FEHBP for family versus single coverage is $4,790.76 per year. To obtain similar insurance for his family, the employee in the domestic partnership would have to pay at least the same $4,790.76 per year in the open market, and the money spent on the premium would be tax deductible, but not tax free.

A married federal employee with two children who dies early leaves his or her survivors with benefits ranging from $12,432 to $38,628 per year depending upon his or her salary. In identical circumstances, the survivors of a federal employee with a domestic partner and two children are left with nothing. If an employee in a domestic partnership becomes disabled, the worker is eligible for anywhere from $7,932 to $21,852 depending on age, earnings, and the severity of the disability. But if the employee were married with children and had the exact same age, earnings, and severity of disability, his or her disability eligibility would range from $11,640 to $32,964.

The difference between the retirement annuities of employees with and without survivor designations vary widely on the basis of length of service, age at retirement, high-three salary, and retirement system. The two major federal retirement systems, the Civil Service Retirement System (CSRS), and the Federal Employees Retirement System (FERS) both allow married federal employees to ensure that their survivors continue to receive benefits after they die. The employee is required to take a reduction in the amount of his or her annuity in order to "buy" this survivor protection, but in most cases, taking the survivor option costs the employee about half of the value of benefits received by the survivor.

FERS provides two options for survivor annuities, either one half or one fourth of the value of the annuity. CSRS is a bit more complicated, allowing 55 percent of anything from the full annuity to 55 percent of one dollar of annuity. CSRS and FERS also allow survivor annuities to be paid to more than one former spouse at a time, as well as a widow or widower. (It is therefore difficult to argue that current law is based upon a religious concept of marriage or a view that marriages are more stable than domestic partnerships). The important point is that the financial value of survivor annuity benefits is substantial, and is, for the vast majority of federal employees who earn a full retirement annuity after a

career of federal service, the single largest component of compensation after salary and their own annuity. This inequity in the treatment of a federal employee's survivors is the most severe and the most indefensible. After all, even the most ardent opponent of equality might feel shame at depriving an elderly surviving domestic partner the survivor benefits available to an elderly surviving husband or wife.

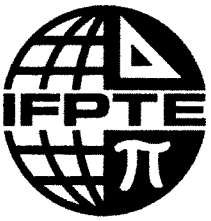
How can anyone square these facts with the merit system principle of equal pay for substantially equal work?

The answer is that one cannot justify discriminating against federal employees who are in domestic partnerships versus federal employees who are in conventional marriages. All else equal, sexual orientation should not form the basis of discrimination in compensation. But unless and until S. 2521 becomes law, discrimination in compensation will continue to occur in the federal government.

Of course, passage of H.R. 2517 is not just a matter of fairness. It is also a matter of what is necessary for the federal government to succeed in recruiting the next generation of government employees, and to retain them once they form monogamous relationships and start families. There will be no reason to stay with the government when other employers, whose mission can be just as compelling as the government's, offer higher salaries and more comprehensive benefits.

Employees who do stay and are affected by the inequity will understandably feel the pain of this discrimination, and it will inevitably affect their morale and commitment to their agency's mission. They will know that they are receiving far less compensation for their work than their married coworkers, and have every reason to feel resentment at the inequity.

Cost cannot serve as a valid rationale for failure to pass this legislation, as the Congressional Budget Office (CBO) has calculated that enactment would add less than one half of one percent to the existing costs of these programs. That estimate excludes the cost of turnover, recruitment, and training when experienced federal employees leave federal service because of this inequity. The cost should be viewed as if it were simply the case that larger numbers of federal employees began to marry. Surely the Congress would not respond to this by abolishing the benefits currently extended to spouses and families. As such, no one should argue that the happy occasion of the formation and maintenance of families is unaffordable or insupportable for the United States government.



INTERNATIONAL FEDERATION OF
PROFESSIONAL AND TECHNICAL ENGINEERS
AFL-CIO & CLC

Remarks of Robert McCann

NASA civil servant
&
Member

International Federation of Professional & Technical Engineers Local 30 (IFPTE), AFL-CIO

Prepared For:

House Federal Workforce Subcommittee of Oversight and Government Reform Committee

Hearing:

Domestic Partnership Benefits and Obligations Act of 2009 (HR 2157)

Wednesday, July 8, 2009 - 2 o'clock

2154 Rayburn House Office Building

Testimony of Robert McCann, Member
IFPTE Local 30, &
NASA Civil Servant Worker at Ames NASA Research Center

Thank you for allowing me, on behalf of IFPTE, to submit these comments. I want to pay a particular note of gratitude to Chairman Lynch for his steadfast support of working people, and for his willingness to hold this hearing today on this very important issue.

Throughout the history of the United States, overt manifestations of institutionalized discrimination against historically compromised and disenfranchised groups have taken many forms. These include denial of equal employment opportunities, denial of equal voting rights, denial of equal rights to assembly and political expression, and denial of equal rights to own and disseminate property. Yet another manifestation, and the subject of this statement, is denial of legal and societal recognition of the adult partnerships that members of these groups seek to enter into.

For example, prior to 1967, marriages between adult Caucasians and adult members of various racial minorities were not legally recognized in many states, and individuals who entered into marriage with a member of another race were subject to persecution. Generally speaking, the rationale for these miscegenation laws was based on some combination of two postulates: one, that non-Caucasians were intellectually, morally, or behaviorally inferior to Caucasians, and two, that inter-racial partnering runs counter to a natural social order as prescribed by one or more religious traditions. Laws were argued to be necessary to ensure that United States society continued to conform to that natural order, as violations of the natural order would have some tangible negative impact on societal functioning.

At an individual level, miscegenation laws actively prevented adults who fell in love and wished to spend their lives together within the institution of marriage from fulfilling that wish. However, beginning with a landmark decision by the California Supreme Court in 1948, and continuing through the Loving vs. Virginia decision by the Supreme Court in 1967, all miscegenation laws were struck down. The court ruled very clearly that the right to freely choose one's life partner is central to the pursuit of happiness, and therefore laws that restrict that freedom are unconstitutional.

Quoting from the Supreme Court decision:

"Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival.... To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discrimination. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State."

The Supreme Court concluded that anti-miscegenation laws were racist and had been enacted to perpetuate white supremacy:

"*There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification. The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy.*" (Italics mine)

In the late 1960's and early 1970's, Americans who experience same-sex sexual physical and emotional attraction began to live lives as openly gay men and women, and form same-sex partnerships that are little different in style or substance than opposite-sex partnerships. I am myself a typical example; I first became aware of same-sex physical attraction upon entering adolescence in the 1970's, and first became aware of same-sex emotional attraction when I fell in love (for the first time in my life) with an office mate in graduate school. After I completed my doctorate degree, I was awarded a postdoctoral appointment at NASA Ames research center in California, which would eventually lead to employment as a federal civil servant. Relocating to the San Francisco Bay Area, I assumed a life as an adult gay male, and met and fell in love with another gay man in 1997. We entered into a committed relationship at that time which continues to this day.

The decision of myself and other homosexuals to live openly gay lives produced a newly visible minority group within US society. In common with other historically disenfranchised groups, living as an openly gay person has not been without its challenges. Governing bodies at the state and federal level have exercised many of the same mechanisms of discrimination against gays and lesbians as were earlier exercised against other groups, criminalizing homosexual activity, denying homosexuals equal employment opportunities and, most germane to the present discussion, failing to accord same-sex partnerships the same level of recognition and status as is accorded to opposite-sex partnerships. As members of this committee are all too aware, most states have enacted constitutional amendments or other legislation that deliberately exclude same-sex partnerships from legal recognition, thereby relegating many long-term committed relationships to nonexistent status. The rationale for this non-recognition is all too familiar: homosexuals are claimed to be less capable moral agents than heterosexuals, and their relationships are claimed to violate the natural societal order as defined by one or more religious institutions and/or deities. Thus, the argument goes, any societal action that recognizes the partnerships of homosexuals will have a detrimental impact, both because homosexual behavior is itself inherently disordered, and/or because a religious entity will exercise some form of supernatural retaliation against the country for violating that natural order.

At the federal level, official recognition of same-sex partnerships is denied by the Defense of Marriage Act, which states, in part, that:

" In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."

As with the earlier miscegenation laws, courts that have examined prescriptions and injunctions against same-sex relationships are increasingly subjecting these to heightened levels of scrutiny, and finding that the arguments for failing to recognize same-sex relationships are without rational basis or merit. As the City of Cleburn made clear, "a bare desire to harm a politically unpopular group" cannot provide a rational basis for government

discrimination. In addition, courts are increasingly finding that the prescriptions and injunctions denying recognition of same-sex partnerships violate important statutes, articles, and clauses such as the equal protection clause of the 14th amendment.

One of the most prominent examples of this logic is the recent decision of the California Supreme Court legalizing same-sex marriage. In June of 2008, the court ruled that there is no rational basis for disallowing same-sex partners to marry, and ordered state offices to begin issuing marriage licenses to same-sex couples that desired to wed. In October of last year, I was delighted to have the opportunity to marry my same-sex partner of the last 12 years. At this point in time, married life is suiting us just fine, and we look forward to supporting each other through good times and bad, in sickness and in health, until death do us part.

In November of last year, I applied to have my husband covered under my federal employee health benefit plan, only to have the application turned down because of DOMA. There are several other employees at my center, also legally married to same-sex partners, in exactly the same position. In those cases where the same-sex partner lacks access to health insurance at their own places of employment, or because they are unemployed, they and their federal employee partner must spend as much as hundreds of dollars a month for private coverage. The lack of availability of such coverage effectively contravenes equal-pay-for-equal work guidelines that have been part of US labor law for decades. I also discovered that, should I predecease him while still a federal government employee, my husband will be denied financially significant survivor benefits, such as half of my government pension, that opposite-sex partners of my married heterosexual colleagues are all entitled to. In these and many other tangible ways, DOMA prevents me and all other married gay and lesbian federal workers across the country equal opportunity and equal compensation at my place of work.

It is more than a little ironic that the NASA administrator recently issued an agency-wide equal opportunity policy statement that includes the following language:

"Equal opportunity in employment means opportunity not just for some, but for all. NASA provides equal opportunity in Federal employment regardless of race, color, gender, [and] sexual orientation...Equal opportunity...covers all human capital and employment programs,

management practices... including, but not limited to, recruitment, hiring, merit promotion, ... *benefits*, and separation (italics mine)." Therefore, DOMA is blocking a major government agency from implementing an important element of its own equal opportunity and non-discrimination policy.

The proposed piece of legislation under review today, HR 2517, would provide relief from the workplace discrimination imposed by DOMA by providing the same employment benefits to the same-sex partners of federal workers as those currently offered to opposite-sex spouses. IFPTE strongly endorses HR 2517, not only to address these specific, tangible inequalities in the federal government workplace, but in the interests of advancing the American traditions of equal opportunity and nondiscrimination that are at the forefront of the labor movement.

Advantages of the legislation:

Providing the same package of benefits to same-sex partners of federal employees as are available to opposite-sex partners isn't just the right thing to do. A fully nondiscriminatory workplace environment that encourages and embraces employee diversity is increasingly being recognized by leading private industry employers as an important ingredient in attracting and keeping workforce talent. Congressional passage of HR 2517 will therefore enable federal agencies to be more competitive with the private sector when it comes to recruiting talented individuals into the civil servant workforce.

Problems and recommendations:

Section G, subsection 2 of HR 2517 defines Domestic Partners in the following manner:

"The term 'domestic partner' means an adult unmarried person living with another adult unmarried person of the same sex in a committed intimate relationship"

As written, HR 2517 restricts the extension of same-sex partner benefits to unmarried adults. In addition to the adults in California who are legally married to their same-sex

partners, there are many federal civil servants in Massachusetts whose same-sex partners will be excluded from receiving the benefits outlined in the bill due to their status as legally married persons. Many additional individuals in the states of Iowa, New Hampshire, Vermont, and Maine will soon be adding to their ranks. IFPTE notes also that in some of the states where legal same-sex marriage is about to take effect, existing recognized domestic partnerships between same-sex partners will be automatically converted to marriages, thus making these individuals ineligible for the benefits outlined in HR 2517 as well. Therefore, IFPTE strongly recommends that section G subsection 2 be revised to reflect the following:

"DOMESTIC PARTNER – The term "domestic partner' means an adult person either legally married to or living with another adult person of the same sex in a committed, intimate relationship."

It is IFPTE's understanding that this change in language will ensure that HR 2517 covers all same-sex committed partners of federal employees.

On behalf of IFPTE, I once again thank Chairman Lynch and the members of the Subcommittee for addressing this concern head on, and for giving me the opportunity to provide my guidance on this important civil rights issue.

United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Federal Workforce, Postal Service, and the District of Columbia
Hearing on the Domestic Partnership Benefits and Obligations Act of 2009
Written Testimony of Joe Solmonese
President, Human Rights Campaign
July 8, 2009

On behalf of the Human Rights Campaign and our more than 750,000 members and supporters nationwide, I thank Chairman Lynch for holding today's hearing on H.R. 2517, the Domestic Partnership Benefits and Obligations Act (DPBO). I also want to thank Representatives Baldwin and Ros-Lehtinen for their leadership and commitment on this important legislation. As the nation's largest civil rights organization advocating for the lesbian, gay, bisexual, and transgender (LGBT) community, the Human Rights Campaign strongly supports this legislation, which would ensure that lesbian and gay federal employees receive equal compensation for their service to our nation.

The DPBO would provide equal family benefits and obligations—including retirement benefits, health insurance, relocation expenses, and many more—to federal civilian employees with same-sex partners. This legislation, which is long overdue, would also bring the federal government up to the standards of America's leading employers, who provide these benefits in order to recruit and retain the most talented workforce possible.

According to the Bureau of Labor Statistics, nearly 13 percent of employees' compensation comes in the form of insurance and retirement benefits, which generally cover family members and dependents, and 7 percent in the form of paid leave, which makes it possible for workers to accommodate work and family obligations.

Increasingly, America's leading employers—including 57% of Fortune 500 companies, 23 states, the District of Columbia, and over 150 local governments—make benefits available to public employees and their same-sex partners.

The federal government—the nation's largest civilian employer with 2.7 million employees—does not provide health, retirement, or relocation expenses for the same-sex partners of its employees. As a result, a lesbian or gay civilian employee doing the same job as his or her married heterosexual counterpart, in the same pay grade, will receive significantly lower compensation. Furthermore, because many companies that provide services to the government—such as top federal contractors Bechtel, Boeing, EDS, General Electric, Honeywell, Lockheed Martin, McKesson, Northrop Grumman, Raytheon and SAIC—offer equal family benefits to their lesbian and gay employees, qualified lesbian or gay applicants have a strong incentive to choose the private sector over government work even where the positions are similar.

On June 17, 2009, President Obama reduced the inequities that lesbian and gay civilian employees, including Foreign Service Officers, face when he signed a Presidential Memorandum on Federal Benefits and Non-Discrimination. The Memorandum identified certain benefits that could be provided equally without congressional action. In particular, the Memorandum instructed the Director of OPM to add domestic partners of federal employees to the long-term care insurance program and require supervisors to allow employees to use their sick leave to take care of domestic partners and non-biological, non-adopted children.

The Memorandum also addressed the inadequacy of benefits for Foreign Service Officers with same-sex partners, an issue that drew public attention last year, when former Ambassador Michael Guest ended a distinguished career and called upon the previous administration to equalize benefits for same-sex partners. Foreign Service employees' same-sex partners will now have access to family benefits such as the use of medical facilities at posts abroad, medical evacuation from posts abroad, and inclusion in family size for housing allocations.

The President also instructed the heads of all other executive departments and agencies, in consultation with OPM, to conduct reviews of the benefits provided by their departments and agencies to determine what authority they have to extend benefits to the same-sex partners of their employees.

Although the Memorandum is an important step in providing same-sex partners of federal employees with the benefits already available to spouses of heterosexual employees, it does not approach providing a full range of benefits. Notably, it does not offer health insurance or retirement savings—the two most critical employee benefits—to the domestic partners of federal employees. The President acknowledged in the Memorandum that certain benefits could not be provided under existing laws and must be addressed legislatively. The President therefore announced his support for the DPBO legislation in order to ensure these critical benefits are provided.

This historic hearing—the first in the House of Representatives—is an important step toward guaranteeing equal compensation for lesbian and gay workers serving our

government at home and abroad. Equal pay for equal work is a value fundamental to American opportunity. The federal government should be the standard bearer for fair workplace practices, but has lagged behind the top employers for too long. By passing the DPBO, Congress can bring the federal workforce into the 21st century, ensuring that all of its workers are treated fairly and that the best and brightest are attracted to federal service.

On behalf of the Human Rights Campaign, I urge you to pass the Domestic Partnership Benefits and Obligations Act.

Written Statement of Lisa-Nicolle Grist

Executive Director

Alternatives to Marriage Project

To the

Subcommittee on Health, Employment, Labor, and Pensions

Committee on Oversight and Government Reform

United States House of Representatives

July 8, 2009

Chairman Lynch. Representative Baldwin, Representative Ros-Lehtinen, and Members of the Subcommittee:

Thank you for giving me the opportunity to share the perspective of America's truly diverse families on the Domestic Partnership Benefits and Obligations Act of 2009. This statement introduces the constituency of the Alternatives to Marriage Project (AtMP), expresses appreciation for the partial measures proposed by the Act, and details how the Act can and must be improved in order to merit full support and passage. On behalf of AtMP members and all unmarried Americans, I respectfully request that H.R. 2517, the Domestic Partnership Benefits & Obligations Act of 2009, be amended to allow federal employees to put one adult on their health plan along with their children. At a minimum, benefits should go to different-sex as well as same-sex partners of federal employees.

The Alternatives to Marriage Project is a 501c3 nonprofit organization with over 8,500 members in all 50 states. Its mission is to advocate equality and fairness for unmarried people, including those who are

single, choose not to marry, cannot marry, or live together before marriage. AtMP provides support and information for this fast-growing constituency, fights discrimination on the basis of marital status, and educates the public and policymakers about relevant social and economic issues. AtMP members believe that marriage is only one of many acceptable family forms, and that society should recognize and support healthy relationships in all their diversity.

The number of unmarried people reporting themselves to the Census as domestic partners is rising quickly, passing 13 million in 2007; about 12% of unmarried partner households are same-sex couples. Nearly 4.7 million children are being raised by domestic partners. There are over 93 million unmarried adults in America: about 15% live with partners, and about a third live alone; thus, the majority of unmarried people live with other people in a web of important relationships. Many Americans have primary caretaking responsibilities for siblings, parents, neighbors or friends. These responsibilities fill the function of family not only for these workers and the people they care for but also for the larger society, which is spared from allocating public caretaking resources. These relationships and families deserve equal access to health care; yet, they are more likely to be uninsured than married spouses. Narrow definitions of family damage people's health and make it harder for them to fulfill their actual family responsibilities.

In December 2008, the National Center for Health Statistics (a branch of the U.S. Department of Health & Human Services), announced "Marriage affects health insurance coverage." In particular, it reported that "Overall, unmarried (divorced or never married) women aged 25–64 years are more likely to be uninsured (21%) than married women (13%) in the same age group." A 2006 study compiled by Women's Voices, Women Vote found that "Unmarried voters are twice as likely as married voters to be without coverage, and unmarried non-voters are four times as likely to go without coverage." That study further found that over a third of unmarried Latinos and nearly a quarter of African Americans have no health insurance coverage, compared to less than one fifth of whites.

The Domestic Partnership Benefits and Obligations Act of 2009 offers an important opportunity to give unmarried Americans who work for the federal government better access to health coverage. However, by offering to include only same-sex partners, it falls short not only of the needs of federal employees but also of the standard set by competing employers.

Domestic partnership and marriage serve different purposes for people in different situations. It is not fair to offer benefits only to federal employees who are married or not allowed to marry. If the federal government sees the value of supporting employees' families, then it should seek to support all true

families. Demonstrations of care-giving and emotional and financial interdependence – such as those outlined in local domestic partnership registries and the affidavits of domestic partnership used by many employers – are more accurate than marriage licenses for defining who is a family. The model definition of domestic partner should be as broad as possible. It should not exclude people who are related by blood as long as they meet the other characteristics of long-term commitment and caring responsibilities.

For example, in 2005 AtMP was contacted by a federal employee in Maryland whom I'll call "Fred." Fred and his female partner had lived together for many years. He was very concerned about her health; she was uninsured and her medical needs were called pre-existing conditions by potential insurers. They each had been married and divorced in the past, and each saw marriage as an abusive institution that would harm their long-standing affection and commitment. Fred and his partner could not understand why his employer, the federal government, would force them through the pain of remarriage in order to fulfill their commitment to care for each other.

As another example, in 2007 *The New York Times* reported that "Sergio A. Olaya [who] runs the Capitol elevators on which the senators ride. ... Mr. Olaya, 21, is struggling with $255,000 of medical bills incurred by his mother before she died in April from an aggressive form of brain cancer [at 61 years old]. ... As a government employee, Mr. Olaya has health insurance. ... His mother, an expert on health and nutrition ... had health insurance in most of her jobs over the last 20 years...[b]ut she had been unemployed and uninsured since December." It is equally unfair that Mr. Olaya was prohibited from putting his mother on his federal employee benefit plan, as it is unfair that another employee is prohibited from sharing her benefits with her same-sex partner.

The Domestic Partnership Benefits and Obligations Act also falls short of the standard set by employers who already cover workers' domestic partners. According to a 2004 report by the Human Rights Campaign Foundation, 95% of employers that cover domestic partners do so inclusively: their employees' partners can access health care without regard to gender.

In fact, a growing number of employers are already extending benefits beyond domestic partners. Insurance companies Nationwide and Prudential offer benefits to the extended family or household members of their employees, as do the Universities of Kentucky and Michigan.

Inclusive employers abound in the public sector as well. Findings in a 2008 report by the Center for American Progress include: Washington State's Human Resources Department reported a positive boost in recruitment and retention since instituting benefits for both same- and different-sex partners. Vermont - the earliest state to champion equal benefits for both same-sex and different-sex partners - found initial,

marginal increases in premium costs but ultimately saw no effect on state costs. The New York state government currently covers 4,881 domestic partners, and the majority of these are different-sex partners. New York reports that the plan has been easy to implement.

AtMP frequently hears from employees in unmarried, different-sex relationships whose workplaces offer benefits only to same-sex domestic partners. Many of these employees are bisexual; many identify as heterosexual and are boycotting marriage "until everyone can marry." These workers deeply resent that their own partners and families are excluded from health coverage; some have brought legal challenges.

It is important to remember that domestic partner benefits were originally offered to recognize family diversity in the workplace, not as an alternative to same-sex marriage. The first known employer to include domestic partner benefits policy was *The Village Voice* newspaper. In 1982, it made "marital" employment benefits available to unmarried different-sex employees in long-term relationships. Only later did *The Voice* expand its policy to include same-sex domestic partners.

It is now well known that employers without domestic partner benefits are at a competitive disadvantage. One survey of 279 human resources professionals representing 19 industries found that domestic partnership benefits were among the top three most effective incentives for recruiting new hires, regardless of sexual orientation.

The fact is that married people are a shrinking proportion of society; since 2005, married couples have occupied a minority of American households. The economic and demographic trends behind this fact are not going away. Americans marry for love and divorce when love is lost, marry later, and live longer. Americans cherish their independence; place high value on a variety of relationships; and define their families to include all the people they care for, not just the ones who have weddings.

When President Obama hinted that he would expand federal employee benefits last month, over 110 AtMP members from over 35 states emailed him to urge that federal employees be allowed to put one adult, or at least different-sex as well as same-sex partners, on their health plan along with their children.

The American people rightly expect the federal government to reflect the people's values and to respect the people's real lives. Congress has taken an important but small step by proposing the Domestic Partnership Benefits and Obligations Act. Please don't fall short of our just expectations. Please take amend the bill to include all partners, without discrimination. Thank you.

In Support of the Domestic Partnership Benefits and Obligations Act of 2009
For the Hearing: *The Domestic Partnership Benefits and Obligations Act*
July 8th, 2009
Statement of Jody Huckaby, Executive Director, PFLAG National

On behalf of Parents, Families and Friends of Lesbians and Gays (PFLAG) National's over 200,000 members and supporters, we thank you for allowing us to submit written testimony supporting the *Domestic Partnership Benefits and Obligations Act of 2009 – H.R. 2517* - and urge the Congress to focus on the issues of extending equal benefits and compensation to all federal employees. We would also like to thank Chairman Lynch and Ranking Members Chaffetz and McHugh for convening the hearing on *The Domestic Partnership Benefits and Obligations Act* before the United States House of Representatives Oversight and Government Reform Committee, Subcommittee on Federal Workforce, Postal Service and the District of Columbia. It is absolutely critical for the Subcommittee to discuss the important role equal benefits and compensation play for all federal employees, their spouses and their families.

Problem Statement and Background Information

Benefits, such as health insurance and retirement savings, are a significant portion of employee compensation. Although the federal government - the nation's largest civilian employer - offers attractive family benefits to employees with different-sex spouses, it does not offer the same benefits to lesbian, gay and bisexual workers with same-sex partners. As a result, these employees do not receive equal pay for their equal contributions, and the government cannot keep pace with leading private-sector employers - including many federal contactors - in recruiting and retaining top talent.

Current Gaps in Federal Law

Despite President Obama's recent Presidential Memorandum, which extended some benefits to federal employees' same-sex partners, it did not go far enough to extend equal benefits comparable to those benefits received by federal employee's with opposite-sex spouses. Benefits currently afforded to married federal employees but denied to same-sex domestic partners include:

- Access to FEHBP health insurance;
- Pension and retirement benefits;
- Family relocation assistance;
- Language training, evacuation services, health care, and anti-terrorism training for Foreign Service officers' families;
- Family and medical leave; and
- Continued health coverage upon employee's termination (at own expense).

The Domestic Partners Benefits and Obligations Act of 2009

The Domestic Partnership Benefits and Obligations Act would provide health care, retirement, and other benefits to all federal civilian employees with qualifying same-sex domestic partners on the same basis as spousal benefits. The Act also provides benefits for domestic partners' children, even if they are not the biological or adopted children of the employee. The Act also imposes equal obligations upon domestic partners, including the duty to disclose financial interests.

Parents, Families and Friends of Lesbians and Gays (PFLAG) **You Have a Home in PFLAG**
1726 M Street, NW Suite 400 Washington, DC 20036 **Voice:** (202) 467-8180 **Fax:** (202) 467-8194 **Web:** www.pflag.org

By offering full benefits to the domestic partners of federal employees, this bill will bring employment practices in the federal government in line with those of America's largest and most successful corporations. Fifty seven percent of Fortune 500 companies provide domestic partner benefits to their employees. Many leading companies in the United States, including defense giant Raytheon, IBM, Microsoft, Shell Oil, Walt Disney, Fannie Mae, Citigroup, Xerox, AOL Time Warner, and United and American Airlines offer these benefits. In addition, 19 states and over 150 local governments offer their public employees domestic partnership benefits. These include cities in every part of the country, from Los Angeles to New York City, to Madison, Wisconsin and Iowa City.

In addition, by offering domestic partnership benefits, the federal government would not only improve the quality of its workforce, but also demonstrate its commitment to fairness and equality for all Americans. Benefits comprise a significant portion of all employee compensation. By not offering domestic partnership benefits to its employees, the federal government is not providing equal pay for the equal work of these employees. The legislation would also require domestic partners to have the same obligations under federal law.

PFLAG's Unique Role

PFLAG seeks to promote the health and well-being of lesbian, gay, bisexual and transgender persons, their families and friends through: support, to cope with an adverse society; education, to enlighten an ill-informed public; and advocacy, to end discrimination and to secure equal civil rights. Parents, Families and Friends of Lesbians and Gays provides opportunity for dialogue about sexual orientation and gender identity, and acts to create a society that is healthy and respectful of human diversity.

PFLAG remains committed to promoting the health and well-being of LGBT individuals by influencing policy and legislation aimed at recognizing same-sex relationships. That is why so many PFLAG parents, families and friends, who understand the importance of employee benefits, continue to work in their local communities to identify innovative ways to move local governments and businesses to provide equal benefits and compensation for gay, lesbian and bisexual employees with same-sex partners.

It is time for the federal government to have the ability to retain the best employees, through giving equal treatment to its gay and lesbian employees in committed relationships. We hope the leadership of the U.S. Congress will take action by moving equality forward. We encourage you to meet with PFLAG members and supporters along with our staff members in our national office who continue to advocate for domestic partner benefits at the local, state and federal level for both public and private employees. We believe these personal accounts will be enormously helpful in your efforts to make a difference in the lives of all hard-working Americans.

Again, we thank you for holding this important hearing and allowing us to submit a written testimony supporting *The Domestic Partnership Benefits and Obligations Act of 2009*. On behalf of all of our members and supporters, we are grateful for your dedicated work in helping create equal workplaces for all Americans. If you have any questions related to our ongoing work, please be sure to contact our Field and Policy Manger, Rhodes Perry at 202-467-8180 x 221 or rperry@pflag.org.

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Mr. LYNCH. Good afternoon, ladies and gentlemen. Today, the subcommittee convenes to discuss H.R. 2517, which is a measure introduced by our own colleague, Representative Tammy Baldwin of Wisconsin, designed to provide equal treatment to lesbian and gay Federal and civilian employees by providing that same-sex domestic partners be entitled to the same benefits available to a married Federal employee and his or her spouse.

While today's proceeding has been framed as a legislative hearing with the purpose of discussing the merits, composition and impact of H.R. 2517, the real issues we are confronting today deal with the principles of equality, fairness, and inclusion in the workplace, principles that should be commonplace for the Federal Government as an employer both in theory and in fact.

Yet today, neither exists as tens of thousands of Federal workers and their same-sex partners continue to be denied access to employee benefits such as health insurance, overtime, and savings, which are customarily offered to employees with opposite-sex spouses. In many ways, it's baffling that this inequality exists on the Federal level despite the significant expansion in the availability of employment-related benefits and equal treatment for domestic partners among other public and private sector employers.

We know that nearly 20 States and over 250 localities expand benefits to domestic partners of other public employees, and in the private sector, we have seen that the number of Fortune 500 companies that extend benefits to employees with same-sex partners has grown from 46 companies, about 9 percent, in 1997 to 286 companies, 57 percent, in 2009.

Aside from the basic concepts of fairness and nondiscrjmination, the need to consider providing domestic partners' benefits to Federal employees should also be evaluated in light of the potential positive impacts that such policies can have on the Federal Government's recruitment and retention capabilities, its employee productivity and morale and, in some cases, the bottom line, as uninsured domestic partners must often rely on other government-sponsored health care programs and plans.

I would again like to thank the gentlelady from Wisconsin, Congresswoman Tammy Baldwin, and the 100-plus cosponsors of H.R. 2517 for their work, their diligence, and their commitment to correcting a longstanding injustice which has resulted in some Federal workers not receiving equal pay for equal work.

I would like to point out recent action taken by the Obama administration in providing same-sex partners of Federal employees with certain benefits already available to spouses of heterosexual employees. Although these fall short of the full range of benefits available to married couples, the President's actions are nevertheless a step in the right direction, and they must be complemented by congressional legislative action, which is what brings us to today's consideration of H.R. 2517, the Domestic Partnership Benefits Act of 2009.

[The text of H.R. 2517 follows:]

I

111TH CONGRESS
1ST SESSION

H. R. 2517

To provide certain benefits to domestic partners of Federal employees.

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 2009

Ms. BALDWIN (for herself, Ms. ROS-LEHTINEN, Mr. BERMAN, Mr. CAPUANO, Mr. ELLISON, Mr. ENGEL, Ms. HARMAN, Mr. HOLT, Mr. KENNEDY, Mr. LANGEVIN, Mrs. MALONEY, Ms. MATSUI, Ms. MCCOLLUM, Mr. MCDERMOTT, Ms. MOORE of Wisconsin, Mr. MORAN of Virginia, Mr. NADLER of New York, Ms. NORTON, Ms. SCHAKOWSKY, Mr. SERRANO, Mr. SHERMAN, Ms. SUTTON, Mr. TIERNEY, Ms. WASSERMAN SCHULTZ, Mr. WU, Mr. CUMMINGS, Mr. KUCINICH, Ms. VELÁZQUEZ, Mr. WAXMAN, Ms. BERKLEY, Mrs. CAPPS, Mr. MOORE of Kansas, Mr. WEINER, Mr. CONNOLLY of Virginia, Mr. HASTINGS of Florida, Mr. PASTOR of Arizona, Mr. WELCH, Ms. WOOLSEY, Mr. MCGOVERN, Ms. ZOE LOFGREN of California, Mrs. DAVIS of California, Mr. GRIJALVA, Ms. KILPATRICK of Michigan, Mr. STARK, Mr. DINGELL, Mr. GEORGE MILLER of California, Mr. SARBANES, Mr. ROTHMAN of New Jersey, Mr. CROWLEY, Mr. WEXLER, Mr. FARR, Ms. LINDA T. SÁNCHEZ of California, Mr. CARSON of Indiana, Ms. DEGETTE, Mr. DELAHUNT, Mr. JACKSON of Illinois, Mr. MICHAUD, Mrs. LOWEY, Ms. ESHOO, Mr. GUTIERREZ, Mr. POLIS of Colorado, Mr. ACKERMAN, Mr. FILNER, Mr. CLYBURN, and Mr. QUIGLEY) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committees on House Administration and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide certain benefits to domestic partners of Federal employees.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Domestic Partnership
5 Benefits and Obligations Act of 2009".

6 **SEC. 2. BENEFITS TO DOMESTIC PARTNERS OF FEDERAL**
7 **EMPLOYEES.**

8 (a) IN GENERAL.—An employee who has a domestic
9 partner and the domestic partner of the employee shall
10 be entitled to benefits available to, and shall be subject
11 to obligations imposed upon, a married employee and the
12 spouse of the employee.

13 (b) CERTIFICATION OF ELIGIBILITY.—In order to ob-
14 tain benefits and assume obligations under this Act, an
15 employee shall file an affidavit of eligibility for benefits
16 and obligations with the Office of Personnel Management
17 identifying the domestic partner of the employee and certi-
18 fying that the employee and the domestic partner of the
19 employee—

20 (1) are each other's sole domestic partner and
21 intend to remain so indefinitely;

22 (2) have a common residence, and intend to
23 continue the arrangement;

24 (3) are at least 18 years of age and mentally
25 competent to consent to contract;

(4) share responsibility for a significant measure of each other's common welfare and financial obligations;

(5) are not married to or domestic partners with anyone else;

(6) are same sex domestic partners, and not related in a way that, if the two were of opposite sex, would prohibit legal marriage in the State in which they reside; and

(7) understand that willful falsification of information within the affidavit may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification and may constitute a criminal violation.

(c) DISSOLUTION OF PARTNERSHIP.—

(1) IN GENERAL.—An employee or domestic partner of an employee who obtains benefits under this Act shall file a statement of dissolution of the domestic partnership with the Office of Personnel Management not later than 30 days after the death of the employee or the domestic partner or the date of dissolution of the domestic partnership.

(2) DEATH OF EMPLOYEE.—In a case in which an employee dies, the domestic partner of the employee at the time of death shall receive under this

1 Act such benefits as would be received by the widow
2 or widower of an employee.
3 (3) OTHER DISSOLUTION OF PARTNERSHIP.—
4 (A) IN GENERAL.—In a case in which a
5 domestic partnership dissolves by a method
6 other than death of the employee or domestic
7 partner of the employee, any benefits received
8 by the domestic partner as a result of this Act
9 shall terminate.
10 (B) EXCEPTION.—In a case in which a do-
11 mestic partnership dissolves by a method other
12 than death of the employee or domestic partner
13 of the employee, the former domestic partner of
14 the employee shall be entitled to benefits avail-
15 able to, and shall be subject to obligations im-
16 posed upon, a former spouse.
17 (d) STEPCHILDREN.—For purposes of affording ben-
18 efits under this Act, any natural or adopted child of a do-
19 mestic partner of an employee shall be deemed a stepchild
20 of the employee.
21 (e) CONFIDENTIALITY.—Any information submitted
22 to the Office of Personnel Management under subsection
23 (b) shall be used solely for the purpose of certifying an
24 individual's eligibility for benefits under subsection (a).
25 (f) REGULATIONS AND ORDERS.—

1 (1) OFFICE OF PERSONNEL MANAGEMENT.—
2 Not later than 6 months after the date of enactment
3 of this Act, the Office of Personnel Management
4 shall promulgate regulations to implement sub-
5 sections (b) and (c).
6 (2) OTHER EXECUTIVE BRANCH REGULA-
7 TIONS.—Not later than 6 months after the date of
8 enactment of this Act, the President or designees of
9 the President shall promulgate regulations to imple-
10 ment this Act with respect to benefits and obliga-
11 tions administered by agencies or other entities of
12 the executive branch.
13 (3) OTHER REGULATIONS AND ORDERS.—Not
14 later than 6 months after the date of enactment of
15 this Act, each agency or other entity or official not
16 within the executive branch that administers a pro-
17 gram providing benefits or imposing obligations shall
18 promulgate regulations or orders to implement this
19 Act with respect to the program.
20 (4) PROCEDURE.—Regulations and orders re-
21 quired under this subsection shall be promulgated
22 after notice to interested persons and an opportunity
23 for comment.
24 (g) DEFINITIONS.—In this Act:
25 (1) BENEFITS.—The term "benefits" means—

1 (A) health insurance and enhanced dental
2 and vision benefits, as provided under chapters
3 89, 89A, and 89B of title 5, United States
4 Code;
5 (B) retirement and disability benefits and
6 plans, as provided under—
7 (i) chapters 83 and 84 of title 5,
8 United States Code;
9 (ii) chapter 8 of the Foreign Service
10 Act of 1980 (22 U.S.C. 4041 et seq.); and
11 (iii) the Central Intelligence Agency
12 Retirement Act of 1964 for Certain Em-
13 ployees (50 U.S.C. chapter 38);
14 (C) family, medical, and emergency leave,
15 as provided under—
16 (i) subchapters III, IV, and V of
17 chapter 63 of title 5, United States Code;
18 (ii) the Family and Medical Leave Act
19 of 1993 (29 U.S.C. 2601 et seq.), insofar
20 as that Act applies to the Government Ac-
21 countability Office and the Library of Con-
22 gress;
23 (iii) section 202 of the Congressional
24 Accountability Act of 1995 (2 U.S.C.
25 1312); and

1 (iv) section 412 of title 3, United
2 States Code;
3 (D) Federal group life insurance, as pro-
4 vided under chapter 87 of title 5, United States
5 Code;
6 (E) long-term care insurance, as provided
7 under chapter 90 of title 5, United States Code;
8 (F) compensation for work injuries, as pro-
9 vided under chapter 81 of title 5, United States
10 Code;
11 (G) benefits for disability, death, or cap-
12 tivity, as provided under—
13 (i) sections 5569 and 5570 of title 5,
14 United States Code;
15 (ii) section 413 of the Foreign Service
16 Act of 1980 (22 U.S.C. 3973);
17 (iii) part L of title I of the Omnibus
18 Crime Control and Safe Streets Act of
19 1968 (42 U.S.C. 3796 et seq.), insofar as
20 that part applies to any employee; and
21 (H) travel, transportation, and related pay-
22 ments and benefits, as provided under—
23 (i) chapter 57 of title 5, United States
24 Code;

1 (ii) chapter 9 of the Foreign Service
2 Act of 1980 (22 U.S.C. 4081 et seq.); and
3 (iii) section 1599b of title 10, United
4 States Code; and
5 (I) any other benefit similar to a benefit
6 described under subparagraphs (A) through (H)
7 provided by or on behalf of the United States
8 to any employee.
9 (2) DOMESTIC PARTNER.—The term "domestic
10 partner" means an adult unmarried person living
11 with another adult unmarried person of the same
12 sex in a committed, intimate relationship.
13 (3) EMPLOYEE.—The term "employee"—
14 (A) means an officer or employee of the
15 United States or of any department, agency, or
16 other entity of the United States, including the
17 President of the United States, the Vice Presi-
18 dent of the United States, a Member of Con-
19 gress, or a Federal judge; and
20 (B) shall not include a member of the uni-
21 formed services.
22 (4) OBLIGATIONS.—The term "obligations"
23 means any duties or responsibilities with respect to
24 Federal employment that would be incurred by a
25 married employee or by the spouse of an employee.

1 (5) UNIFORMED SERVICES.—The term "uni-
2 formed services" has the meaning given under sec-
3 tion 2101(3) of title 5, United States Code.

4 **SEC. 3. EFFECTIVE DATE.**

5 This Act including the amendments made by this Act
6 shall—

7 (1) with respect to the provision of benefits and
8 obligations, take effect 6 months after the date of
9 enactment of this Act; and

10 (2) apply to any individual who is employed as
11 an employee on or after the date of enactment of
12 this Act.

○

Mr. LYNCH. I look forward to a healthy and robust discussion on all aspects of the measure before us.

I would like to thank today's witnesses for taking the time to be with us today as we explore this important issue.

I would now like to call upon our witnesses.

It is the committee's policy that all witnesses are to be sworn. I'll ask you to please rise.

[Witnesses sworn.]

Mr. LYNCH. The record will show that the witnesses have answered in the affirmative, and I will now ask our ranking member, Mr. Chaffetz, the gentleman from Utah, for a 5-minute opening statement.

Mr. CHAFFETZ. Thank you, Mr. Chairman. I do appreciate it, and I appreciate the work that you've put into this effort, and I truly do look forward to listening and learning and understanding your perspective.

I hope this can also be a candid dialog about some of the respect and traditions of this country.

With this, I again want to thank the chairman for holding this hearing today in discussing H.R. 2517, the Domestic Partnership Benefits and Obligations Act of 2009.

I would also like to thank Reverend Henry Gaston, Patrick Walker, Donald Sadler and other members of the Ministers' Conference of D.C. and vicinity for their presence and their participation in this ongoing discussion. I look forward to hearing from the various witnesses that we will today.

I, like most people in this country, am in favor of preserving traditional marriage. To me, marriage carries a direct religious significance in addition to other connotations. But perhaps most significant to H.R. 2517 is that the term "marriage" is also a legal matter, and a court of law is involved in the marriage process. What we cannot do with this legislation is create laws which are similar for different people.

While we are told that because opposite-sex couples have the option to marry, they're provided with similar benefits. What I'm concerned about is trying to draw that distinction into having an unintended consequence of actually offering and creating a separate class or category of people that then would obtain or be given rights above and beyond other people who don't choose to participate in those lifestyle choices.

Whether or not a heterosexual couple is dating and living together can meet all other standards except for the portion of regarding the couple of same-sex status is of concern to me. If they can, yet are not afforded the same rights, this bill is directly discriminatory against heterosexual couples, and that, to me, is one of the unintended consequences that I have a serious concern and question, and I'd appreciate if the witnesses would address.

Marriage by another name is of concern to me and I think the majority of Americans. At the same time, I want to be respectful of individuals and their rights to choose. And I would just like to relay a very brief story that's very personal to me in my Great Aunt Louise. She has since passed away.

She was happily married for a long time. And yet when she passed away, she ended up living with another women. It was not

necessarily an intimate relationship, it was not necessarily a relationship that was other than based on the fact that she had an economic need, she had a security need, there was a friendship need, and yet I worry that maybe given the definitions of where this legislation is trying to go, that if she had been a Federal employee, that there would be other people that get benefits above and beyond where she had been.

And I also worry that heterosexual couples who have made a decision not to get married would be discriminated against along the way.

I also have concerns about fraud and abuse, the ability to enforce these types of things, the costs that will be associated with them. I think these are all valid points. At the same time, I think we can approach this with a moral attitude that says we want to do what's right for people and for individuals, but also have a respect for the traditions of this country that marriage, defined as a marriage between one man and one woman, is something that this country feels strongly about. And I do as well.

So with that, I look forward to hearing, not so much speaking. I thank the chairman and look forward to hearing your testimony, and I yield back the balance of my time.

Mr. LYNCH. Now I would like to offer 5 minutes for an opening statement to the Honorable Tammy Baldwin, the lead sponsor of this measure.

STATEMENT OF HON. TAMMY BALDWIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Ms. BALDWIN. Thank you, Mr. Chairman, and thank you, Ranking Member Chaffetz and members of the subcommittee for the opportunity to testify today at what is a very historic hearing.

I also want to thank OPM Director John Berry for taking the time to testify in support of this legislation and wish to thank Ambassador Guest and all of our distinguished panelists today for their leadership.

As my colleagues on this committee know, the Federal Government employs more than 1.8 million civilian employees, making it the Nation's largest employer. Historically, the Federal Government has been a leader in offering important benefits to its employees. But today, we are lagging behind, and this is particularly true regarding the extension of benefits to employees with same-sex partners.

As it stands, some Federal employees do not receive equal pay and benefits for equal contributions. And the government is not keeping pace with leading private sector employers in recruiting and retaining top talent. Indeed, a large number of America's major corporations, as well as State and local governments and educational institutions, have extended employee benefit programs to cover their employees' domestic partners.

These employers include top American corporations such as GE, Chevron, Boeing, Texas Instruments, Lockheed Martin, and American Airlines, whom you will hear from later this afternoon.

Under the Domestic Partnership Benefits and Obligation Act, a Federal employee and his or her same-sex domestic partner would be eligible to participate in Federal retirement benefits, life insur-

ance, health benefits, Workers Compensation, and family and medical leave benefits to the same extent as married employees and their spouses.

These employees and their domestic partners would likewise be subject and would assume the same obligations as applied to married employees and their spouses, such as antinepotism rules and financial disclosure requirements.

I want to make very clear that this bill contains strong antifraud provisions, requiring employees to file an affidavit of eligibility in order to extend benefits to their domestic partners. And this is significant, especially considering that we do not require married employees to show documentary evidence of their marriages when claiming spousal benefits.

The penalties for fraudulently claiming a domestic partnership would be the same as penalties for fraudulent claim of marriage. For example, intentional false statements on a Federal Employees Health Benefits form is punishable by a fine of up to $10,000 and imprisonment up to 5 years.

Mr. Chairman, I appear before you today both as the lead author of this legislation, but also as a lesbian Federal employee who has been in a committed relationship with my partner, Lauren, for over 13 years. Over the years, Lauren and I have examined the differences between my benefits and my ability to provide for her compared to the benefits enjoyed by my straight, married colleagues in Congress.

Some quick number crunching would demonstrate that the difference between my health benefits and yours just with regard to that benefit alone over the course of my 10 years in Congress is measured in five figures. This is a significant inequality, and heaven forbid anything would happen to me, but Lauren would not be eligible to receive the survivor annuity from my pension nor health insurance survivor benefits.

Unlike the spouses of my colleagues, Lauren is also not currently subject to any of the obligations related to my Federal service. I find this also disturbing.

All Members of Congress file annual financial disclosures. Married Members must file important information about their spouse's income, investments, debts, gifts received, etc. Surely, the public interest requires that these obligations also apply to partners of gay and lesbian office holders.

Last month, as you mentioned in your opening statement, Mr. Chairman, President Obama signed a Presidential Memorandum on Federal Benefits and Nondiscrimination which directs the Office of Personnel Management and the State Department to extend certain benefits to the same-sex partners of Federal employees within the confines of existing Federal law. Although the memorandum is an important step in providing same-sex partners of Federal employees with benefits already available to spouses of heterosexual employees, it falls short of providing the full range of benefits.

President Obama recognized and acknowledged that fact when he signed the memorandum calling it just a start. He went on to say that, as Americans, we are all affected when our promises of equality go unfulfilled. President Obama recognized that full exten-

sion of benefits will require an act of Congress and proclaimed his strong support for the legislation that you are reviewing today.

Gentlemen, thank you again for this opportunity to review the bill and to testify before the committee.

Mr. LYNCH. Thank you.

[The prepared statement of Hon. Tammy Baldwin follows:]

Congresswoman Tammy Baldwin
Statement for Subcommittee on Federal Workforce, Postal Service, and the District of Columbia
Hearing on H.R. 2517, the Domestic Partnership Benefits and Obligations Act
Wednesday, July 8, 2009

Thank you Chairman Lynch, Ranking Member Chaffetz, and members of the Committee for allowing me the opportunity to testify today at this historic hearing.

I am very pleased that the Domestic Partnership Benefits and Obligations Act (H.R. 2517) is getting its first House hearing. I want to thank OPM Director John Berry for taking the time to testify in support of this legislation. I also wish to thank Ambassador Guest and all our other distinguished panelists for their leadership.

As my colleagues on this Committee know, the federal government employs more than 1.8 million civilian employees, making it the nation's largest civilian employer. Historically, the federal government was a leader in offering important benefits to its employees. This is no longer the case – particularly regarding the extension of benefits to employees with same-sex partners. As it stands, some federal employees do not receive equal pay and benefits for their equal contributions, and the government is not keeping pace with leading private-sector employers in recruiting and retaining top talent.

Indeed, a large number of America's major corporations, as well as state and local governments and educational institutions, have extended employee benefit programs to cover their employees' committed domestic partners. For example, over half of Fortune 500 companies now offer health benefits to employees' domestic partners, up from just 25 percent in 2000. Overall, more than 8,000 private-sector companies make such benefits available to employees' domestic partners, as do several hundred state and local governments and colleges and universities. These employers include top American corporations such as GE, Chevron, Boeing, Texas Instruments, Lockheed Martin, and American Airlines, whom you'll hear from later this afternoon.

Under the Domestic Partnership Benefits and Obligations Act, a federal employee and his or her same-sex domestic partner, who are not related by blood and are living together in a committed intimate relationship, would be eligible to participate in federal retirement benefits, life insurance, health benefits, workers' compensation, and Family and Medical Leave to the same extent as married employees and their spouses. These employees and their domestic partners would likewise be subject to and assume the same obligations as apply to married employees and their spouses, such as anti-nepotism rules and financial disclosure requirements.

I want to make very clear that the bill has strong anti-fraud provisions, requiring employees to file an affidavit of eligibility in order to extend benefits to their domestic partner (and this is significant, especially considering that we do not require married employees to show any documentary evidence of their marriage). Further, the penalties for fraudulent claims for domestic partners would be the same as the current penalties for fraudulent marriage. For example, intentional false statements on the Federal Employee Health Benefits form is punishable by a fine of up to $10,000 or imprisonment up to 5 years – and the same would apply under this legislation.

Mr. Chairman, I am testifying today both as the lead author of the legislation before us, but also as a lesbian Member of Congress who cannot currently cover my partner of 13 years, Lauren, through the federal benefits programs.

Over the years, Lauren and I have examined the differences between my benefits and my ability to provide for her compared to the benefits enjoyed by my straight, married colleagues in Congress. I can tell you that the difference between <u>my</u> benefits and <u>yours</u> with regard to health insurance alone is measured in five figures.

For example, although the federal government offers its employees and their dependents more than 300 health insurance plans and subsidizes health insurance premiums, I am not eligible to cover Lauren under any plan like my straight married colleagues can. Although I can specify her as a beneficiary for my life insurance, TSP, and any unpaid compensation, if for some reason I didn't sign this paperwork, the "order of precedence" would prevent Lauren from receiving my savings. And heaven forbid if anything happens to me, Lauren is not eligible to receive the survivor annuity from my pension, nor health insurance survivor benefits.

Unlike the spouses of my straight married colleagues, Lauren is also not currently subject to any of the obligations related to my federal service. And this is also disturbing. All Members of Congress file annual financial disclosures. Married Members must file important information about their spouses' income, investments, debts, gifts, etc. Surely, the public interest requires that these obligations apply also to partners of gay and lesbian office holders.

Last month, President Obama signed a Presidential Memorandum on Federal Benefits and Non-Discrimination, which directs the Office of Personnel Management (OPM) and the State Department to extend certain benefits to the same-sex partners of federal employees within the confines of existing federal laws. Although the Memorandum is an important step in providing same-sex partners of federal employees with the benefits already available to spouses of heterosexual employees, it falls short of providing the full range of benefits. President Obama acknowledged that fact when he signed the Memorandum, calling it "just a start." He went on to say that, "As Americans, we are all affected when our promises of equality go unfulfilled." President Obama recognizes that the full extension of benefits will require an Act of Congress and proclaimed his strong support for the Domestic Partnership Benefits and Obligations Act.

Like our President, I strongly believe that we must address the significant inequality in compensation experienced by an estimated 30,000 employees at all levels of the federal government who currently cannot provide benefits to their same-sex domestic partners. The purpose of the Domestic Partnership Benefits and Obligations Act is to ensure that hard-working Americans can no longer be denied equal compensation for equal work just because of who they love. There is certainly nothing more American than ensuring that people have equal job opportunities and are paid fairly for a day's work.

Chairman Lynch, my thanks again to you for inviting me to testify.

Mr. LYNCH. Next, I'd like to introduce Mr. John Berry, who's the Director of the U.S. Office of Personnel Management, which manages the Federal Government's Civil Service employees. Prior to Mr. Berry's appointment, he was the Director of the National Fish and Wildlife Foundation and the Director of the Smithsonian Zoological Park.

Mr. Berry, you're recognized for 5 minutes.

STATEMENT OF JOHN BERRY, DIRECTOR, U.S. OFFICE OF PERSONNEL MANAGEMENT

Mr. BERRY. Thank you, Mr. Chairman. It's an honor to be back with you today. And, Congresswoman Baldwin, thank you for your leadership on this issue.

It is an honor to be here to represent on behalf of the President and his administration our strong support for H.R. 2517. This critical legislation will provide health, life and survivor benefits to same-sex domestic partners of Federal employees. I applaud Congresswoman Baldwin and the many cosponsors of H.R. 2517 for introducing this bill and you, Mr. Chairman, and the Members for hosting this hearing today.

Both the White House and the Office of Personnel Management wholeheartedly endorse the passage of this legislation. In my written testimony for the record, Mr. Chairman, I've also mentioned some technical fixes that we're seeking, and I will make all of my staff available to you and the committee staff to work with you to provide any support that may be of assistance in addressing those corrections.

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

Under current law, the Federal Government cannot offer basic benefits like health insurance, life insurance, dental or vision insurance to domestic partners of our gay and lesbian Federal employees. This policy 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. In this case, however, we have fallen behind the private sector and 19 States, including Alaska and Arizona. Almost 60 percent of the Fortune 500 companies and 83 percent of the Fortune 100 companies already offer this benefit to their same-sex domestic partners.

These companies include, as Congresswoman Baldwin mentioned, American Airlines, who is here today—and I commend their leadership in that regard—on the next panel, but also companies that you might not expect: Chevron, Food Lion, Archer Daniels Midland, Lockheed Martin, many, many others.

The Federal Government simply does not effectively compete with these companies for every talented person; we fail to offer comparable job benefits to our employees. And, in fact, Mr. Chairman, if I could just add, many of these companies are in direct competition with us. We spend quite a bit of money doing security

clearances on employees, and after they have that clearance, that clearance goes with the employee, not with the position. And so, essentially, if an employee can be recruited away, these are the kinds of tools where we can invest a lot of money, and then that employee walks out the door to a Lockheed Martin and others who need employees with security clearances. We ought not allow that uncompetitive edge.

The President, as Congresswoman Baldwin has already mentioned, took an important first step toward addressing these shortfalls when he signed the memorandum last month directing all Federal agencies to extend benefits to same-sex domestic partners of Federal employees to the extent now permitted by law. But as the President noted when he issued this, this legislation is needed to offer gay and lesbian Federal workers true equality and benefits and ensure fairness in the workplace.

I'd also note that the cost of extending these benefits to same-sex partners is negligible. 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. Adding domestic partner health insurance and survivor benefits for both Federal workers and retirees would cost approximately $56 million in the year 2010. This marginal increase equates to about two-tenths of 1 percent of the entire cost to the government of our Federal employees health insurance program.

Simply put, extending benefits to same-sex partners is a good, practical, bottom-line business decision, and it allows the Federal Government to retain our competitive edge in the 21st century. This legislation is a valuable business opportunity for the Federal Government to enhance our recruitment and our retention efforts. And just as important, this bill shows that we recognize the value of every American and their families and their relationships and are committed to the ideal of equal treatment under the law, as our Founders envisioned.

Mr. Chairman, thank you for this opportunity, and I look forward to answering any questions the committee might have.

[The prepared statement of Mr. Berry follows:]

STATEMENT OF

JOHN BERRY
DIRECTOR
U. S. OFFICE OF PERSONNEL MANAGEMENT

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.

Mr. LYNCH. Thank you. Great to have you up here again before our committee. You're a frequent witness here, and again we appreciate you, especially under today's circumstances.

I'm going to allow myself 5 minutes for a first round of questioning, and the way Congress works, as you both know very well, is that we usually have to be in five different places at the same time. So as Members come in and leave, I'll afford them an ample and full opportunity to ask questions at this hearing.

And because we have so much going on, I'm going to give the other members of the panel an opportunity to submit questions to you both in writing, and I'll say, in 5 days we'd like to have the responses to those questions if they're offered.

[The information referred to follows:]

Questions for the Record
Subcommittee on Federal Workforce, Postal Service, and the District of Columbia
Committee on Oversight and Government Reform
U.S. House of Representatives

July 8, 2009, Hearing on H.R. 2517
"Domestic Partnership Benefits and Obligations Act of 2009"

Question from Chairman Lynch
What is OPM's position regarding including current annuitants in the legislation?

The Administration through the testimony of the Director of OPM and through our cost estimates on H.R. 2517 clearly supports including current retirees under the bill.

As we have noted previously, there would be some additional cost to extending benefits to current retirees. Adding domestic-partner health insurance and survivor benefits for both Federal workers and retirees would cost approximately $56 million in 2010. This includes $16 million in savings because retirees who elect survivor benefits for their domestic partners will experience a reduction in their annuity payments. The cost for employees only, as the bill is currently drafted, would be $38 million in 2010.

Question from Ranking Member Chaffetz
You indicated during the hearing that there were serious employment gaps in the federal government, even during this current economic climate which sees the government growing at an unprecedented rate. As a result of these gaps, we were told we need more recruitment and retention tools in spite of the government's continued growth.

- **Specifically, where are these gaps located?**

Some of the occupations in which we are seeing serious employment gaps include – in addition to veterinarians –acquisition professionals, cybersecurity professionals, machinists, engineers, quality assurance and equipment specialists, food safety inspectors and microbiologists.

- **Do you think H.R. 2517 is going to help recruitment and retention to any measurable extent? Why?**

Based on the experience of other employers, we believe the addition of domestic partner benefits will help the Federal Government recruit and retain qualified employees. Employers in both the public and private sectors have reported that domestic partner benefits are an effective tool for recruitment and retention. According to the Williams Institute at the UCLA School of Law, domestic partner benefits reduce the likelihood that a lesbian, gay, or bisexual employee will consider leaving his or her job. The Williams

Institute has also found that a majority of heterosexual workers surveyed agree that all employees should be guaranteed equal benefits, regardless of their sexual orientation.

These positive outcomes are supported by the prevalence of domestic partner benefits in the private sector. According to the Human Rights Campaign, almost 60 percent of Fortune 500 companies already offer similar benefits to the same-sex domestic partners of their employees. In addition, 20 States offer these benefits to their employees.

If we fail to offer comparable job benefits to our employees, the Federal Government will have a harder time competing effectively with these other large employers for every talented person. We need legislative relief to correct the current laws under which the employee benefit programs operate. We believe that offering domestic partner benefits will help us address employment gaps and assist us in recruitment and retention.

Mr. LYNCH. Ms. Baldwin, currently there are three States that recognize same sex marriage. That's Massachusetts, Connecticut, and Iowa. Another three States, Vermont, Maine, and New Hampshire, will begin to recognize same-sex marriages in the next 6 months, based on legislation that has recently passed. And while the process in California is still somewhat in flux; marriages performed there between June 16, 2008, and November 4, 2008, are currently recognized by that State.

There are, of course, Federal employees in each of those States, and some of them may have had same-sex spouses. However, the Federal Government cannot recognize these marriages because of DOMA, the Defense of Marriage Act, and these employees, therefore, are not eligible for the benefits provided to Federal employees with opposite-sex spouses.

My question is, how are those folks going to be affected by your legislation? Is H.R. 2517 intended to cover those employees as well?

Ms. BALDWIN. The way this would work, the Federal employee who is in a same-sex partnership, whether they are married, in a marriage recognized at their State level or not, would have to file an affidavit of eligibility relating to their domestic partnership in order to receive the benefits that are being proposed in the bill before you. In terms of having complete Federal recognition of the marriages in those States, that would require a separate act of Congress, one that I support strongly, which would be repeal of title 3 of the Defense of Marriage Act, legislation that I expect to be offered by colleagues later in this session.

But the way this legislation would work in practice recognizes the fact we have Federal employees around the world, in every State of the Union, and that the States will go at different paces in terms of recognizing marriages. And so it made much more sense to create this mechanism to provide the employment fringe benefits, and that's what this bill is limited to.

I would note in addition to your iteration of States that have enacted recognition of marriage, two additional jurisdictions, New York State and the District of Columbia, have approved, either by executive order or by act of the Council, to recognize same-sex marriages performed in other jurisdictions. So they sort of add to the number of jurisdictions that at the State or local level will recognize marriage.

Mr. LYNCH. Thank you. And you're right; I think the action here in D.C. will come before the committee in some form. I know that the City Council has approved that measure as well.

Director Berry, in his June 17th memorandum, President Obama directed you and the Secretary of State to begin the process of extending some Federal benefits to qualified same-sex domestic partners of Federal employees. Can you give us an update on how that is going, even though the limited portion has gone forward? Do you see any problems in this? How is it proceeding?

Mr. BERRY. No, Mr. Chairman. I think that's going along well. We are well on schedule to stay within the 90 days that the President has established for us to issue and to come out with any regulations that would be required.

We are going to be issuing guidance to the Federal agencies to assist them. OPM and State have done a very thorough review of

our processes and code involved, but we did not have the opportunity or the time to do that.

For example, the General Services Administration is the agency charged with relocation benefits, so that a Federal employee's move, how that is handled, is through the General Services Administration. So, for example, we're asking each agency to do a thorough review of their law, and that's what the President has asked. Then we'll be collecting that information and collating it and getting back to the President within 90 days.

We just had the Chief Human Capital Officers monthly meeting yesterday, and that was on our agenda, and so we discussed that in full. Everybody is going through and going forward with their process. So I think we're right on schedule, Mr. Chairman.

Mr. LYNCH. Thank you. Let me followup then.

Your testimony earlier mentioned the fact that the bill would exclude annuitants with same-sex partners from electing benefit coverage. Is OPM's position that these individuals should be covered by the bill or not?

Mr. BERRY. Yes, sir, that they should be, and in fact, the dollar estimate that I gave you actually presumes you would make the corrective change to include annuitants.

Mr. LYNCH. Explain that. There is a possible funding offset here, right?

Mr. BERRY. Well, in the short term, there is a savings to the government because Federal employees who are retiring or have recently retired would take a lower payment in exchange for having the survivor benefit for their annuitant, for their partner, domestic partner, just as it is with the spouse now.

So, short term, there is a savings. In the long term, there would be a slight increase, but that is factored into the number that I gave you in my testimony, the $56 million.

And if I could just check—that is correct. OK.

Mr. LYNCH. So what you're saying is that they don't have the option right now to reduce, to seek the lower——

Mr. BERRY. No, sir.

Mr. LYNCH. Like myself, if you want to include your spouse, you take a lower benefit, and right now, for gay and lesbian employees of the Federal Government, they're all maxing out right now. They're all taking the highest option because they're forced to do that?

Mr. BERRY. Absolutely.

Mr. LYNCH. And if they take the lower amount, then it will cause a savings for the government.

In his memorandum, President Obama reaffirmed the civil service merit system principle that makes it unlawful to discriminate against Federal employees on the basis of factors unrelated to job performance, including sexual orientation or gender identity, and President Obama directed you to issue guidance to Federal Agencies requiring compliance with this principle.

How has that proceeded?

Mr. BERRY. Mr. Chairman, we're again right on schedule with that. Our counsel's office is working on preparing that, and we will meet the 90-day standard that the President has established.

My hope is, we actually have it done in less than 90 days, but we will definitely be within the 90-day period the President has set up.

Mr. LYNCH. Now, I do know that there was a situation over at the Office of Special Counsel, and I want to ask you about that.

As you know, the U.S. Office of Special Counsel is responsible for protecting Federal employees from discrimination based on sexual orientation and for enforcing the cornerstone of the merit system.

However, the recently departed Special Counsel, who is still being investigated by the OPM IG, the Office of Personnel Management Inspector General, refused to do so because of personal ideological beliefs. Unfortunately, the President has been slow to nominate a new Special Counsel, which means enforcement of this right continues to be somewhat of a gray area, I imagine.

You have been in touch with the acting leadership of the OSC, the Office of Special Counsel, about the issue, and I need to know where that sits right now.

Mr. BERRY. Mr. Chairman, I am very honored and extremely pleased that my General Counsel now at the Office of Personnel Management was a previous Special Counsel and held that position during the Clinton administration, and is an outstanding attorney and one of the brightest legal minds with Federal employees' and retirees' issues in this town. I know that she is in close contact with both the Special Counsel's Office and the Merit Systems Protection Board.

They are independent agencies, sir, so OPM does not directly affect or control either their budget or their staffing, but we do closely coordinate in terms of logic, rationale, and actions.

Right now, the President has made clear in that memorandum that it is the law of the land that any nonwork-related irrelevant factor is inappropriate for consideration in the Federal workplace, and that's going to be the responsibility for whoever the Special Counsel that he appoints to enforce as the prosecutor, and the Merit Systems Protection Board, as the adjudicating agency, to rule on those actions. But the President has made clear for all of the management of the Federal Government—senior executives, managers included—that he expects the law to be enforced.

Mr. LYNCH. Very good.

I'm not sure if the distinguished gentleman from northern Virginia, Mr. Connolly, has any questions at this point. Or do you need a minute?

Mr. CONNOLLY. Thank you, Mr. Chairman.

I ask unanimous consent that my opening statement be entered into the record.

Mr. LYNCH. Without objection, so ordered.

[The prepared statement of Hon. Gerald E. Connolly follows:]

Opening Statement of Congressman Gerald E. Connolly

Subcommittee on Federal Workforce, Post Office, and District of Columbia

"Domestic Partnership Benefits and Obligations Act of 2009"

Wednesday, July 8th, 2009

Thank you, Chairman Lynch for holding this hearing about the federal workforce. Once again this Subcommittee is working on the vital issue of federal employee recruitment and retention, an essential task considering that 47% of the supervisory Federal workforce will be eligible for retirement within the decade. As we have noted in numerous Committee and Subcommittee hearings this year, the Federal government is facing a brain drain at the managerial and other levels. We have discussed numerous tools to improve employee recruitment and retention, including implementation of paid parental leave, FERS re-deposit, FERS sick leave reform, and CSRS annuity reform. We have also discussed contracting reform that would enhance oversight over contracting, better enabling us to execute the Recovery Act and save taxpayer money across contracting functions.

These and other policy reforms are essential to maintain and enhance the capacity of the federal workforce. One important reform is implementation of domestic partnership benefits. Whether or not one is personally comfortable with the concept of domestic partnership benefits, we should be able to agree that provision of domestic partnership benefits will enhance our capacity to recruit and retain highly qualified federal employees. In fact, we know that this must be an important personnel policy because 286 of Fortune 500 companies provide them.

In fact, the Federal government has fallen behind corporate, non-profit, state, and local government employers in providing domestic partnership benefits. This presents yet another obstacle to this Committee's efforts to enhance the efficacy of the federal workforce through improved recruitment and retention of employees. Lockheed Martin, Sprint, and SAIC are just a few of the companies with a significant corporate presence in this region that offer domestic partnership benefits. We are competing with these companies for qualified employees, and cannot expect to hire the best among them if we offer inferior pay and inferior benefits.

Of course, the Federal government should not discriminate on the basis of sexual orientation. Ms. Baldwin's bill presents us with an opportunity to eliminate such discrimination. As important as that is, however, we should focus on the utility of this bill for all American citizens who expect the Federal government to function as efficiently as possible.

Mr. CONNOLLY. Mr. Chairman, in my district, I represent about 56,000 Federal employees and maybe as many retirees and lots of Federal contractors; and most of those Federal contractors and most of the large employers in my district, in fact, already have domestic partner benefits programs because they understand how important it is for recruitment and retention.

And I wonder—especially, Mr. Berry, but also you, Representative Baldwin—my comment on that whole issue of the challenge of recruitment and retention as we move forward, we've got a lot of Federal employees ready to retire in the baby boom generation. How are we going to replace them and retain those we replace them with if, in fact, we don't include this as part of the benefits portfolio moving forward?

Ms. BALDWIN. You raise a very, very important point about attracting the top talent for government service. And I don't have any aggregate data for you, it's hard to pin down, but I have some very powerful anecdotal information from my home State of Wisconsin, which just last week, by the way, enacted a domestic partnership registry and will be shortly extending those benefits to State employees.

I represent a district with a world-class university, the University of Wisconsin-Madison, and I have received as a Member of Congress panicked calls from chairpersons of departments at the medical school saying, Is there anything you can do about domestic partnership; we have the chance to land one of the most world-respected pediatric oncologists. And they're saying if their domestic partner isn't recognized with benefits, they're going to accept an offer at another world-class university.

We've had a researcher from the engineering school leave the State with an NSF grant that totaled more than it would have cost to implement the domestic partnership benefits State-wide in Wisconsin because of the indignity of the unequal treatment in employment.

So I think there are countless anecdotal accounts of why, when you can't offer these benefits, you lose top talent.

Mr. BERRY. If I could, I'll just add to and concur with the comments of the Congresswoman.

This is essential in maintaining our competitive edge in the 21st century, and the Federal Government spends between $3,000 and $15,000, depending upon the complexity of the security clearance, on our employees now. As you well pointed out, Federal contractors who require those clearances, who are desperate to get them and who have a hard time getting them, by providing this benefit, essentially the government incurs the cost of doing the evaluation on the Federal employee, does the initial training of that employee, and all of the expense associated with that, and then that employee is sucked away by either the Lockheed Martin or General Dynamics or whoever provides that benefit, if this is a concern in that case.

I look at this as a bottom-line business judgment. This is about recruiting and retaining, and not only do we need to be effective in recruiting across the Nation, but we've got to retain the employees, especially those employees with security clearances that we're at risk of losing because of this uncompetitive situation.

Mr. CONNOLLY. OK.

Mr. Chairman, I just want to say I completely concur, and I think that's the correct way to frame the issue for the Federal Government moving forward: How will we stay competitive in the employment market when we are competing with lots of large employers who, in fact, provide these benefits?

So I'm going to be an enthusiastic supporter of H.R. 2517 and encourage my colleagues to do the same.

I thank the Chair.

Mr. LYNCH. The Chair now recognizes the gentleman from Utah, Mr. Chaffetz, for 5 minutes.

Mr. CHAFFETZ. Thank you, Mr. Chairman. I started to chat with you on the floor about this, but as I read this bill, doesn't it discriminate in terms by giving same-sex couples greater Federal benefits than opposite-sex couples who may not be married?

Ms. BALDWIN. The option exists for opposite-sex couples to marry in every State of the Union, and so it is easily cured if they want to seek those benefits for them to enter the institution of marriage. Aside from the States that the chairman mentioned, that opportunity does not exist in all States for same-sex partners, and to the extent that it does exist in any States, the Defense of Marriage Act, which is currently embodied in Federal law, would prohibit the Federal Government from recognizing those marriages in those States that do recognize it.

So, in other words, we have to come up with another mechanism in order to offer fringe employment benefits—this is what we're talking about in this bill—to the same-sex partners of Federal employees.

Mr. CHAFFETZ. So a heterosexual couple is not going to get the same or a man or woman living together is not going to be able to get the same benefits as somebody who is a same-sex couple?

Ms. BALDWIN. Should they desire those benefits, they would have the option of marrying, and that is a choice open to them but not open to the same-sex partners of Federal employees.

Mr. CHAFFETZ. Mr. Berry, did you care to comment on that?

Mr. BERRY. I would reinforce what the Congresswoman has said. I think it is an effective alternative there, whereas the same alternative does not exist for same-sex couples.

Mr. CHAFFETZ. What is the determining factor? Intimate relationships? I mean, how are we going to define and enforce?

Mr. BERRY. Well, as required in the legislation, it is an affidavit, and it has substantial penalties. You know, currently our Inspector General at the Office of Personnel Management is responsible for enforcing fraud——

Mr. CHAFFETZ. So would you want heterosexual couples to just fill out an affidavit? Why wouldn't they just do that?

Mr. BERRY. Well, under this case it is defined specifically in the legislation as same-sex, but it does—that affidavit has—is criminal perjury. It could be—it's enforceable not only——

Mr. CHAFFETZ. But why can't you just fill out an affidavit: We've got a relationship, we plan to live together?

Ms. BALDWIN. As we said earlier, the option is available for a heterosexual couple to marry, and then these employment benefits

would flow automatically on the basis of that marriage and that spousal relationship.

Because of the Defense of Marriage Act, even those same-sex couples who are afforded the right to marry in certain States would not have those marriages recognized currently at the Federal level. And so this is a mechanism that allows people like myself who've been in a 13-plus-year relationship to be able to provide for my family.

Mr. CHAFFETZ. What percentage of people do we think are going to participate? The number I've heard is like 1.5 percent. Do we have any sort of cost estimate here?

Ms. BALDWIN. You will have a witness later who is very expert on this topic. Obviously, Director Berry has some data already. I haven't seen a percentage, but roughly 30,000 Federal employees. Is that close to yours?

Mr. CHAFFETZ. Do you have any idea what percentage?

Mr. BERRY. Now these are 2003 numbers, Congresswoman, but of the 1.8 million retirees, it's estimated that 29 percent, 5,400, are expected to elect the domestic partnership survivor benefit. And that's the basis on which——

Mr. CHAFFETZ. Sorry to cut you off. I've got, like, seconds to go. I appreciate that you've highlighted the statistic that I was after.

And Mr. Berry, the Office of Personnel Management stated in the Senate Homeland Security and Governmental Affairs hearing on September 24, 2008—and I recognize how new you are to this position, "that they do not serve as a central clearinghouse for all Federal employees and, therefore, would not have the records nor resources to collect and maintain such affidavits."

Do we have any sort of assessment as to how huge the bureaucracy is going have to become in order to not only maintain but to service those, to enforce those?

I mean, this creates a Pandora's box of problems it seems to me.

Mr. BERRY. No, Congressman, this is actually going to be fairly easy to administer. Each of the agencies would just keep the affidavit on file. That would be available for investigation against fraud by any inspector general. If fraud was discovered it would be referable to the U.S. attorney.

We see no additional cost associated with this, and the numbers we're talking about and the experience of the State and the private sector in this regard show this out over the past 10 years that there is not a huge increase, there is not a huge cost, there is not a huge paperwork burden. So we do not anticipate any of the Federal Government in this, and this administration is ready to implement it immediately.

Mr. CHAFFETZ. In wrapping up, Mr. Chairman, I'd just appreciate if you'd go again to look at that September 24, 2008, because I feel like the OPM was somehow compelled to have a fairly substantive approach to this in saying they are not—anyway, go back and look at that quote.

I'd like to better understand why you come to this "this is easy" conclusion. In 2008, they said, "No, this will be exceptionally difficult."

So, with that, I'll yield back the balance of my overtime.

Mr. LYNCH. OK. Let me just followup on some of what the ranking member was asking about.

I have very, very good staff here and I probably know more about this than I ever needed to know, but they showed me some studies that have been done of all the companies out there in the United States—some are international firms—that provide domestic benefits, same-sex couples. And they surveyed all those companies, and they tried to figure out, what's the take-up utilization rate among those same-sex couples that could have, and it was very, very low.

The ranking member was not far off; it was around 2 percent, very small. And I wonder about that in the Federal employee context, where you have a situation where someone's going to have to file an affidavit, and as the Director mentioned, under the pains and penalty of perjury—some very serious penalties here, $250,000, 5 years in prison, fairly dramatic consequences for fraud.

And also, if you put the overlay of what you had mentioned before about security clearances, you're going to have employees here who, I think, might be even more reluctant than in the private sector to take up these benefits. They don't want to file that affidavit with their employer, with their Department.

Now, my understanding was that the affidavits would be filed with OPM. Is that correct, or is it with the individual Departments?

Mr. BERRY. As it is now written, I believe Congresswoman Baldwin has recommended it be filed with OPM.

One of the technical amendments we were going to urge, because each of the agencies follow their own payroll and retirement paperwork, until the person's retired—once they're retired, that paperwork would come to us. So, for existing annuitants, we would cover that; but otherwise, for active employees, it would be with each Bureau and Department.

That's what we would recommend as a technical amendment to improve the legislation.

Mr. LYNCH. OK. I don't believe that's a hostile amendment, is it?

Ms. BALDWIN. No, sir. That would be very welcome.

Mr. LYNCH. OK. Let me ask you something else.

Earlier in your testimony, Director Berry, you said something about retirees utilizing same-sex benefits. However, my reading of the bill, this will just be for active employees, and so retirees would not be eligible. Am I misreading that?

Ms. BALDWIN. You are not misreading that, but as Director Berry indicated, in their review of the legislation, OPM has come up with a number of technical recommendations, and that would be one. And as you heard earlier, it has some near-term offsetting effects in terms of the cost of the bill. So it would be something that we should certainly consider.

Mr. BERRY. Mr. Chairman, as a technical amendment, we would recommend the inclusion of existing annuitants and allowing that program for them. And so we would be happy to work with your staff to achieve that.

Mr. LYNCH. That's something that's new to me right now, but that's why we have hearings.

Let me just say this. I know there has been a doctrinal priority to try to treat active employees and retirees the same, and that's

been something that the Federal Government has tried to do as an employer generally. I have to chew on that for a little bit and figure out what that really means. It's new. It's obviously just come up. But we'll try to work with you again.

I'm sure I've exhausted my 5 minutes.

Mr. Connolly, you're recognized for 5 minutes.

Mr. CONNOLLY. Well, I wanted to ask Mr. Berry, from his point of view, given his responsibilities, what kind of feedback are you getting from Federal agency heads, in terms of the value of this as a potential tool for recruitment and retention?

Mr. BERRY. There's no question, Mr. Connolly, this is a very valuable tool. As has been noted in the testimony, 83 percent of the Fortune 100 companies in our country today provide this. Those companies are not doing this out of social work or charitable purposes. They are doing it because it is a valuable recruitment and retention tool in their personnel portfolio.

So they are not motivated here on some social agenda. They are not restricted by some of the discussion that the Federal Government is encumbered by. They're making this as a bottom-line business assessment and judgment, and that is specifically the position.

As I talk with Cabinet Secretaries, the President, and the White House staff, it is clear, this will be a helpful tool. It is not going to answer all the problems of the Federal Government; we have many other issues to deal with. As you know, hiring reform is going to be one. I was talking with Congressman Chaffetz about our efforts to increase our hiring of veterans. We have many efforts we're going to be undertaking.

But this, again, is an important tool that is going to help us maintain our cutting edge with the private sector here in the 21st century.

Mr. CONNOLLY. And I would just observe in closing—because we have to vote, I know, Mr. Chairman—I find it odd that somebody would even suggest inferentially that this benefit provision, could itself constitute discrimination against folks in opposite-sex relationships when, of course, the screaming contradiction of that question is that marriage is available to people in that situation, and it is not in all but a handful of States to those in same-sex partnerships.

And so that's why you have to, as Representative Baldwin indicated, look at other ways of trying to address the issue of fairness in the provision of benefits. And I certainly look forward to expanding that conversation with Mr. Chaffetz and his colleagues in the weeks and months coming.

I thank the Chair.

Mr. LYNCH. I thank the gentleman.

All right. As you know, we have votes, and I'm going to have to allow the witnesses to go up and vote.

Here's what I'd like to do. We'll go and do votes. I don't want to dismiss this panel. When we come back, I'm going to maybe have a couple more questions, and then I'll give you each, say, 3 minutes because we have not exhausted all the questions that could arise on this issue; and I'll ask you to just try to fill in those gaps that we may have missed in our questioning.

And then I'll pull the next panel, OK?

Thank you. So we're in recess. They tell me it's just one vote, so we might be back in 20 minutes. OK.

[Recess.]

Mr. LYNCH. Good afternoon and welcome back. As I had said before the break, I did want to offer one more question.

Just in terms of eligibility, I understand in reading the bill, that Ms. Baldwin has presented, it defines same-sex beneficiaries as being, "unmarried," and of course, now with the situation in Massachusetts and Connecticut and a bunch of places where, at least according to those States and between some States and the District of Columbia, those folks are now married. So it would appear that it might be the unintended consequence of this legislation that same-sex couples that are married, now would not be helped, but would be hurt by this bill.

Now, I've gone over it with our own counsel. They have instructed me that since the Federal Government does not at this point recognize marriages other than traditional marriages—one man, one woman—that from the Federal Government's standpoint everybody outside that group is unmarried, period.

So it's really not a conflict is what it's saying. But to get it on the record, I just wanted to ask the Director and the lead sponsor of this bill whether it is your understanding that is the case as well.

Mr. BERRY. Mr. Chairman, thank you.

It is my understanding that what you have just described is the situation. But to be extra sure, because obviously in light of this, our counsel would like to work with yours and the counsels from the Department of Justice to make sure that we resolve this issue so that we do not have any unfavorable treatment for either Federal employees or retirees in those States that do use that term as an unintended consequence.

So we would be happy to work with the author and the committee to make sure that we draft this correctly to ensure equal treatment in those cases.

Mr. LYNCH. OK.

Ms. Baldwin.

Ms. BALDWIN. I would associate myself with the comments of Director Berry with regard to this point.

There's certainly a strong reason why that language originated in the bill in earlier iterations before any State had recognized same-sex marriages. I think your legal counsel's analysis is accurate, but I think additional clarity, because of the progress being made in a number of States, is warranted.

Mr. LYNCH. OK. That satisfies me.

In that respect, I now yield 5 minutes to the gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. Thank you, Mr. Chairman.

I have a growing concern about how we can possibly define the terms and enforce the terms that constitute who would be eligible and who wouldn't be eligible. I don't know how in the world it can be enforced. I don't have any idea or clue how it can possibly be defined. It certainly hasn't been defined in the legislation from my perspective.

Would you care to address that.

Ms. BALDWIN. Well, I would hope that the fact that literally thousands of private sector corporations and State and local units of government have seen fit to enact domestic partnership registries and offer employment benefits would give some comfort to the gentleman in terms that it can be managed, and it is being managed across this country very well.

We lag behind in the fact that the Federal Government does not offer these employment benefits, but I think that the legislation very carefully sets forth the eligibility requirements.

The affidavit is an additional protection against fraud. No, we don't want people defrauding the Federal Government either to purport they're in a marriage that they're not in or to purport they're in a domestic partnership that they're not in. And so these provisions have been specifically added as strong fraud prevention language.

But I would say you should take comfort in the fact that this is done across the country in other jurisdictions of government as well as the private sector, and it's working very well.

Mr. CHAFFETZ. Mr. Berry, one of the key or prime things that you cite as a reason to do this is the need to attract and retain employees. Where in the Federal Government do we have a lack of applicants? Because I guarantee I can get some applicants to probably show up tomorrow. Where are we lacking in terms of being able to recruit people?

Mr. BERRY. Congressman, this is a case you would have to look at each specific case.

Mr. CHAFFETZ. Can you name one where we don't have——

Mr. BERRY. Oh, absolutely. Right now, we give direct hiring authority for veterinarians, doctors, nurses, engineers. The list goes on and on because we cannot effectively recruit in those professions, and so right now we don't even require competition. If a Federal agency finds a nurse that walked in the door and proved she is qualified, they can hire her in the morning because we can't find them. We can't fill those jobs, and these positions are significant. They're one of our greatest challenges, and so in each of these areas we are attempting to go out there with sharp elbows and compete with private sector, university settings, State governments, and local governments, so that we can provide critical services.

You know, veterinarians at the Food and Drug Administration right now, we do not have enough to do the food safety management that we need to supply for the country. These are tough challenges we face as the employer for the country, and going to allow us—I'm not saying it's going to solve that problem entirely, but for the same-sex partner, the person who has a partner who is now working for Archer Daniels Midland and has domestic partner benefits, and who is a veterinarian, I in no way am going to have that person be able to say, they're going to move, relocate, and lose the health insurance for their partner if that's their condition of Federal employment. This is going to allow me now to attract that person, or at least, be competitive.

So I think it's going to be a very powerful tool for us. It's not going to solve all the problems. I'm not portraying this is a panacea, but it's going to be one important tool in the tool belt.

Mr. CHAFFETZ. I guess I would be very curious to see a list of where you have some gaping holes. I think the American people—I find the overall sweeping generalization—and, granted, we have limited time here. To say that we have these big, gaping holes when our unemployment is north of 9.5 percent, I think if we're not sharing that with the American people, we ought to be. I don't see it. I'd love to see that list.

Mr. Chairman, as we wrap up this panel here, I know we have others waiting, I appreciate your passion and commitment to this.

I believe that in the traditional definition of marriage, as between one man and one woman, there are benefits and there are things that we do as a people to encourage that relationship. And I stand proud on that, and I don't think we should try to create something that is under a different name. That's my own personal opinion. I know your opinion would differ, and that's what makes this body so great.

I hope, Mr. Chairman, as this moves forward, that we have proper time to have this debate in greater numbers and that there isn't some procedural thing that would get in the way of us being able to vote in a broad sense as this moves forward.

So, again, I thank you both.

I've gone over my time, and thank you, Mr. Chairman.

Mr. LYNCH. I welcome the gentleman's remarks. I know we have not, as I said before, exhausted the full range of questions that might be offered, and with our continual interruptions on the floor, it's made it even more difficult.

What I'd like to do, though, is offer each of you 3 minutes if there are areas in this bill that you would like to amplify or issues that you feel have not been appropriately addressed, I give you an opportunity to do that now in closing.

Ms. Baldwin, you're recognized for 3 minutes.

Ms. BALDWIN. Thank you, Mr. Chairman, for this very generous allocation of time to review this bill with the committee and exchange back and forth with questions. I just want to summarize with a couple of points.

In many ways, I regard this as an issue of equal compensation both in pay and benefits, but predominantly, we're looking at benefits for equal work where you have gay or lesbian employees of the Federal Government who are in committed, lifelong relationships. They have families they wish to protect, and they are not receiving the tools to be able to provide those protections, be it health care, survivor benefits that we've talked about, family and medical leave.

You'll hear later from Ambassador Guest about the employment benefits related to those we ask to serve our country overseas that are very important if you want to be able to protect your family. And so, I regard this very much as an issue of equal compensation for equal work where we have identified a glaring discrepancy based merely on sexual orientation.

I want to respond briefly to the ranking member's comments relating to marriage versus the very limited scope of this bill relating to fringe benefits.

Marriage, which we have long looked to the States to define and regulate, is an aggregation of literally hundreds—in many States, thousands—of benefits and obligations that inure to those who are

able to enter the institution of marriage. And so I, in no way, view this measure, as limited as it is, as a way to replicate marriage by another name.

And if you look even to the Federal level, I think it was in either the late 1980's or early 1990's that a request for an analysis of how many times the Federal code references spouse, husband, wife, marriage—again, thousands of references, lots of benefits and lots of obligations. This in no way replicates that.

While I am a supporter of equal marriage rights, that is not what we are here today to speak with you about. This is much more a matter of equal pay and equal compensation and benefits for those who arrive at the workplace and work at their jobs diligently and deserve to have equal respect of their employers.

Mr. LYNCH. Thank you.

Mr. Berry for 3 minutes.

Mr. BERRY. Mr. Chairman, thank you so much for the hearing today, for your opportunity; and Congressman Chaffetz, for your engagement and involvement. We appreciate your attention and the courtesies that you have extended throughout the day.

I would just make a couple of quick points, just underscoring the President's support for fairness across the Federal Government for treating all employees equally. Also, as the Director of OPM, for supporting it as an opportunity to maintain our competitive edge.

Congressman, you're right, with the economy now, for many Federal positions, we have an overabundance of applicants, but we do face shortages in some critical areas that are very important, and this will be one tool that will allow us to maintain that.

And the economy isn't going to remain down forever, and as we move forward in the 21st century. We have very complicated jobs in the Federal Government, and they're essential to protect the life, health and safety of our citizens. And it is essential that we be able to both recruit and retain once we've gotten and made a substantial investment in the best and the brightest, and this will be one of those tools, just like the rest of our health benefits packages are.

I'd also just like to mention, there is nothing in this legislation that requires the repeal or even the amendment of the Defense of Marriage Act. This is not an attempt to seek that. Though the President has made clear he supports the repeal of that legislation, it is not required for this legislation. And I think it's important to remember that as we're having this debate.

This is a debate about health benefits, life insurance, vision, and dental. It's about a benefit package that we're just trying to provide our employees fairly across the board. It is not an attempt to redefine marriage. It is not an attempt to overwhelm the Defense of Marriage Act. That is not required.

I would have to check this out, but one of the things in terms of your questioning, Mr. Chaffetz, about whether we extend this benefit to heterosexual couples actually might entangle us in DOMA, whereas this legislation does not. And so I think we would have to be careful of that because, as we define or redefine those terms in that way, it might more directly engage DOMA. This legislation now doesn't.

And so I think we're best in keeping it that way and keeping it as a straightforward health benefit, employee vision, and dental,

and move forward with this as a competitive tool for the 21st century.

So, with that, Mr. Chairman, I thank you very much and look forward to working with you on the many technical amendments we've discussed today. And thank you again for the courtesy today.

Mr. LYNCH. Thank you both, Director Berry, Representative Baldwin. We appreciate your willingness to come before the committee and help us with our work. We bid you have a good day, and we want to welcome the second panel. Thank you.

Welcome. We will continue with this hearing. It is the custom of this subcommittee to swear witnesses who will offer testimony. Could I please ask you to rise and raise your right hands.

[Witnesses sworn.]

Mr. LYNCH. Let the record show that all of the witnesses have answered in the affirmative.

I will offer a brief introduction of each of our witnesses.

Ms. M.V. Lee Badgett is currently the research director of the Williams Institute for Sexual Orientation Law and Public Policy at UCLA. Her research focuses on family policy issues and on labor market discrimination based on sexual orientation, race and gender. Ms. Badgett is also the director of the Center of Public Policy and Administration at the University of Massachusetts-Amherst, where she also serves as a professor of economics.

Mr. Greg Franklin is the current assistant executive officer of Health Benefit Services for the California Public Employees' Retirement System [CalPERS]. In this capacity, Mr. Franklin is responsible for purchasing health care for nearly 1.3 million CalPERS members at an annual cost of more than $5.5 billion.

Mr. Franklin is also responsible for the day-to-day operations of the health benefits branch where he oversees such offices as the Office of Health Plan Administration, the Office of Employer and Member Health Services, the Office of Health Policy and Program Support and the Division of Operation and Infrastructure Support.

Ms. Carolyn E. Wright has served as the vice president of Corporate Human Resources for American Airlines since May 2001. Ms. Wright's responsibilities include strategy development and program design in the areas of compensation, benefits, retirement, leadership development, Workers Comp and recruiting. Previously, Ms. Wright held the position of senior vice president of Customer Services at American Eagle Airlines.

As the procedure within this committee, each of the witnesses will have 5 minutes. I didn't explain it to the last two witnesses because they're here so often. The box in front of you will show a green light during the time which you're invited to offer your 5 minutes of opening statement. When it turns yellow, you've got 1 minute to sum up, and if it turns red, your time for statement has expired.

So, Ms. Badgett, I'd like to welcome you to offer your opening statements for 5 minutes.

STATEMENTS OF M.V. LEE BADGETT, RESEARCH DIRECTOR, WILLIAMS INSTITUTE ON SEXUAL ORIENTATION LAW AND PUBLIC POLICY, UCLA SCHOOL OF LAW; GREGORY A. FRANKLIN, ASSISTANT EXECUTIVE OFFICER, HEALTH BENEFIT SERVICES, CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AND CAROLYN E. WRIGHT, VICE PRESIDENT, CORPORATE HUMAN RESOURCES, AMERICAN AIRLINES

STATEMENT OF M.V. LEE BADGETT

Ms. BADGETT. Thank you. Good afternoon, Chairman Lynch. As an economist who has studied these issues for many years, I'm grateful for the opportunity to speak today about H.R. 2517.

Today, I'd like to make four points about the need for the bill and the budgetary implications of the bill.

First, you've already heard from the other witnesses, and I'll just confirm from an economics perspective, that by equalizing the treatment of same-sex partners of Federal employees, this bill would put the Federal Government in the mainstream of modern compensation practices. The shift has been dramatic, it's been rapid and it will only continue. There will be more and more employers who will offer these benefits, putting the Federal Government farther and farther behind if this bill is not enacted. I've studied the experiences in many of these employers, and they have reported that the implementation of domestic partner benefits has been quite easy and the cost quite manageable.

The second point that I want to make is that the employees who receive these benefits gain a great deal in terms of security. They sign up for them to protect their family's health and well-being. At least some of those family members right now are quite likely to lack health insurance. A recent study that I did found that 20 percent of people who are in same-sex couples are uninsured, a rate that is almost double that of married employees, and it's significantly higher than the average in the United States; and this greater vulnerability is, quite clearly, at least partly a result of the employer's failure to offer domestic partner benefits. So many Federal employees now may have family members who are not covered by insurance at all.

Third, the cost of providing benefits to domestic partners is small and manageable. Last year, I coauthored an independent study that estimated the cost of extending benefits to the more than 34,000 same-sex partners of Federal employees. We identified that number from the American CommunitySurvey. We estimated that providing benefits for nonpostal employees would cost the Federal budget approximately $41 million in the first year and $675 million over 10 years. These are cost estimates that are quite similar to those of Director Berry.

The majority of these costs are concentrated in the area of employee health benefits and retiree health benefits. We predicted enrollment in health care plans would increase, but by a very small percentage, approximately 0.55 percent, which works out to being in our estimate roughly 14,000 employees.

As a result of this increase in enrollment, additional health care benefits for the same-sex partners of Federal employees—and here I'll just go ahead and include postal service employees as well—and

their kids would cost about $60 million in the first year. That's a very small percentage increase, about 0.4 percent increase in health care spending for Federal employees last year; and that increase is very much in line with the experience of employers in the private sector and the States and cities that have offered these benefits.

As you discussed in the last panel, there's some question about retirees. We estimated—we assumed that Federal employees, as they retire in the future, would be able to cover their partners in the future as retirees. So we estimate that the cost of health care benefits for those partners could increase by $127 million over 10 years.

The retirement benefits themselves would have a very small change in cost to the government. In fact, as was also mentioned in the last panel, there would be a reduction in annuity payments over the short term as Federal employees offer survivor benefits for their same-sex partners, and that would save approximately $108 million over 10 years. And I'll just note that the findings of our study are not only in line with the OPM figures, but also they're very similar to the Congressional Budget Office's 2003 analysis of a similar bill.

The cost for all the other benefits are minimal, and although they're not expensive, the ability to take family medical leave or to enroll a partner in life insurance or long term care insurance or to receive death and disability benefits are quite important to those Federal employees who will take advantage of those and can make a big difference in the lives of their families.

My last point is that several factors will help offset some of these costs, although some of them are hard to measure precisely. One factor that I don't think has been mentioned yet is that employees of same-sex partners will need to pay additional Federal taxes on the imputed value of the benefits they receive as employees if this bill were to pass. That would offset some of the costs of the bill. Approximately $118 million in revenue over 10 years would be added back in.

And then the second factor, which you've heard a little bit about is that the Federal Government is likely to see lower turnover amongst its employees since the Federal employees who have partners are less likely to seek employment elsewhere. Lower turnover means lower cost of recruiting, hiring and training new employees, and there are several studies that show that domestic partner benefits do significantly reduce the likelihood that employees will look for jobs in other places. So I think this is an effect that is very real. It's hard to measure; it's hard to actually calculate the cost impact, but it's real.

So putting these pieces together suggests that some of these gains will offset the very small cost of offering equal benefits to same-sex partners. The experience of thousands of employers offering these benefits in the United States today, as well as existing research, support my conclusion that the Federal Government can adopt and implement this new policy easily and affordably.

Thank you.

Mr. LYNCH. Thank you.

[The prepared statement of Ms. Badgett follows:]

TESTIMONY on HR 2517: "Domestic Partnership Benefits and Obligations Act of 2009"

M.V. Lee Badgett, Ph.D.
University of Massachusetts Amherst

Good afternoon. My name is M. V. Lee Badgett. I am the Director of the Center for Public Policy and Administration and a professor of economics at the University of Massachusetts Amherst. I also serve as Research Director of the Williams Institute on Sexual Orientation Law and Public Policy at the UCLA School of Law. Over the last fifteen years, I have conducted extensive research on economic and policy issues related to sexual orientation, including several studies of the cost of granting domestic partnership benefits to employees' same-sex partners. I have consulted with many businesses, large and small, on domestic partnership benefits, and I have written reports on this issue for several states. I thank you for the opportunity to speak today about HR 2517, the "Domestic Partnership Benefits and Obligations Act of 2009."

This important legislation would put the federal government in the mainstream of modern compensation practices with respect to the equal treatment of the same-sex partners of federal employees. Over the last fifteen years, domestic partner health care benefits have become a common practice among public and private sector employers. Twenty states now offer benefits to the domestic partners of state employees: Alaska, Arizona, California, Colorado, Connecticut, Illinois, Iowa, Maine, Maryland, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, Wisconsin, and the District of Columbia. More than 250 cities, counties, and other local government entities cover domestic partners of other public employees. In the private sector, almost two-thirds of the Fortune 1000, and 83% of Fortune 100 companies also provide these benefits. These employers have

generally reported that the implementation of domestic partner benefits has been quite easy and the cost quite manageable.

The employees who receive these benefits gain in terms of security, signing up for such benefits to protect their families' health and well-being. A study that I recently co-authored found that 20% of people in same-sex couples are uninsured, a rate that is significantly higher than average in the United States and is as least partly the result of employers' failure to offer domestic partner benefits. That study suggests that many federal employees' partners and children may currently be completely uninsured. We also know from many studies that uninsured individuals often receive health care that goes uncompensated, shifting costs to the federal, state, and local governments, as well as private insurers.

One of the most common questions about offering domestic partner benefits concerns their direct cost to employers. Last year I co-authored a study that estimated the cost of extending domestic partner benefits to the more than 34,000 same-sex partners of federal employees. We used data from the American Community Survey, conducted by the U.S. Census Bureau, and statistics from the Bureau of Labor Statistics to estimate the number of federal employees who are likely to enroll a same-sex partner in federal benefits specified by this legislation. We drew on data about the cost of federal employee benefits from various sources.

TESTIMONY on HR 2517: "Domestic Partnership Benefits and Obligations Act of 2009"
M.V. Lee Badgett, Ph.D.
University of Massachusetts Amherst

Based upon figures about the cost of providing benefits to federal employees and future retired federal employees, we estimated that providing these vital benefits for non-postal employees would cost approximately $41.0 million in the first year and $675 million over ten years. The majority of these costs are concentrated in the areas of employee health benefits and retiree health benefits.

Health benefits for the same-sex partners of federal employees (including postal service employees) and their dependent children would cost $60.4 million in the first year – that is a 0.41% increase in healthcare spending for employees in 2008. Not all 34,000 employees with same-sex partners would enroll their partners. Both partners are federal employees in some same-sex couples, and more than half of the remaining partners are likely to have health insurance offered through their own employers. Overall, enrollment in health care plans would increase by a small percentage, approximately 0.55%.

As current federal employees retire in the future, the cost of health benefits for retirees' partners would increase by $127 million over ten years. The retirement savings program would actually see a reduction in annuity payments over the short-term as federal employees opt for survivor benefits for their same-sex partners. This reduction amounts to $108 million over ten years. These findings are similar to those found in the Congressional Budget Office's analysis of an earlier bill that would have provided domestic partner benefits to same-sex and different-sex partners.

Costs for other benefits specified in the bill are minimal, such as relocation reimbursements for transferred employees and death and disability claims. While not expensive, the ability to take Family Medical Leave, to enroll a partner in life insurance or long-term care insurance, or to receive death or disability benefits are important benefits to federal employees and can make a large difference in the lives of these employees.

Several factors will help offset some of these costs. First, the federal government is likely to receive increased tax revenue as a result of extending domestic partner benefits to same-sex couples. Employees with same-sex partners currently pay additional federal taxes on the imputed value of domestic partner benefits. Over ten years the additional tax revenue associated with granting domestic partner benefits to federal employees would be approximately $118 million.

Second, the federal government is likely to see reduced costs of employee turnover if this bill were to be passed and signed into law. The federal government now competes with many large and prominent employers who already offer domestic partner benefits to the same-sex partners of lesbian, gay, and bisexual (LGB) employees, as noted earlier. When the federal government loses an employee to one of those companies or to the state and local governments in the Washington area who offer partner benefits, the government must spend money to recruit, train, and attempt to retain a new employee. While it is difficult to precisely

predict the savings from avoiding these turnover costs, they are certainly real. Two studies have found that domestic partner benefits reduce the likelihood that an LGB employee will consider leaving his or her job.

Putting these pieces together suggests that the federal government is likely to see these less precisely measurable gains offset the relatively small but measurable cost of offering equal benefits to the same-sex partners of federal employees. The experience of thousands of employers offering domestic partner benefits in the United States today, as well as research by myself and other scholars support my conclusion that the federal government can adopt and implement this new policy easily and affordably. HR2517 will also greatly enhance the financial security of the 34,000 federal employees with same-sex partners, and that sense of security will also generate benefits for their employer.

Mr. LYNCH. Mr. Franklin, you're now recognized for 5 minutes.

STATEMENT OF GREGORY A. FRANKLIN

Mr. FRANKLIN. Good afternoon, Chairman Lynch and Ranking Member Chaffetz. I'm Gregory Franklin. I'm the assistant executive officer for the Health Benefits Services branch of the California Public Employees' Retirement System [CalPERS].

CalPERS is the largest public employee pension fund in the United States, with assets of approximately $182 billion. We administer retirement and health benefits for more than 1.6 million active and retired California public employees and their families on behalf of the 2,600 California public employers. As of June 30, 2008, we were paying more than $10 billion annually in benefits to 476,000 retirees and beneficiaries.

CalPERS also administers a health benefits program that covers nearly 1.3 million members, the employees and retirees of the State of California, contracting local public agencies, and special districts. We're the second largest purchaser of employee health benefits in the Nation after the Federal Government. We're the largest purchaser of employee health benefits in California.

In 2000, a new State law, Assembly Bill 26, went into effect that established a domestic partner registry at the California Secretary of State Office. Under the law, partners of opposite sex, if one of whom was over the age of 62, and partners of same sex may register for domestic partnership. Registration as domestic partners, however, does not confer any rights upon the partners unless specifically provided by law.

Assembly Bill 26 also amended California's Public Employee Medical and Hospital Care Act, which is administered by CalPERS. To allow—to allow covered employers to offer health benefits to domestic partners of its employees retirees as an option, the State of California began health benefits to domestic partners in January 2000. Some public agencies also began offering health benefits to domestic partners as well.

In 2005, Assembly Bill 105, the California Domestic Partners Rights and Responsibilities Act, became law. The law, which was supported by the CalPERS board administration, confers spousal rights on domestic partners, giving them statutory rights to certain employee benefits, as well as entitlement to continued health insurance coverage after the death of a CalPERS member. The essence of Assembly Bill 205 put domestic partners on equal footing with spouses relative to employee benefits under California law.

Assembly Bill 205 mandated the provision of health insurance coverage for domestic partners in the same manner as provided to spouses, removing the issue from collective bargaining process at the State level and eliminating local agency discretion.

Of note is that the CalPERS long-term care insurance program was exempt from this Assembly Bill 205 because the program is governed by the U.S. Internal Revenue Code as a tax exempt governmental plan.

And the Federal Government does not recognize domestic partnerships. Allowing domestic partners to enroll in the long-term care plan would, in effect, be enrolling persons who are not eligible

under Federal tax law and therefore threaten the tax-exempt status of the plan.

In a related issue, the premiums for eligible domestic partners who are enrolled in a regular CalPERS health benefits program must be treated as taxable income for Federal tax purposes—again, due to the Federal Government not recognizing domestic partnerships for government programs.

Premiums of spouses are tax deductible. Under Assembly bill 205, CalPERS treats partners just like—it treats domestic partners just like spouses with respect to eligibility for CalPERS retirement benefits.

The most significant change relative to retirement benefits is that surviving registered domestic partners of deceased CalPERS members and retirees are now entitled to the same death benefit allowances that were previously only available to surviving spouses.

Assembly bill 205 also gives a domestic partner an entitlement to community property interest of a CalPERS member's benefits upon dissolution of a domestic partnership.

The most significant implementation issue related to what types of domestic partners are eligible for benefits under Assembly bill 205.

In California, a legal domestic partnership is one that is formally registered in the Domestic Partner Registry administered by the California Secretary of State's Office. But the issue of domestic partnership formed outside of California was less clear.

As of July 1, 2009, CalPERS covered 3,449 members who have 3,620 domestic partners and dependents enrolled in the health benefits program. For 2009, the total premiums for covered domestic partners is estimated at $19.5 million, which represents 0.33 percent of our total $5.8 billion in premiums projected to be paid in 2009. Unfortunately, we cannot provide similar statistics for our retirement benefits program.

Overall, we do not believe that providing retirement and health benefits to domestic partners of CalPERS members produce significant burdens on staff workload or administrative budgets. I hope this information provides you with a better understanding of our experience incorporating domestic partners' benefits into our retirement and health benefits program.

I'm happy to answer any questions you may have.

[The prepared statement of Mr. Franklin follows:]

Testimony by Gregory A. Franklin

Assistant Executive Officer, Health Benefit Services
California Public Employees' Retirement System

Committee on Government Oversight and Reform
Subcommittee on Federal Workforce, Postal Service and the District of Columbia
House of Representatives
U.S. Congress

July 8, 2009

CalPERS Background

The California Public Employees' Retirement System, commonly referred to as CalPERS, is the largest public employee pension fund in U.S., with assets of approximately $182 billion. We administer retirement and health benefits for more than 1.6 million active and retired California public employees and their families. Our membership is divided approximately into thirds among employees of the State of California, public schools, and contracting local public agencies such as cities, counties and special districts.

CalPERS is a defined benefit retirement plan, often referred to as a traditional pension plan. Benefits are based on a member's years of service, age, and highest average compensation. We also provide disability retirement and death benefits, with payments in some cases going to survivors and beneficiaries of eligible members. As of June 30, 2008, we were paying more than $10 billion annually in benefits to 476,000 retirees and beneficiaries.

CalPERS also administers a health benefits program that covers nearly 1.3 million members, the employees and retirees of the State of California and contracting local public agencies. Our health benefits program offers three health maintenance organizations (HMOs), three preferred provider organizations (PPOs), and three special PPOs for members belonging to specific employee associations. We are the second largest public purchaser of employee health benefits in the nation after the federal government. We are the largest purchaser of employee health benefits in California.

Domestic Partner Benefits

In 2000, a new state law (AB 26) went into effect that established a domestic partner registry at the California Secretary of State's Office. Under the law, partners of the opposite sex if one of whom is over age 62 and partners of the same sex may register for a domestic partnership. Registration as domestic partners does not confer any rights upon the partners unless specifically provided by law.

AB 26 also amended California's Public Employee' Medical and Hospital Care Act (PEMHCA), which is administered by CalPERS, to allow PEMHCA-covered employers to offer health benefits to domestic partners of its employees and retirees as an option. The State of California began offering health benefits to domestic partners in January 2000. We know that some contracting public agencies began offering health benefits to domestic partners after AB 26 became law but we do not know how many because it's a local decision that is not required to be reported to us.

In 2005, AB 205, the California Domestic Partners Rights and Responsibilities Act, became law. The law, which was supported by the CalPERS Board of Administration, confers spousal rights on domestic partners, giving them statutory rights to certain employee benefits as well as entitlement to continued health insurance coverage after the death of a CalPERS member. In essence, AB 205 put domestic partners on equal legal footing with spouses relative to employee benefits under California law.

AB 205 mandated the provision of health insurance coverage for domestic partners in the same manner as provided to spouses, removing the issue from the collective bargaining process at the state level and eliminating local agency discretion.

Of note is that the CalPERS long-term care insurance program was exempt from AB 205 because the program is governed by the U.S. Internal Revenue Code as a tax-exempt governmental plan and the federal government does not recognized domestic partnerships. Allowing domestic partners to enroll in the long-term-care plan would in effect be enrolling persons who are not eligible under federal tax law and therefore threaten the tax-exempt status of the plan.

In a related issue, the premiums for eligible domestic partners who enroll in the regular CalPERS health benefits program, i.e., HMOs and PPOs, must be treated as taxable income for federal income tax purposes, again, due to the federal government not recognizing domestic partnerships for government programs. Premiums of spouses are tax deductible.

Under AB 205, CalPERS treats domestic partners just like spouses with respect to eligibility for CalPERS retirement benefits. The most significant change relative to retirement benefits is that surviving registered domestic partners of deceased CalPERS members and retirees are now entitled to the same death benefit allowances that were previously only available to surviving spouses. AB 205 also gives a domestic partner entitlement to the community property interest of a CalPERS member's benefits upon dissolution of a domestic partnership.

Implementation of AB 205

In the fall of 2004, when AB 205 was signed into law, CalPERS established an interdivisional domestic partners implementation committee with representation from all relevant program areas to analyze and implement the new law. The committee's work included:

- Conducting an impact analysis on CalPERS program areas
- Conducting a legal review to clarify statutory language for implementation purposes
- Developing an implementation plan
- Identifying required changes to internal and external procedures
- Making information technology changes to properly capture and document members' domestic partners for benefit administration purposes
- Developing a communications plan to educate affected stakeholders
- Making necessary changes to CalPERS member publications and forms
- Adding domestic partner eligibility and enrollment information to the CalPERS Web site

Implementation Challenges

The most significant implementation question related to what types of domestic partners are eligible for benefits under AB 205. In California, a legal domestic partnership is one that is

formally registered in the domestic partner registry administered by the California Secretary of State's Office.

But the issue of domestic partnerships formed outside of California was less clear. AB 205 provides that certain legal unions validly formed in "another jurisdiction" that are "substantially equivalent" to California's domestic partnerships are recognized as valid in California. The State of California does not have an official list of such jurisdictions and the statute does not provide a formula or a clear definition for making such determinations. After studying the question, the CalPERS Legal Office decided that these types of determinations would be handled on a case-by-case basis.

Participation and Cost

As of July 1, 2009, CalPERS covers 3,449 members who have 3,620 domestic partners and dependents enrolled in our health benefits program. The 3,620 domestic partners and dependents comprise 0.28 percent of the nearly 1.3 million covered lives in the CalPERS health benefits program. The domestic partners covered include both same-sex and opposite-sex partners.

For 2009, the total premiums for covered domestic partners is estimated to be $19.5 million, which represents 0.33 percent of the total $5.8 billion in premiums expected to be paid in 2009.

Unfortunately, we cannot provide similar statistics for our retirement benefit program at this time due to changes we are making to our retirement program database, although the order of magnitude is expected to be similarly small. Currently, about four to five pre-retirement and post-retirement death cases out of a total of more than 2,000 per month have a surviving domestic partner.

Given the participation levels, it is reasonable to conclude that the cost of providing retirement and health benefits to domestic partners of CalPERS members is relatively minor. Implementation of AB 205 was done by existing staff within existing budgets.

Overall, we do not believe providing retirement and health benefits to domestic partners of CalPERS members produced significant burdens on staff workload or our administrative budget.

I hope this information provides you with a better understanding of our experience incorporating domestic partner benefits into our retirement and health benefits programs.

I am happy to answer any questions.

Mr. LYNCH. Mrs. Wright.

STATEMENT OF CAROLYN E. WRIGHT

Ms. WRIGHT. Chairman Lynch, members of the subcommittee, my name is Carol Wright, and I'm the vice president of Corporate Human Resources for American Airlines based in Fort Worth, TX.

Speaking for the more than 80,000 employees for American Airlines and our partners at American Eagle, we are honored to be here today to address relevant issues in your consideration of H.R. 2517, the Domestic Partnership Benefits and Obligations Act of 2009.

As you can appreciate, we are by no means experts on the Federal work force or the specific human resource benefit questions you are raising with this legislation. We have not had the opportunity to study it in detail. Nor do I believe we can competently offer recommendations on all aspects of the bill. Instead, you have encouraged us to share with you our experience as a corporate leader in the private sector and to share our views on best employment practices and inclusion, which speaks to the overall goals of this legislation.

As you may be aware, American, American Eagle and the AmericanConnections airlines serve 250 cities and 40 countries with, on average, more than 3,400 daily flights. As a global airline, American recognizes the importance of the relationships among its customers, employees, business partners and suppliers and the communities that we serve.

We must embrace the diversity that exists within each of our key constituencies and operate in an inclusive manner for all of these groups to thrive. As a company that bears the name "American," we also know that much is expected of us and we hold ourselves to a high standard. We know that promoting diversity is a journey, and America is committed to making further progress as we weave it into the very fabric of our company.

Beginning in 1993, we were the first major airline to include sexual orientation in our equal employment opportunity policy, and we added gender identity in 1999. In 1994, we also recognized our lesbian, gay, bisexual, and transgender employees as our first official employee resource group. Last month, we celebrated its 15th anniversary.

Building on these first steps in the late 1990's, we decided to examine benefits parity for all of our employees, and to identify any gaps in our soft and hard benefits, including health and other insurance coverage, travel companion privileges, and other options that customarily were available to legally married heterosexual spouses.

Philosophically, we have always tried to recognize employees as individuals with their own family needs, talents, and ambitions. All deserve equal respect and acceptance for the true worth and unique experiences and skills that they bring to their jobs.

We determined that treating the employees in committed relationships with same-sex partners as a family rather than as single people was consistent with that philosophy. So in 2000, we became the first major airline to offer benefits to the same-sex partners of our employees, as we had long done for married spouses.

I'm not able to disclose the proprietary financial details about the costs or fiscal implications of our policies, but I can readily report that the actual impact on overall human resource budget is proportionately modest and manageable.

So what are the upsides? We see a stronger work force in every sense. We are instilling a more enduring sense of loyalty and commitment and helping to motivate our LGBT employees to be all they can be and to bring their whole identity to work. We never saw this as a special case or privilege, but simply doing the right thing in a business setting that underscores fairness, equity, and inclusion.

What are the implications for the Federal Government and your extraordinarily diverse work force? We cannot predict with any certainty the future market conditions for employment and worker retention, but we can report that America's top corporations are showing the way on best practices.

According to research from the Human Rights Campaign, roughly 80 percent of the Fortune 100 now offer equal same-sex partner benefits, and the same can be said of the 57 percent of the Fortune 500. Last year in a national survey commissioned by Out and Equal Workplace Advocates, and conducted by Harris Interactive with Witeck-Combs Communications, 64 percent of all American adults agreed that job benefits should be extended equally to committed same-sex partners that are available to legally married spouses.

Mr. Chairman, in closing, I also have a recently updated document entitled, "Diversity and Inclusion: A Way of Life at American Airlines" that I would like to submit for the official record.

Mr. LYNCH. Without objection.

[The information referred to follows:]

AmericanAirlines®

Diversity and Inclusion: A Way of Life at American Airlines

Overview

American recognizes that being a global airline means we are in the business of connecting people and cultures from around the world. The company will only be successful if the experience it delivers, and the environment created, is welcoming and respectful of everyone. American also recognizes the relationship among its customers, employees, business partners and suppliers, and the communities it serves. They are all connected, and diversity and inclusion must be evident across these groups for all of them to thrive.

As a company that bears the name "American," much is expected of us, and we hold ourselves to a high standard. From hiring the industry's first African American flight attendant in 1963, to the first female pilot in 1973, to the creation of our supplier diversity program in the 1980's and our multicultural marketing teams in the 1990s, American has a long history of leadership. American knows promoting diversity and inclusion is a journey, and the company is committed to making further progress in weaving it into the very fabric of the company so it is evident every day.

At American Airlines, diversity means acknowledging different perspectives, ideas and various cultures and backgrounds. It means promoting inclusion, creating an environment where all differences are valued, and where employees can develop to their full potential. At American, diversity means creating a good workplace and fostering good corporate citizenship in the community.

American Airlines is proud of its tradition of diversity, the heritage it bespeaks, and the future opportunities it represents. At American Airlines, diversity is a way of life and everyday part of doing business.

Employee Diversity

American believes the company is strengthened through the diversity of its people. American understands that each employee is unique and the company strives to provide an environment that encourages and values individual experiences, perspectives and ideas. It strives to be a business where employees can respect and value each other regardless of race, gender, age, ethnicity, religion or sexual orientation.

American has been recognized for using the cultural differences among its employees in a way that advances the airline's business priorities while also developing employees' business and leadership skills. Consistently recognized as a leader in its employee policies for inclusiveness and fairness, American's policies have helped the company attract and retain high performing, creative employees.

- Today American Airlines has several officers who are African-American, Hispanic, Asian-American and female, and the number of women officers is among the top in the industry.
- Of American's U.S.-based employees, 40 percent are female and 31 percent are ethnic minorities.
- American has the distinction of being the first major airline to hire a female pilot (1973) and the first to have a female captain (1986).
- The number of female engineers employed by AA exceeds the national average.
- For more than a decade, American Airlines has been a pioneer in implementing fair-minded policies and practices for its gay, lesbian, bisexual and transgender customers and employees. The first major airline to implement same-sex domestic partner benefits (2000), American also offers equal health, pension and travel benefits to same-sex partners of gay and lesbian employees. American was the first major airline to implement both sexual orientation (1993) and gender identity (2001) in its workplace

nondiscrimination policies, and the first major airline to have a recognized GLBT employee resource group – GLEAM.

- In 1963, American hired the industry's first African American flight attendant, Joan Dorsey. And in 1964 American hired its first African-American pilot, Captain Dave Harris. Both worked the remainder of their careers with American and each retired with more than 30 years of service. In 2008, American honored Capt. Harris and Dorsey at a special ceremony to celebrate their places in aviation and company history.
- American is one of the few corporations to voluntarily form a Board of Directors Diversity Committee which provides oversight of American Airlines and American Eagle diversity initiatives.

Employee Resource Groups:
American currently has 16 Employee Resource Groups (ERGs). As a major international airline, ERGs play a particularly important role because they promote a positive, productive work environment while creating avenues for employees to contribute their ideas to the business - helping American develop products and services for its global customer base. In addition, the ERGs play a vital role in connecting American to the communities it serves.

These groups have not only helped American better understand and work with its own employees, they've also helped American tailor its products and services to better meet customers' needs and desires:

- The Indian and Asian/Pacific Islander ERGs provided cultural guidance and helped with menu planning and promotional activities in support of Delhi and Shanghai service introductions.
- The Human Rights Campaign (HRC) Buyer's Guide lists American, in part because of the efforts of the Gay/Lesbian/Bisexual/Transgender ERG in assisting Human Resources with its responses to the HRC's annual survey.
- The African American ERG helped to conduct focus groups with African American customers and employees, to generate ideas on how to make American's marketing, products and services more appealing to the African American consumers.

American's 16 ERGs include: 40+ Employee Resource Group (40+ ERG); African American Employee Resource Group; Asian/Pacific Islander Employee Resource Group; Caribbean Employee Resource Group; Christian Employee Resource Group; Employees with Abilities; Generation Now; Gay, Lesbian, Bisexual and Transgender Employees (GLEAM); Hispanic/Latin Employee Resource Group; Indian Employee Resource Group; Jewish Employee Resource Group; Muslim Employee Resource Group; Native American Employee Resource Group; Parents AAt Work; Veteran Military Employee Resource Group; Women in AAviation.

Community Involvement
The people of American Airlines have long understood that serving a community means more than just flying there — it means contributing to a range of nonprofit organizations and community events and encouraging and facilitating employee volunteerism and donations. From national partnerships to local initiatives, American Airlines strives to make a positive impact on the lives of its customers, its employees, its families, its shareholders, and the communities where they live.

- In 2007, American provided more than $28 million of in-kind and cash support to hundreds of nonprofit organizations in all of the countries it serves.
- American Advocates, launched in 2004, has 10,000 volunteers for various initiatives. Employees and departments have consistently volunteered for community events such as Something mAAgic, the Susan G. Komen Race for the Cure and the American Cancer Society's Relay for Life. Employees also contribute generously to disaster relief efforts, including the tsunami and Hurricane Katrina relief efforts.

- Airline Ambassadors organizes relief missions to areas ravaged by natural disasters, to distribute food, medicine, school supplies, wheelchairs, clothing and toys to orphanages, clinics, especially in Latin America.
- American is a long-term supporter of the United Negro College Fund (UNCF) and its initiatives to provide students in the African American community with opportunities they might not have under other circumstances.
- American Airlines sponsored an Aviation Youth Summit in 2008, in conjunction with the C. R. P. Future Pilots Flight School in Dallas. Named for legendary pilot and original Tuskegee Airman Claude R. Platte, the organization seeks to celebrate the history of the Tuskegee Airmen and continue the legacy of these pioneering heroes. Eagle Senior Vice President – Technical Operations David Campbell was among the featured speakers, sharing with young future aviators the opportunities that exist and tips for pursuing a career in aviation. American also sponsored a performance by legendary actor, James McEachin in Feb. of 2009 to raise funds for the C.R.P. Future Pilots Flight School.
- In 2008, American Airlines announced an expanded relationship with Susan G. Komen for the Cure, and the airline's new role as Komen's inaugural Lifetime Promise Partner. American pledged to raise $8 million and is the first funder of Komen's new category of grants, Promise Grants. The first American grant is funding a five-year study of inflammatory breast cancer (IBC) at The University of Texas M. D. Anderson Cancer Center.

Supplier Diversity

Established in 1989, the mission of American's Diversified Supplier Program is to afford qualified minority, women-owned and small businesses the opportunity to participate as potential suppliers of products and services to the airline. Administered from the Corporate Purchasing Department, the program is represented throughout the corporation by supplier diversity advocates, who are responsible for supporting supplier diversity within their respective departments on a day-to-day basis. Each department establishes annual goals for its supplier diversity spending, and progress is measured to ensure that each department is on track to realize its supplier diversity objective.

Success depends on the supplier's ability to be price competitive in the marketplace, to provide a quality product and/or service, and to deliver that product or service in a timely manner. American attempts to match potential suppliers with customers within the American Airlines organization, to establish a line of communication between the supplier and the customer.

- Since initiation of the Diversified Supplier Program, total expenditures with minority-owned and women-owned suppliers have exceeded $3.6 billion.
- The Diversified Supplier Program focuses on ethnic minority (African American, Hispanic, Native American and Asian Pacific) and women-owned businesses.
- American was the first airline to invite certified LGBT suppliers to participate in our supplier diversity program.

Customer Diversity

American also embraces diversity to better understand its customers, suppliers and the community as a whole. By utilizing the perspectives of various ERGs and the large number of diverse employees, American is able to successfully enhance the customer experience through understanding the different expectations, experiences, and backgrounds of its customers. A number of initiatives are in progress to enhance the overall customer experience for travelers who fly with American, and a series of marketing programs are under way that specifically appeal to key diverse customer segments.

- In January 2008, American developed a robust diversity and inclusion page on aa.com. The link promotes American's diversity efforts in supplier diversity, employees, diversity leadership, awards and recognition, corporate citizenship and on-going marketing initiatives.

- American has dedicated sales teams that focus solely on diverse customer groups, such as the African-American, Hispanic, and Lesbian, Gay, Bisexual and Transgender (LGBT) communities. These sales teams support and partner with many community organizations such as the NAACP, The Thurgood Marshall Scholarship Foundation, and Paul Quinn College. In the Hispanic community, American supports the Hispanic Women's Network of Texas; the League of United Latin American Citizens (LULAC); National Council of La Raza (NCLR) and National Association of Latino Elected and Appointed Officials (NALEO) National Conventions; and the Latina Style 50 Best Practices on Diversity Conference. The LGBT team supports organizations such as Human Rights Campaign, Gay and Lesbian Alliance Against Defamation, Lambda Legal, and amfAR. American Airlines uses specialized and diverse advertising, marketing, and public relations agencies to develop insightful programs that best serve its needs.
- American uses the web to generate revenue and loyalty among its diverse customers as well as educate and inform them of travel-related or company-related information at www.AA.com/rainbow. AAVacations.com now has a microsite, www.AAvacations.com/rainbow, aimed at serving American's loyal LGBT customers who are eager to explore the vacation destinations on this popular Web site. American was the first U.S. airline to launch a vacation package site for LGBT travelers. Additionally, approximately half of American's travelers are women, and American was the first airline to publicly state its commitment to female travelers. www.AA.com/women offers destination information, travel tips, lifestyle and business related events for women consumers.
- American has also established two external advisory councils: one focused on women travelers, the other on LGBT travelers. Advisory Council members provide ongoing and ad hoc market feedback on American's position within their respective communities and offer input on market trends, community concerns and program concepts that promote growth within these customer groups.
- American Airlines leads the industry in African American advertising and is the only airline with a specialized African American advertising manager and budget. American has a dedicated African American advertising agency, which guides the strategic placement of ads – to date, largely in American's most competitive markets such as New York and Chicago.

Awards

Many organizations and publications have recognized American's diversity efforts. The company leads the airline industry in its commitment to diversity initiatives and has been recognized with numerous awards, including:

- In 2009, American Airlines was the sole airline to be named one of the "50 Best Places for Diverse Managers to Work" by DiversityMBA Magazine.
- American Airlines was the only airline to be named one of the nation's "Top 50 Employers" by readers of Equal Opportunity Magazine in 2009.
- Perfect 100 score on Human Rights Campaign's Corporate Equality Index for seven years in a row (2001-2008).
- 2008 Employer of Choice Award – Minority Corporate Counsel Association.
- DiversityInc.'s "Top 25 Noteworthy Companies" – 2008.
- Hispanic Business Magazine's Elite 60 – 2008.
- Latina Style Top 50 Companies for Latinas – 2008.
- American Airlines wins prestigious Cannes Lion award for commercial "Team Building" featuring a diverse workforce - July 2008.
- Black Enterprise Top 15 Companies for Marketing Diversity - July 2007.
- eWomenNetwork Foundation International Femtor® Industry Innovator Award - June 2007.
- Named among DFW Minority Business Council's inaugural Top 20 "Buy Those That Buy Us" award - June 2007.

Ms. WRIGHT. Thank you for inviting American Airlines to be here today to report on our past decade experience on this topic. We continue to work hard and sustain and build our commitment to diversity leadership and hope our testimony reflects some of the lessons we have learned and are proud to share with you.

Thank you. I will be happy to answer any questions.

Mr. LYNCH. Thank you.

[The prepared statement of Ms. Wright follows:]

Legislative Hearing on the Domestic Partnership Benefits and Obligations Act of 2009

Statement of Carolyn E. Wright
Vice President, Corporate Human Resources
American Airlines

before the

Subcommittee on Federal Workforce, Postal Service, and the District of Columbia
Committee on Oversight and Government Reform

July 8, 2009

Chairman Lynch, Members of the Subcommittee, my name is Carol Wright and I am Vice President of Corporate Human Resources for American Airlines, based in Fort Worth, Texas.

As requested, I have submitted my testimony for the record, and will keep my remarks brief.

Speaking for the more than 80,000 employees of American Airlines and our partners at American Eagle, we are honored to be here today and to address relevant issues in your consideration of Representative Tammy Baldwin's legislation, H.R. 2517, The Domestic Partnership Benefits and Obligations Act of 2009.

As you can appreciate, we are by no means experts on the federal workforce, or the specific human resource and benefits equity questions you are raising with this legislation. We have not had the opportunity to study it in detail nor do I believe we can competently offer recommendations on all aspects of the bill.

Instead, you have encouraged us to share with you our experience as a corporate leader in the private sector and to share our views on best employment practices and inclusion – which speak to the overall goals of this legislation.

First, let me provide just a brief overview of our company. American, American Eagle, and the AmericanConnections® airlines serve 250 cities in 40 countries with, on average, more than 3,400 daily flights. Our combined network fleet totals approximately 900 aircraft. American Airlines is also a founding member of the global oneworld® Alliance, and together with oneworld members, we serve nearly 700 destinations in over 150 countries, with 8,500 daily departures. We also transport approximately 500,000 tons of cargo around the world each day.

At a glance, those statistics highlight our mission for the past 75 years. American recognizes that being a global airline means we are in the business of connecting people and cultures from around the world. Our company will only be successful if the experience we deliver, and the environment we create, is safe, welcoming and respectful of everyone. American also recognizes the relationships among its customers, employees, business partners and suppliers,

and the communities that we serve. We must embrace the diversity that exists within each of our key constituencies, and operate in an inclusive manner, for all of these groups to thrive.

As a company that bears the name "American," we also know that much is expected of us, and we hold ourselves to a high standard. From hiring the industry's first African-American flight attendant in 1963, to the first female pilot in 1973, to the creation of our supplier diversity program in the 1980s and our multicultural sales teams in the 1990s, American has a long history of leadership. We also know that promoting diversity is a journey, and American is committed to making further progress as we weave it into the very fabric of our company.

Beginning in 1993, we were the first major airline to include sexual orientation in our Equal Employment Opportunity policy and we added gender identity in 1999. In 1994, we also recognized our lesbian, gay, bisexual and transgender employees as our first official Employee Resource Group. Last month, we celebrated their 15th anniversary.

We saw first-hand how these inclusive steps translated into enhanced loyalty and morale among our people, and gave evidence throughout the company that our words and our actions were aligned. In fact, last September, American wrote a letter to Congress supporting passage of the proposed Employment Non-Discrimination Act – which mirrors our own inclusive recruitment, hiring and retention practices.

Building on these first steps, in the late 1990's, we decided to examine benefits parity for all of our employees, and to identify any gaps in our soft and hard benefits, including health and other insurance coverage, travel companion privileges, and other options that customarily were available to legally married heterosexual spouses.

Philosophically, we have always tried to recognize employees as individuals with their own families' needs, talents and ambitions. All deserve equal respect and acceptance for the true worth and unique experiences and skills they bring to their jobs. We determined that treating employees in committed relationships with same-sex partners as a family, rather than as single people, was consistent with that philosophy. So, in 2000, we became the first major airline to offer benefits to the same-sex partners of our employees as we had long done for married spouses.

I am not able to disclose proprietary financial details about the costs or fiscal implications of our policies, but I can readily report that the actual impact on overall human resource budgets is proportionally modest and manageable.

What are the upsides? In the past decade, we see a stronger workforce in every sense. We are instilling a more enduring sense of loyalty and commitment, and helping to motivate our LGBT employees to be all they can be and to bring their whole identity to work. We never saw this as a special case or privilege, but simply doing the right thing in a business setting that underscores fairness, equity and inclusion.

In our diverse segment marketing strategies, we now can tell a more complete story to all customers about our welcome that is authentic and meaningful. There is no question that it helps

us to be a much stronger contender as a world-class marketing organization during this very difficult economy. We know all of our customers consider service, value, convenience and comfort. However, in a very competitive market, we have learned that many appreciate inclusion and equal respect, too.

What are the implications for the federal government and your extraordinarily diverse workforce – which dwarfs so many corporations? We cannot safely predict with any certainty the future market conditions for employment and worker retention. But we can report that America's top corporations are showing the way on best practices. According to research from the Human Rights Campaign, roughly 80% of the Fortune 100 now offers equal, same-sex partner benefits, and the same can be said of 57% of the Fortune 500.

Last year, in a national survey commissioned by Out & Equal Workplace Advocates, and conducted by Harris Interactive with Witeck-Combs Communications, 64% of all American adults agreed that job benefits should be extended equally to committed same-sex partners that are available to legally married spouses.

Mr. Chairman, in closing, I also have a recently-updated document titled "Diversity and Inclusion—A Way of Life at American Airlines" that I would like to submit for the official record.

Again, thank you for inviting American Airlines to be here today, and to report on our past decade experience on this topic. We continue to work hard to sustain and build our commitment to diversity leadership, and hope our testimony reflects some of the lessons we have learned and are proud to share with you.

Thank you and I will be happy to respond to any questions.

Mr. LYNCH. I'm going to yield myself 5 minutes for some questions.

You are each experts in your own right, but, Ms. Badgett, you have the unique, I think, perspective of having conducted fairly extensive studies in the area of Federal employee employment practices and Federal benefits. And so, having had an opportunity to look at this from a unique angle, I think that could be beneficial to the committee.

Have you thought about what the discretionary spending and nondiscretionary spending ramifications would be on the Federal Government if we were to extend these benefits? I know you are an economist and an accomplished one, but have you thought about it from that perspective and could you just offer your thoughts on that?

Ms. BADGETT. Do you mean distinguishing between spending in those different categories or taken as a whole?

Mr. LYNCH. Either way. I think that would be helpful. That is a tall order. I'm not so sure you've broken it down into that level. But that's what I'm thinking about.

Ms. BADGETT. We have broken it down to that level, and the direct spending, which comes largely from health benefits and the annuity payments, is the smaller of the two by our estimates.

In a given year, it varies. It will add up over time because we've made the assumption, for purposes of estimation, that retirees of current employees would be eligible.

So if I said that right, current employees, when they retire, their partners would receive these benefits. So those will accumulate over time in terms of the health care benefits, but because of the lower annuity payments, much of that will be offset. So that's actually a fairly small annual amount. It starts off being zero on Day One, but over time would rise over 10 years to about $31 million a year.

On the other side, in terms of discretionary spending—so we've taken out the Postal Service cost, we've taken out the tax revenue offsets. In those cases it starts out at roughly $52 million. This is our study—we did it last year so it's the last fiscal year—and would increase overtime to about $84 million by the end of 10 years. So the total for 10 years would be $660-some million.

Mr. LYNCH. I tried to read through all of the information. You came up with an assumption, I think it was 34,000 employees same-sex partners within the Federal Government. How did you arrive at it? How did you extrapolate that number? I was just curious.

Ms. BADGETT. We actually measured it. Since 1990, both the Census and now the American Community Survey have allowed us to identify people who say they have same-sex unmarried partners in their household. We counted them up in the American Community Survey and found there were 34,000 same-sex couples in which at least one person was a Federal employee. And in about 4,000 of those cases, both partners were Federal employees.

Mr. LYNCH. That would have been my next question.

Ms. BADGETT. So that leaves about 30,000 people that we would be concerned about.

Not everyone who has a domestic partner would sign that partner up for benefits. We know this from many other employees' experience. We estimated the number who would sign up by looking at the employment status of the partner. Many of those people will have employers who offer them health care benefits already, so they may not be interested in signing up for their partner's benefits in the Federal Government.

And after we made those adjustments, looking at the figure in the BLS about how many employers offer health care benefits, we cut that number roughly in half. So that's how we ended up with the 14,000 figure that we use in the report.

Mr. LYNCH. OK. Thank you.

My time has just about expired.

I will now recognize the gentleman from Utah, Mr. Chaffetz, for 5 minutes.

Mr. CHAFFETZ. Thank you all for being here and taking the time and being patient with us in terms of the timing. So thank you.

Let me start with you, Ms. Wright. My understanding is that your policy was implemented in the year 2000. Do you have any quantifiable data that proves or demonstrates that this policy retains employees? Do you have any quantifiable data to share with us?

Ms. WRIGHT. What I can say is part of a larger package of benefits, we know we have a very low turnover rate at our airline, we know through anecdotal——

Mr. CHAFFETZ. You don't have anything quantifiable that would distinguish——

Ms. WRIGHT. Nothing that would attribute it to any single individual item like this. But we do know anecdotally that we have people who choose to——

Mr. CHAFFETZ. I would note anecdotal information is important, but I would also note it's anecdotal. There's nothing that distinguishes, identifies, or can quantify something that we are trying to quantify.

Let me followup on the chairman's question here, going back to Ms. Badgett here.

In your testimony, you state that 20 percent of people in same-sex couples are uninsured. Have you done any research? Because my understanding is that opposite-sex couples that are engaged in relationships actually represent a much higher uninsurance rate than same-sex couples. Is that your understanding?

Ms. BADGETT. Yes, that is correct. We found that in the same-sex study.

Mr. CHAFFETZ. Do you believe that this bill in any way discriminates against anybody else? I'm not trying to give you a trick question. But my concern is you have heterosexual couples who maybe aren't married—because becoming married, it takes a commitment, there is a lot of paperwork, there are legal ramifications, it's very difficult to untangle that relationship from a legal standpoint.

Do you believe that this legislation—because I do—discriminates against heterosexual couples?

Ms. BADGETT. I wouldn't call it discrimination. As the last panel had a discussion about this same topic, they pointed out—and I think this is correct—that when you compare the situation of some-

one in a same-sex, unmarried couple, to that of someone in a different-sex unmarried couple, there is no option. There is no legal way for the same-sex couple to establish a legal relationship that would allow them to get these benefits. For different-sex couples, they do have that option.

So from that perspective, no, I don't think that's discrimination.

Mr. CHAFFETZ. We'll go ahead and disagree on that one, but I appreciate it.

I would just note here the majority memorandum states that, "Although costs will increase for the Federal Government under this bill, it will also generate an increase in income and payroll taxes."

I could see where there is taxing on benefits and the ramifications that this would have, not only on individuals bus also to the Federal Treasury, but I also find a huge, huge disparity between, oh, this is only going to affect 0.2-something percent—as I heard on the first panel—and then to others who want to say, oh, no, the same-sex couple population is like 10 percent. It's huge. It's huge.

How do we deal with the huge disparity in those numbers, because they seem to be used at convenience probably on both sides? But I can't find anything that's quantifiable nor do I believe that the Census data, which is now nearly 10 years old, provides adequate information or background to try to assess the true cost of what it would cost to implement this.

Ms. BADGETT. Well, addressing that particular question you've raised two separate issues of measurement, and that's how I look at this. One has to do with how do you count the number of people who think of themselves as being lesbian, gay, or bixsexual, which I think is a very different question. That's where the 10 percent is often raised. And I think that is a completely different issue.

In thinking about how many couples will actually sign up for benefits, you are looking at, first of all, a much smaller group. Those are people who are in relationships in which they live together.

So the unmarried partners are counted in the Census and the American Community Survey, which is actually done every year. So we've used much more up-to-date figures than the Census figures. So that's a much smaller pool of people.

And then in thinking further about the people who need those benefits because they don't have access to them either because they're Federal employees themselves or because they have an employer who offers those benefits, at that point you are starting to whittle away at that much larger number. And our goal as analysts is to get down to the point of trying to figure out how many people will actually want to sign up for those benefits.

And that will be reflective of at least a couple of other things. One, that tax payment is going to be a disincentive for many people to sign up for them. So that will, perhaps, reduce some of the folks who sign up.

And then, finally, there is perhaps some concern about stigma if people believe that they will be thought of as lesbian, gay, or bisexual, which is probably how they will be thought of if folks know that they are in a same-sex relationship. Then they may also be reluctant to sign a piece of paper saying that.

That's why that's important. We haven't talked too much about it, but that is why I believe it's important to have both a very strong nondiscrimination policy alongside of a domestic partner benefits policy to ensure the people who sign up for benefits won't be hurt in some other way.

Mr. CHAFFETZ. Thank you. I see I'm out of time.

Mr. LYNCH. Mr. Cummings for 5 minutes.

Mr. CUMMINGS. I want to thank you all for your testimony.

Ms. Wright, I find it very interesting what American Airlines has been able to achieve. In your testimony, you talk about what actually began happening back in 1993. And as I listened to just the last set of questions here, I'm wondering how did you all break through to be able to accomplish what you accomplished? What kind of hurdles did you overcome and how did you get to where you are today? It seems like you had to go against some pretty heavy artillery. I'm just guessing.

Ms. WRIGHT. I think that is a fair statement.

As I'm sure you can well imagine, you get there through a conviction of knowing what you are doing is right. And at American, we have employees from all walks of life, all cultures, nations, genders, races, religions, and sexual orientation. And for us, the diversity is becoming woven into the fabric of our company, and it's about what we've come to create as an understanding that diversity and inclusion is not about all having the same background, the same beliefs, but in acknowledging and accepting the diversity of beliefs and valuing what each individual brings.

And so it's that sort of core understanding on the part of our company and our employees of what diversity means, and the acceptance of that helps us get through when there are disagreements and different perspectives. It's a matter of bringing them all forward and letting them all be heard.

Mr. CUMMINGS. You talk about morale. How do you determine that you have stronger morale when you have these kinds of problems? How do you come to these kinds of conclusions?

Ms. WRIGHT. I think there are several things. One, we have a very low turnover rate. We do periodic surveys of our employees. We try to understand what, through those surveys, retains people, and when they leave, when they exit, why they exit, to understand where we are doing well and where we can be stronger. And we continue to take all of that information, plus the anecdotal evidence, talking to the employees and not just the lesbian, gay, bixsexual and transgender employees, but other employees who understand and value the inclusiveness and the respect for the individual that's demonstrated by our policies.

So we look through all of that and say, are we on the right track? It's a journey. It's not a destination. And we continue to evolve in trying to be more inclusive and doing a better job of making it a part of our culture.

Mr. CUMMINGS. As you moved to bring about those types of policies, was there any kind of education accompanying that? In other words, to create the kind of sensitivity or hope to create the kind of sensitivity, because I think what happens so often is that when you come up with new policies like this, there are people who have some hidden, sometimes on the surface, sometimes in-your-face

type of feelings, and those feelings can come out. And I think, just as Ms. Badgett said, a lot of times people are reluctant to talk about their personal lives, and to have to make a declaration perhaps opens them up to some suffering.

Ms. WRIGHT. Yes.

Mr. CUMMINGS. I'm just wondering, as you went through this, did you anticipate those kinds of problems, and, if anything, what did you do in anticipation?

Ms. WRIGHT. We did anticipate and we do learn as we go as well. It's a combination of the two. We do training on a broad basis about diversity in general. And one of the things we talk about is knowing who's in the room. Sometimes diversity is obvious, sometimes it's not obvious. So understanding that and providing training for all of our employees on diversity and inclusion.

We also have a Diversity Advisory Council [DAC], which is made up of representatives from each of our resource groups which represent a wide range of demographic groups. Through that council, we get a lot of advice. We include all of the leaders of the different demographic groups and our different employee research groups to come together and help us figure out how we can do more to support.

And then where we have unique situations, such as a transgender pilot, we will provide specific training and counseling to people immediately around that area or in the areas where problems exist. We'll go in and provide additional training and counseling for the employees in those areas to try to help them come to terms and better understand and embrace the inclusive approach that we are taking.

Mr. CUMMINGS. Thank you very much.

Thank you, Mr. Chairman.

Mr. LYNCH. Mr. Franklin, we've been guessing and trying to extrapolate through studies what the impact might be on the Federal budget by extending these benefits. You've had very real experience with CalPERS. You've had to grapple with the costs, you have had to grapple with administering this, just as we are sort of thinking about this, with the affidavits and verification.

Tell us about your experience. What did it mean to the bottom line at CalPERS and what difficulties did you have in doing the whole administrative piece, getting people to come forward? Was it in an affidavit-type situation, registration-type system? How did you handle that?

Mr. FRANKLIN. Thank you, Mr. Chairman, for the question.

Fortunately for CalPERS, our experience was not onerous. The Secretary of State, after the legislation was passed, set up an online registration system. Additionally, made hard-copy registration available at various Secretary of State offices.

In regards to cost in general, as I stated earlier, $19.5 million was our total cost. However, we spent close to $6 million annually for health care benefits. The total number of individuals or members who are enrolled in our Domestic Partner Health Benefits Program is less than a half a percentage point. So therefore, our membership in that regards was not large.

In terms of other administrative challenges, the biggest administrative challenge was managing the tax implications and looking at

how our State Controller Office would manage those folks who were not exempt, did not have tax exemptions. That was a large part of the work. However, that was done in fairly short order, given that there were other IT changes afoot at our State Controller's Office.

But all in all, I think our approach initially was one that we wanted to create an environment where California recognized the diversity of our State. We wanted to ensure that as an employer, our benefits were in alignment for all of our employees. So the actual enactment of the legislation was not problematic.

Mr. CUMMINGS [presiding]. Let me ask you something, Ms. Wright. You know, a lot of times you hear people say they worry there might be fraudulent activities in regards to these things. You hear those arguments all the time. It's quite a bit of experience you have. It's been quite a few years now. I'm wondering what you've found. Have you had any kinds of fraudulent activities that you know of?

Ms. WRIGHT. No significant fraudulent activity in terms of the domestic partner benefits. We do go through and we did an audit a few years back on all of our dependents, whether they be spouses, dependent children of domestic partners. I suppose with any large corporation, we found some cases but they really weren't a domestic partner. They were in heterosexual couples and married couples or dependent children. So fraud has really not been, in terms of domestic partners, a big issue for us.

And we do go through an affirmative proof of eligibility process at the time of enrollment to verify the people are indeed eligible.

Mr. CUMMINGS. Had you all anticipated that there might be problems with that?

Ms. WRIGHT. I don't think we anticipated the problems would be any greater or less with the domestic partner benefits than with any other benefit, whether it be married couples, dependent children, or common-law spouses. So I don't think we anticipated it would be a bigger issue, just proportionate to any other issue.

Mr. CUMMINGS. Now, Mr. Franklin, I think I asked Ms. Wright the question about this whole idea of morale, but we've also heard today that providing this benefit is good for the employer because it helps recruit and retain top talents. You found that to be the case?

Mr. FRANKLIN. CalPERS is not exactly the employer. We are a broker for the State of California. However, we do ask questions regarding recruitment, retention, absenteeism, in order to be better performed. We really haven't seen data either one way or the other in terms of the retention or recruitment. However, satisfaction surveys have shown in the past that when you ask questions around diversity and equity in the workplace, that this notion or this premise that everyone is being treated fairly is one we get very high marks on.

Mr. CUMMINGS. That's interesting. As I was listening to you, Ms. Wright, the whole idea that something can come about, and then it's new and a lot of people have questions about it, and then what's new becomes old. And then it becomes the norm. The problem is getting through the process. And I think that's the difficulty quite often.

My mother used to say, "Integrity is about doing what you believe is right, and then withstanding the criticism and waiting for everybody to catch up."

And so I think that the things that we are talking about today, may be new for some. For some it hasn't even come into existence yet. But at some point, I think it will be the norm and maybe we'll move to another level.

Ms. Badgett, let me ask you one last question.

Your testimony states that you've worked with numerous employers on implementing domestic partner benefits. Can you tell us what the main reason employers cite for providing these benefits, other than costs, and what do they tell you is the main challenge in implementing the benefits?

Ms. BADGETT. I would say that employers usually refer to two reasons to offer these benefits. The first is the one that you hear a lot about. It's about competing with other companies for the best employees.

The second one has to do with equity issues, with treating all employees fairly. So they—in my experience—frequently cite those roughly equally. Those are the two issues.

In terms of the implementation piece of it, I think the concern that most employers seem to have is with regard to the taxable imputed income that they have to adjust their payroll systems to reflect. And that can sometimes be a little bit unwieldy for employers, but they only have to do it once. So it's something that's a one-time cost.

Mr. CUMMINGS. Did you want to say something?

We are going to take a slight break. Mr. Lynch is coming right back, and then we'll go to our third panel. Thank you all for your patience and thank you all for your testimony.

[Recess.]

Mr. LYNCH. I want to thank you all for your patience and your willingness to come before this subcommittee and help us with our work.

I apologize for the interminable delays that have gone on today. Some of them intentionally, unfortunately. But this is an important enough issue that we have a full and fair hearing here, and we intend to do just that. I know there were some witnesses who have offered testimony in writing, and we'll accept that without objection.

But in continuance of our hearing, I want to introduce our next panel.

Ambassador Michael Guest served as America's first openly gay Senate-confirmed U.S. Ambassador during his tenure to Romania from 2001 to 2004. Mr. Guest currently serves as senior adviser to the Council for Global Equality, which was formed in September 2008 by a coalition of human rights organizations that advocate for a stronger and more consistent U.S. Government and corporate voice on behalf of lesbian, gay, and transgendered human rights protections at home and abroad.

Ms. Lorilyn "Candy" Holmes has been an employee with the U.S. Government Accountability Office for 33 years in spite, believe it or not, of her youthful appearance. She is responsible for the oversight of various agency-wide information technology programs. A

native Washingtonian, Ms. Holmes is an ordained clergy with the Metropolitan Community Churches, which is the world's largest and oldest Christian denomination, with primary affirming ministry to the lesbian and gay and transgendered community along with family, friends, and allies.

Dr. Frank Page currently serves as the pastor of the First Baptist Church of Taylor, SC, and has previously held the position of president of the Southern Baptist Convention. A native of Robbins, NC, Dr. Page is the author of several books and scholarly articles as well as a member of President Obama's Council on Faith-Based and Neighborhood Partnerships.

I realize that we have far exceeded the estimated limits of time thus far. It is the custom of this subcommittee to ask all witnesses who are here to offer testimony be sworn. Could I ask all of you to raise, stand and raise your right hands.

[Witnesses sworn.]

Mr. LYNCH. Let the record indicate that all of the witnesses have answered in the affirmative.

I will begin by offering 5 minutes for an opening statement to Ambassador Guest.

STATEMENTS OF AMBASSADOR (RET.) MICHAEL GUEST, FORMER CAREER FOREIGN SERVICE OFFICER; LORILYN HOLMES, CURRENT FEDERAL EMPLOYEE, REVEREND, METROPOLITAN COMMUNITY CHURCHES; AND FRANK PAGE, PASTOR, FIRST BAPTIST CHURCH OF TAYLOR, SC, PRESIDENT, SOUTHERN BAPTIST CONVENTION 2006

STATEMENT OF MICHAEL GUEST

Mr. GUEST. Mr. Chairman, thank you for inviting me to share my perspective on this bill.

For more than half of my life, I served our country as a career Foreign Service Officer. I was honored to represent our country, and I am proud of my accomplishments, but in December 2007, I ended my career after having sought, without success, to amend policies that discriminate against gay and lesbian Foreign Service personnel.

While sharing the same service obligation as my colleagues, my family had no benefits. My partner had sacrificed his career to support me in serving the country that we both love and in return was treated as a second-class citizen in our overseas postings. And I couldn't reconcile how an administration so consumed with the fight against terrorism would knowingly put my partner's life at risk and indeed put the security and effectiveness of our embassy communities at risk to policies that base protections needlessly on marriage, an option that, of course, is unavailable to us.

Mr. Chairman, the State Department's specific inequalities that I challenged have framed my perspective, and those are offered in detail in my written testimony.

As examples, the Department would not train my partner in how to recognize a terrorist threat or a counterintelligence trap, thus putting his life and indeed U.S. interests at risk. He had no guarantee of being evacuated whether for life-threatening medical reasons or to escape political violence that might close an embassy.

The Department would not train him in the informal community leadership roles that he, as my partner, was, in fact, expected to fill. Unlike spouses, he had no diplomatic protections nor could he compete for jobs that the embassy needed to fill, regardless of his qualifications; and while the Department paid to transport pets to and from posts, it wouldn't pay my partner's airfare as if the government for which he sacrificed so much considered him to be less important than a dog.

Now, I trust you can see the ironies. As a diplomat, I advanced American principles of equality, fair play, and respect for diversity in the countries to which I was posted; and yet the very agency that charged me to represent those policies showed no respect for those principles and how it treated those of us who are gay or lesbian. Nor did that agency that drills crisis management, diversity awareness, and leadership skills into all employees show any concern at all on the issues of health, safety, morale, and effectiveness that stem from these discriminatory policies.

Now, Mr. Chairman, I still believe that America is still the greatest country on Earth, and I'm proud of the time that I spent in the State Department, but my experience in seeking redress of these inequalities made me realize that this is not the America I believed in when I came to Washington some 30 years ago to work, in fact, as an intern here on Capitol Hill.

You see, the issue we are here to address is not about personal belief, and it is not the definition of marriage. Those are red herrings. It's workplace fairness, and it's civil rights. Somehow we, as a country, have allowed the term "equality," which is an absolute term, to be redefined to mean more rights for some individuals and fewer for others.

LGBT Americans are not demanding so-called special rights, as some claim, through this or any other bill. How is it that we are debating even today whether citizens who are gay should enjoy the same fundamental protections as others that we work with, who live in our communities, work in offices and factories, and, yes, share a fellowship in our place of worship.

And, in that regard, I want to mention, when I was a student at Furman University many years ago, I attended First Baptist Church in Taylor, SC, which is represented here by my fellow panelist.

Mr. Chairman, I was reluctant to relive before this committee the most painful chapter of my life, the decision to leave a career that I love. But, for me, this is a matter of closure. When President Obama took his action on the 17th of last month to redress the issues at the State Department, I took my partner's hand and quietly apologized to him that this action couldn't have come sooner for his sake.

And now the spotlight is on Congress. The bill before you addressees a range of benefit that remains out of reach for Federal employees for same-sex partners. These have been detailed by other panelists. They're as critical to our families as they are to us, and I respectfully ask that you close this gap.

You've heard many solid arguments for this bill based on things like worker retention and budgetary impact and comparisons to

corporate policies, but I ask you to support this legislation for different reasons.

First, principle is at stake. Equality, fair mindedness, and respect for diversity are at the heart of America's identity. This bill would honor those principles and bring us closer to fulfilling those ideals.

But, second, this bill is about people. Those of us who are gay have the same aspirations, the same hopes, and the same needs as any of you. We have families that we love, that we need to take care of, just as you do. We are humans like you. We love and support our country like you do. And we ask only to be treated fairly and equally and that our families be provided with the same protections and benefits that are provided to yours.

I have been in Washington almost three decades, and I've heard over and over that policy issues related to gay and lesbian Americans are just too hard to tackle and that other agendas must come first and that the time is not now. This issue is hard only because we make it so. And surely we can come together as a country and as a people to do the right thing for families who have yet to recognize and realize the equality to which we, as citizens, are entitled.

I thank you, Mr. Chairman.

[The prepared statement of Mr. Guest follows:]

Hearing on the Domestic Partnership Benefits and Obligations Act of 2009
(H.R. 2517)
Subcommittee on Federal Workforce, Postal Service, and
the District of Columbia

Wednesday, June 8, 2009
Rayburn House Office Building, room 2154

Testimony by Michael Guest,
former career Foreign Service officer

I thank the Chairman and the members of this subcommittee for inviting me to share my perspective on the Domestic Partnership Benefits and Obligations Act of 2009.

For me, this legislation is intensely personal. For 26 years, I served our country in the Department of State as a career Foreign Service officer. I came to that career out of deep love for the United States, and for the principles it represents. I saw the Foreign Service as an opportunity to advance American interests and to make the world a better place. I was proud to represent our country abroad and am proud of my achievements.

In December 2007, I ended my career after having sought, without success, to convince Department leaders to amend personnel policies that discriminated against Foreign Service personnel who are gay. Some of these policies affect all government agencies, and I will return to that point in a moment. But partners of gay and lesbian Foreign Service personnel faced a staggering array of inequities that came into play when they were assigned, at regular intervals, to serve their country abroad. Until President Obama's recent order to correct these deficiencies, partners were not:

- trained, as spouses are trained, in how to recognize a potential terrorist or counter-intelligence threat – thereby putting their lives and the security of our embassy communities at risk;
- trained in the informal community leadership roles that they, like spouses at senior levels (Ambassador or Deputy Chief of Mission), are expected to fill;
- provided with equal access to embassy medical services, even in countries where medical care is poor or dangerous;

- provided emergency medications (e.g., Tamiflu in the event of an avian flu outbreak) that are important to the embassy community's ability to cope with contagious epidemics;
- evacuated, as other family members would be, should a medical condition arise that could not be treated locally;
- assured that, in the event of danger or instability, they would be evacuated with other members of the embassy community;
- offered the protections that diplomatic passports afford;
- offered visa support, to allow them to remain with their families throughout their posting;
- allowed to compete for open jobs at the embassy, even where they might be best-qualified to contribute ideally to embassy effectiveness;
- trained in languages and area studies, to empower their ability to represent our country effectively in diplomatic settings;
- offered embassy ID cards and compound access equivalent to that offered to the families of straight employees;
- given separate maintenance allowance when employees answer the call to serve at unaccompanied posts;
- included in family size calculations for cost of living adjustments, post housing assignments, or other miscellaneous allowances associated with transfers overseas; or
- offered paid transportation to and from post, even though the costs of transferring an employee's pet is reimbursed – a point that has as much to do with morale as it does employee benefits.

Over the better part of three years, I drew these inequitable policies to the attention of two successive Department of State Directors General; the Assistant Secretary for Civil Rights; the Director of the Foreign Service Institute; the Under Secretary for Management; the Under Secretary for Political Affairs; and ultimately, Secretary Rice. In those conversations, meetings, e-mails and letters, I noted that the Department's choice of making marriage the fulcrum for decisions on training, protections and benefits was adverse to both workplace fairness and workplace needs. I stressed that failure to correct these inequities had impaired the effectiveness of our diplomatic platforms; impacted considerations of gay and lesbian families regarding service in dangerous or unhealthy locales; reduced post morale and hindered the ability of ambassadors to foster a "one team, one mission" spirit; and indeed put lives and embassy communities quite literally at risk. I also underscored that these discriminatory policies stood against principles

of equality, fairness and respect for diversity – principles that not only are important to our country's founding and functioning, but that American diplomats are charged to promote abroad.

In most conversations, I was told that I was right, that these policies were unfair and should be changed. But no action resulted. Knowing that I would be given another overseas posting before any new Administration could be expected to act, I ended my career. I simply could not ask my partner, who had put his career on hold to support me, to accept second-class citizenship again. Nor could I accept being asked to urge upon other countries the American principles noted above, when the cabinet agency that directed me to do so knowingly dishonored those principles at home.

I am, of course, deeply grateful to President Obama and Secretary Clinton for having acted to end State Department-specific discriminatory policies, to the extent Executive Branch directives can do so. But a range of discriminatory policies remain in place in federal law, adversely affecting gay and lesbian families across the federal workplace. Unlike spouses, partners of gay and lesbian employees are not covered by federal employee health, group life insurance, and long-term care plans. Employees cannot take medical and emergency leave to care for a partner who is sick or dying. And partners, unlike spouses, aren't eligible for benefits from employees' retirement and disability plans. In essence, the employment package offered to gay and lesbian federal employees falls vastly short of what their straight colleagues, who perform identical work, receive.

The Domestic Partnership Benefits and Obligations Act would redress these and other workplace imbalances. In so doing, it would provide a critically important floor of protection for LGBT families. It would chip away at the number of citizens who lack affordable health insurance in this country. It would reduce the financial strain on gay and lesbian families, for whom separate health care plans can be a major, even unaffordable cost. It would help the federal government become more inclusive and representative by eliminating major financial disincentives for gay and lesbian Americans to serve their country. And it would establish the federal government as abiding by the important principle of fair workplace treatment of all employees, a principle that should be above partisan political debate.

Many proponents of this bill stress that it will help the federal government attract and retain top-caliber talent. According to survey information

compiled by the Human Rights Campaign, health benefits for partners are now offered by well over half of Fortune 500 companies. Many smaller private sector companies follow that best practice. With a wave of baby boom-generation employees expected to retire from federal service in the coming years, the federal government should not want its personnel policies to drive talent in other directions. Nor should it want to lose, because of these inequities, a single employee in whom it has invested over years.

But for me, the essential arguments in favor of this bill are less about employer interests than they are about people and principle. Advocates of this legislation are not seeking "special rights," as opponents sometimes claim. Rather, they are asking for gay and lesbian families the same rights that you and your families enjoy – no more, but also no less. Surely men and women who work side-by-side, under equal conditions of service, deserve equal pay, protections and benefits. Surely no factor that's flatly irrelevant to the jobs we perform – whether race, sexual orientation, gender, or gender identity – should be used to justify unfair and unequal treatment. And surely the American people can be brought to understand that families matter not only to straight Americans, but also to those of us who are gay. Anything short of fully equal treatment in the federal workforce dishonors the service of LGBT Americans, fails our families and, indeed, tarnishes our country's integrity and principles.

When I ended my career in December 2007, I spoke of the choice I felt compelled to make between service to my country and obligations to my partner, who is my family. Indeed, as Rep. Tom Lantos, a personal hero of mine, said shortly before his untimely death, "There is no rational explanation for a same-sex domestic partner to be treated as a second-class citizen. … These dedicated men and women serve their country, yet our government does not honor the basic rights of the benefits they have earned for themselves and their families."

For the sake of those who honor our country with their service, and for their families, and indeed for the fabric and integrity of our country, I urge that this bill be moved quickly to the President's desk for signature. And I urge that it receive full bipartisan support, so that workplace equality as an American principle is not seen as a partisan matter.

Thank you.

Mr. LYNCH. Ms. Holmes, you are now recognized for 5 minutes.

STATEMENT OF LORILYN HOLMES

Ms. HOLMES. Good evening, Chairman Lynch. I appreciate this opportunity to testify before you in favor of domestic partner benefits for Federal employees. I appreciate that my partner and a portion of my family are also present.

It's been a long time since I have visited the Rayburn Building where my father worked years ago as a laborer serving in these same hearing rooms. He would take me by the hand and walk me through these very halls of Congress explaining this is where decisions are made, Candy, that impact us all. I would have never imagined I would return to be speaking before you today before you now on a topic of such importance to me and to countless others. I believe my father is looking upon us from celestial heights, proud that I am here. Thank you for convening this hearing.

My name is Candy Holmes, and I am a Federal employee, a manager with the Government Accountability Office in Washington, DC. I have worked at the GAO for 33 years—absolutely 33 years. I am here to speak not only about my story but to express my views on the merits and the need for this legislation, that it ensures that lesbian and gay Federal employees and our same-gender partners receive the same benefits that are granted to our opposite-gender married Federal employees.

I am not here speaking as a representative of the GAO. I am testifying on my own behalf.

It is also important for me to share with you that I am lesbian, and I am Christian, and for the last 20 years I have been a part of the Metropolitan Community Churches, and I am an ordained clergywoman. I'm in a same-gender relationship with the Reverend Darlene Garner. We are in a loving, committed relationship in which we worry about our children, take pride in our grand and great grandchildren, make a home together, and plan our retirement together.

Darlene is also ordained clergy with the MCC and serves as part of the denomination spiritual leadership. Because she is an employee of MCC, she relies on limited employee benefits and a retirement plan that will provide less than $120 a month when she retires.

There are many families like ours. The difference is this. The government to which I have devoted 33 years of my working life will not honor my partnership because I love another women, not a man. There are many voices and stories you will not have a chance to hear, so I share from our collective experiences of unfair treatment and unjust Federal policies.

I entered the Federal Government in 1977. And in that day, it was enough that I was also dealing with the dynamics of being African American and a woman in the Federal workplace. So I was a closeted lesbian. I worked in utter fear that I would be found out and suffer the consequences. Like many others, I chose to be silent; and that rendered my life invisible.

Recently, I came to a tipping point in my life. The decision in California to uphold Proposition 8, the ban on gay marriage, sent me a stark, clear, yet unbelievable message that discrimination can

be legalized again. I was outraged. So I am here to bear witness openly as a lesbian Federal employee who seeks fair and equal treatment.

Federal employees who are married to someone of the opposite gender are automatic beneficiaries of Federal benefits. My family and others like us are automatically denied. It is disturbing and demoralizing to be treated as a second-class citizen and worker and told that I cannot enjoy the benefits of my labor on an equal footing with my opposite-gender counterparts.

Being treated as a second-class citizen is eerily familiar to me. Same church, just a different pew. There was a time in this country when being treated differently because of the color of my skin was simply the way it was. Being treated so unfairly now because of who I love is more than a matter of fairness; it is an issue of civil rights.

My partner and I are preparing for our retirement years now. Unless this act is adopted now, the economic impact of my retirement on my family will be dire, as though I had never dedicated 35 years of my life to my career as a Federal employee.

No opposite-gender married couple will ever have to think about this, ever have to even think about such a thing because they had been privileged by right of legislation. Government should work for us, not against us.

In summary, Chairman Lynch, the family benefits in question are a significant portion of employee compensation because gay and lesbian Federal employees do not receive equal pay for our equal contributions. It is clear that this act would be a first step in the right direction toward eliminating discrimination and compensation.

As I conclude, I would like to thank the cosponsors from both the House and the Senate for their ongoing efforts to move this act to this point and for linking their hands with mine and others on the arc of history to bend it once more toward justice.

During these days of uncertainty, I remind us all of the words of President Obama from his inaugural address: The time has come to reaffirm our enduring spirit to choose our better history, to carry forth that precious gift, that mobile idea passed on from generation to generation, the God-given promise that all are equal, all are free, and all deserve a chance to pursue their full measure of happiness, including Federal employees like me. There is no wrong time to do the right thing.

Thank you and God bless. I will be happy to take any questions you may have.

[The prepared statement of Ms. Holmes follows:]

The Subcommittee on Federal Workforce, Postal Service, and the District of Columbia
Statement of Rev. Lorilyn (Candy) Holmes
Domestic Partnership Benefits and Obligations Act of 2009
H.R. 2517
2154 the Rayburn House Office Building
Wednesday, July 8, 2009

Domestic Partner Benefits for Federal Employees

Good afternoon Chairman Lynch and Subcommittee members. I appreciate this opportunity to testify in favor of domestic partner benefits for Federal employees. I am also grateful for the support of my family, a portion of which is here -- my partner Rev. Darlene Garner, my sister – Beatrice Cook, my brother Arlen Holmes, and my great niece – Elaine Conway who is also a lesbian. Thank you for inviting me to this hearing.

It has been a long time since I have visited the Rayburn Building, where my father worked years ago as a laborer toting ice to these same hearing rooms. He would take me by the hand walking me through these very halls of Congress explaining -- this is where decisions are made that impact us all. I would have never imagined I would return to be speaking before you now on a topic of such importance to me and countless others. I believe my father is looking upon us from celestial heights -- proud that I am here. Thank you for inviting me to this hearing.

My name is Candy Holmes. I am a Federal manager with the Government Accountability Office (GAO) in Washington, DC. I have

worked at the GAO for almost 33 years. I have worked at GAO in various capacities – beginning my career as an editorial assistant and progressing to my current managerial position in GAO's information technology department. I am here to speak with you about not only my story, but to express my views on the merits and need for legislation that ensures that lesbian and gay Federal employees and our same-gender partners and children receive the same benefits that are granted to opposite-gender married Federal employees. Though I am a dedicated GAO employee, I am not here speaking as a representative of the GAO. I am testifying on my own behalf.

It is also important for me to share with you that I am Lesbian and Christian. I grew up in the Baptist and Pentecostal faith traditions. And for the last 20 years I have been a part of the Metropolitan Community Churches (MCC) and am an ordained clergywoman.

> The MCC is the world's largest and oldest Christian denomination with a primary affirming ministry to lesbians, gays, bisexuals, and transgender persons, along with our families, friends, and allies.

I am in a same-gender relationship with Rev. Darlene Garner. We are in a loving, committed relationship in which we worry about our children, take pride in our grand and great grandchildren, make a home together and plan our retirement together. We support and are supported by are sisters, brothers, nieces, nephews, and extended family. We care for each other when we are sick and revel with each other in health. We cannot get married in our state, but we live as most married couples hope to live. The difference is this: the

Government, to which I have devoted 33 years of my working life, will not honor my partnership, because I am given to love another woman, not a man.

Darlene is also ordained clergy with MCC and serves as a part of the denomination's spiritual leadership. Because she is a MCC employee, she relies on limited employee benefits and a retirement plan that will provide less than $120 per month when she retires.

I want to emphasize that I am not representing my denomination. I am testifying as a federally employed person who has worked for the entirety of her Federal career without the same employment benefits afforded my opposite-gender, married co-workers. I am testifying as a federally employed person who has worked for the entirety of her Federal career without the same employment benefits for my family that are granted to my opposite-gender, married colleagues as a matter of course.

Passage of the Domestic Partnership Benefits and Obligations Act (DPBO) of 2009 would make a fundamental and positive difference in the lives of lesbian and gay Federal employees. Now is the acceptable time to recognize the inequities that have oppressed Federal employees who are in same-gender relationships and to redress discriminatory policies through fair-minded legislation.

There are many voices and stories you will not have a chance to hear so I will share from our collective experience of unfair treatment in the Federal workplace and to convey our enduring spirits in the face of unjust Federal policies.

I entered the Federal government in 1977. In that day it was enough that I was also dealing with the dynamics of being African American and a woman in the Federal workforce. So I was a closeted lesbian. I worked in utter fear that "how I am given to love" would be found out and impact work assignments, collegial relationships, and my ability to succeed. And like many others, I chose to be silent and that rendered my life invisible.

Recently, I came to a "tipping point" in my life. The decision to uphold Proposition 8, the ban on gay marriage, sent me a stark, clear, yet unbelievable message -- discrimination can be legalized again. I was outraged! It became crystal clear that my silence was not going to save me nor ensure me equal rights. Out of that pain came the courage to speak my truth and be silent no more. So I am here to bear witness openly as a lesbian Federal employee who seeks fair and equal treatment.

Federal employees who are married to someone of the opposite gender are automatic beneficiaries of Federal benefits that are automatically denied me because my partnered relationship is not included as eligible. It is disturbing and demoralizing to be deemed a second-class citizen and worker, and to be told through unfair policies and unjust practices that I cannot enjoy the benefits of my labor on an equal footing with my opposite-gender counterparts.

Being treated as a second-class citizen is eerily familiar to me. "Same church, just a different pew." There was a time in this country when being treated differently because of the color of my skin was

simply the way it was. Being treated so unfairly now because of who I love is more than a matter of fairness; it is an issue of civil rights.

The lack of domestic partner benefits is in direct contradiction of equal employment opportunity policies. I have worked as hard as my opposite-gender married co-workers; yet my partner and I, as well as my same-gender partnered colleagues are denied access to the full range of employment benefits because we love within a same-gender relationship. When our partners lose their jobs and their health coverage lapses, we really struggle to afford the $400-600 or more monthly premium for COBRA and other benefits. If we could add our partners to our Federal health benefit program, as our opposite-gender married colleagues are able to do, we would save up to 90% on the cost of insurance. Although we put in the same amount of work as Federal employees we cannot receive the same federal employee health benefits for our partners or children. Private health insurance can be more than $5,000 a year for an individual policy that may not even cover routine health care. Many of our partners are without any health coverage at all.

We and other families like ours because of the current Federal policies will not receive benefits such as retirement annuity; workers compensation benefits; health insurance; social security survivor benefits; social security lump sum death benefits; or family optional life insurance, just to name a few. We should not have, nor be expected to work without the same access to the same benefits that are made available to our opposite-gender married co-workers.

My partner and I are preparing for our retirement years now. Unless the DBPO Act is adopted now, the economic impact of my retirement on my family will be dire, as though I had never dedicated 35 years of my life to my career as a Federal employee. No opposite-gender married couple will ever have to even think about such a thing because they had been privileged by right of legislation. "Government should work for us, not against us. It should help us, not hurt us."[1] The Federal government's failure to legislate equality will also harm the Government itself because it will continue to lose its competitive edge when recruiting the best and brightest who will be seeking to enter the workforce in the future.

In summary, Chairman Lynch and Subcommittee members, the family benefits in question are a significant portion of employee compensation. While President Obama recently promulgated limited additional benefits for domestic partners, the major benefits of health insurance and retirement benefits must be legislatively enacted. Because gay and lesbian Federal employees do not receive equal pay for our equal contributions, it is clear that the DPBO Act would be the necessary next step in the right direction toward eliminating discrimination in compensation. The Federal government should lead by example and strive to attain the highest level of fairness for its employees.

As I conclude, I would like to thank the co-sponsors from both the House and the Senate for your ongoing efforts to progress the DPBO Act to this point. I especially express my sincere gratitude to

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[1] The American Promise. President Barack Hussein Obama. Democratic National Convention. Denver, Colorado. August, 28, 2008.

Representatives Tammy Baldwin and Ileana Ros-Lehtinen, and Senators Joe Lieberman and Susan Collins for championing this cause and for linking your hands with mine and others on the arc of history to bend it once more toward justice. Though the Domestic Partnership Benefits and Obligations Act is only one step toward addressing inequities impacting the LGBT community, I am hopeful that needed change will come and the light of full equality will shine on us all. During these days of uncertainty I remind us all of the words of President Obama from his inauguaural address -- "The time has come to reaffirm our enduring spirit; to choose our better history; to carry forward that precious gift, that noble idea, passed on from generation to generation: the God-given promise that all are equal, all are free, and all deserve a chance to pursue their full measure of happiness,"[2] including Federal employees like me. There is no wrong time to do the right thing.

Thank you and God bless!

Chairman Lynch, I would be happy to answer questions you or other members of the Subcommittee may have.

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[2] Inaugural Address of President Barack Hussein Obama. Washington, D.C. January 20, 2009.

Mr. LYNCH. Dr. Page, we are thankful that you stayed. You are now recognized for 5 minutes.

STATEMENT OF FRANK PAGE

Mr. PAGE. Thank you, Mr. Chairman. I do appreciate the opportunity to address this committee, though singular you are at this particular moment.

I've heard much talk today in the 6 hours plus that I have sat here about diversity, equality, fairness, but I have to note for the record in the interest of fairness, I'm the only person asked to speak as a witness today who speaks in opposition to this proposed bill, H.R. 2517.

I have heard a great deal of verbiage today about how this would make the government on equal footing regarding recruitment and retention. I've heard many things about fairness; I understand that and I hear that in my heart. But I do believe this is a part of a social agenda, and I do speak in opposition to H.R. 2517, primarily because of two reasons. One is moral; one is financial.

I do believe that it has been the perennial role of the government to support the institutions of society such as marriage; and, in this instance, I think this is taking a direct role in opposition to a traditional definition in support of that which marriage has traditionally been.

I believe that the government has always stood to support, not to discourage. I do believe in moral absolutes. Those are words we've not heard today. Those are words that are not popular in our culture today. But I do say that I do believe there are moral absolutes.

I was excited to hear Ambassador Guest say that he had attended our church. I would love for him to attend again, and he would find a place of love and welcome. But he will also hear again biblical truth that marriage is one man, one woman, freely and timely committed to each other as companions for life. We believe that the government ought to support the role of marriage in our society.

We also, as unpopular as it is today, believe that this is a part of a social agenda that continues to seek normalization of the homosexual lifestyle that I, and I believe many other evangelicals, not all, certainly oppose. We care for people, we do love people, but we are painted as if we are hateful, caricatured as mean spirited. We are not, but we do believe there are absolutes, and we stand by them.

This bill promises equal treatment, but I believe that it has created an elitism. For example, it's been pointed out today that heterosexual couples, opposite-gender couples would not be allowed to have the same benefits. It's been pointed out, well, they can get married. Well, there are same-sex couples that do not wish to get married. There are opposite-sex couples that do not wish to get married for many reasons. This sets aside same-sex couples as an elite class, and those same benefits would be denied to opposite-sexed couples who choose not to marry.

So I do believe that this is creating a discriminating bill. It is a discriminating bill; and, again, I think that is improper.

Do I personally oppose same-sex couples who live together without marriage? Yes. Do I oppose opposite-sex couples who live together? Yes. We do believe that is improper. For moral reasons but also financial reasons.

I do believe that this creates an opportunity for abuse. I've heard the promises today of supposed safeguards. But I've got to tell you, Mr. Chairman, that I, like many Americans, don't trust the government's ability to guard itself in its policy real well, and I hope that doesn't come as a great surprise to you. But I have deep concerns about the moral implications about this bill, also about the financial possibilities. I do encourage that this bill will be defeated and that we will see the government continue in some small form to lead corporations and society in the protection of traditional marriage.

Thank you for listening to my comments.

Mr. LYNCH. Let me begin with Ambassador Guest.

First of all, thank you for your service to our country. I appreciate that greatly. I regret that the situation existed that treated you in a way that you felt that you could not continue in our service, because I think we have, lost out. We have suffered not only because of your own decision, but I'm sure that there are thousands of employees that have probably made the same decision over time as a result of this policy.

Let me ask you. You also, in your last few years of service, began to advocate on behalf of changing the laws and changing the regulations as they apply to Federal employees. We are looking at a proposal today offered by Ms. Baldwin subject to some technical amendments being suggested by the Office of Personnel Management. But, basically, what they're suggesting is that, in order to extend these benefits, they will require gay and lesbian employees to file a sworn affidavit under the penalties of perjury that they have a long-term commitment, solid commitment, in some cases, marriages recognized in other States, and that they want the benefits that they receive as employees to be extended to their spouse, to their domestic partners.

The idea of requiring employees to come forward requiring to sign an affidavit, especially in the Federal Government context, can be somewhat intimidating. And I just want—I wonder how you see that, the administration of that practice, affecting the utilization rate among gay and lesbian employees in the Federal workplace.

Mr. GUEST. Thank you for the question, Mr. Chairman.

I don't think that this is an onerous requirement, to be honest. Had we been speaking 20 years ago, things might have been different. But I think our society has evolved in a way where people are much more open about who they are and more honest. Honesty is a value that I think is very, very important in life; and I think many people now are much more honest.

I, frankly, don't know that it is entirely necessary. I certainly believe that Federal employees who have security clearances would never risk their security clearance on the promise of a false affidavit. I don't think that people would be willing to jeopardize their employment, also. But I do believe that, in the interest of making sure that this process works as smoothly and effectively as possible and that there is no fraud, that having this sort of an affidavit

would not be objected to by any member of the Federal Government that I know.

Mr. LYNCH. Ms. Holmes, you had a perspective as a parent as well as a partner in this. With over 33 years going through—you've got a compelling story, and it gives great power to your testimony today. How has that affected your extended family life in dealing with this policy over the years? How have your children been affected by being, I think, unfairly treated by a policy that obviously distinguishes between heterosexual families and homosexual families?

Ms. HOLMES. Well, Chairman Lynch, in our case, my partner and I, when we came together, the children were already grown. They were young adults, so we were not impacted by this—not being included or not being able to use the health benefits.

But that being said, such an exclusion still has a heavy impact on my colleagues. And I can share from their experiences in blending families and with our children, our partners, we share parenting responsibilities and love all of the children without distinction. However, the Federal Government does not consider the children of our same-sex partners as being our children.

I know of many same-sex couples who live in such a blended family situation and coverage under the Federal employees health benefit program would not cover them. It is not available to the children of our partners. When the children are ill, the birth or adopted children of Federal employees can be treated by a private physician. If the partner is a stay-at-home parent, or for whatever reason is uninsured, the partner's ill child sometimes must go without health care or it must, at most, turn to public services for health care.

Mr. LYNCH. Dr. Page, a number of the members of previous panels, in response to questions by the ranking member, Mr. Chaffetz of Utah, there was an exchange here on several occasions about the idea that, as you stated in your testimony, single heterosexual couples living together were being discriminated against under this bill because they would not be afforded the same rights that gay couples would be afforded as it's currently drafted. And the response from some of the witnesses, several of them, was that the heterosexual couples have the opportunity to marry and upon that marriage, unquestionably, they would be afforded the benefits. Nothing further needs to be done.

And you have made the same argument that heterosexual couples are being discriminated against. How do you reconcile that fact that one couple can go ahead and get married and they get the benefits just like that and the other one, the gay couple or lesbian couple, can achieve that same result?

Mr. PAGE. Well, I mean that is a separate issue. The issue of marriage is very clear, that under Federal law right now they are not married and they cannot get married. That's a moot point to me. Because that is not an even a possibility at this point, as far as Federal law.

But what I was simply saying is this: there are many same-sex couples that simply do not choose to get married for whatever reason. There are many opposite-sex couples that choose not to get married. But there are many people, for example, who are in rela-

tionships or friendship, may even live together, elderly persons, young persons, whatever the age might be. Why should they be discriminated against, that they're not going to be allowed to get the same benefits that a same-sex couple would get?

I'm simply saying it's discriminatory purposely because the only protected clause in this particular piece of legislation are same-sex couples, automatically discriminating against those who are opposite sex. They choose not to get married. That's not my business. That's not your business. That's their business. But the government is automatically discriminating against them.

Mr. LYNCH. But it is the operation of law that a gay couple cannot get married, even though they have a long-term, committed relationship.

Mr. PAGE. And that is true.

Mr. LYNCH. And it's the operation of law that, you know, heterosexual couples can.

Mr. PAGE. But I'm not arguing what's legal and what's not legal. I'm arguing what is discriminatory and what is not discriminatory.

Mr. LYNCH. Is that connected?

Mr. PAGE. Yes, sir.

Mr. LYNCH. I understand, but this is a legislative body.

Mr. PAGE. Yes, sir.

Mr. LYNCH. I am a lawmaker, so we've got to talk about the law.

Mr. PAGE. All right. Well, then let's respect the law that is currently on the books that says these persons are not married.

Mr. LYNCH. The law is not a static entity. We're here because a very respected member of the legislature has come forward with a proposal to change the law, to extend the benefits. And I respect your position. I don't——

Mr. PAGE. No, sir, I don't think you do, but thank you for saying that.

Mr. LYNCH. No, no, I do respect you. However, we are trying to grapple with the issue of, in this case, as presented by some, equal work for equal pay or equal pay for equal work. And I think that there is a valid case being made when you do a comparative assessment of how each person is treated, and I think there is a fair statement that it's drastically different for Ambassador Guest in his situation versus some of my other heterosexual employees and the benefits that have been afforded to them. You know, at least from an equal protection standpoint I think there's fair argument that's been put forward here.

Let me just say this. There's no way I'm going to cover the whole landscape of questions that need to be asked this evening, but what I would like to do is to give each of you several minutes. If there are aspects of this debate today in the three panels that have not been covered, if there are parts of this debate that you'd like to emphasize or amplify or just summarize, that you think that a message that has not been heard here today, then I want to give you full opportunity to do that.

Dr. Page, I'd like to afford you the first 3 minutes, if you'd like to. As I said, just put some messages on the record about your feelings on this and your positions on this. You're recognized for 3 minutes.

Mr. PAGE. Thank you, Mr. Chairman.

I do recognize that I rise in favor of a minority opinion. It's not very popular. It's not politically correct. But I do stand and say that the government should be in the process of encouraging the traditional marriage that has stood for many, many hundreds of years as that way that culture is best protected, and I think the government ought to be encouraging, not discouraging, and I think this act discourages.

Thank you, sir.

Mr. LYNCH. Thank you, sir.

Ms. Holmes, you're recognized for 3 minutes.

Ms. HOLMES. Thank you, Chairman.

I want to start with saying the government is not a religious institution. For the Federal Government to afford all employees equal treatment does not require anyone to change their values or beliefs. It requires only that the Federal Government honor the legal doctrine of separation of church and State.

And on a real personal note, it has been demoralizing to go to work each day knowing that I must endure the indignity of not receiving equal pay for my equal work. The spirit of the Declaration of Independence is that all people have the inalienable right to life, liberty, and the pursuit of happiness. Yet, being a lesbian and employed by the Federal Government has meant that I can't or haven't been allowed to exercise that basic American right for myself and my family.

Thank you.

Mr. LYNCH. Thank you.

Ambassador Guest, you're recognized for 3 minutes.

Mr. GUEST. Mr. Chairman, the three of us who are sitting before you now are all Christians. We all are men and women of faith and belief, but we are also all Americans. America is not, as my colleague has said, a theocratic society. This country was founded on certain principles, and among them were equality, among them were fair play, fairness, and justice. And these are principles that we represent in political discourse in this body and principles that we represent abroad when we are speaking about what America stands for, and those principles are denied by the law the way it now exists.

You've pointed out that law is not static, that law changes both to deal with changing times, and from this perspective I would say it's not from changing times. It's to right wrongs. It's to right injustices.

I find the argument that somehow this bill is discriminatory sheer sophistry. We would not be sitting here today having this discussion about this bill if one of two situations existed, one being that we, gay and lesbian Americans, were allowed access to marriage because all of these benefits that are attached to employment for the Federal Government are attached through the institution of marriage. The second circumstance would be if the government recognized that workplace benefits and protections and fairness should not be attached through marriage, that marriage should not be the fulcrum on which these benefits are offered, that there needs to be a principle established of equal rights for equal representation and equal service.

And that's what this really is about. That's what this bill is about, and I would urge that the committee consider it in that light.

Thank you.

Mr. LYNCH. Thank you.

As you know, we had several hearings going on at the same time today. It's the way it works around here. It's not the best way, but it's the way it works. So what I'm going to do is I'm going to leave the record open for 5 days. That will also, you know, based on your testimony today will also give the other members of this committee an opportunity to submit questions to you in writing; and you will have 5 days to return those answers to the committee if necessary.

But I want to thank you each. I really do appreciate all the testimony that's been offered to this committee. I thank you for your willingness, and it took courage for each of you to step forward and offer testimony to this committee under oath, and we appreciate that, and we thank you, and we bid you good evening.

This hearing is now adjourned.

[Whereupon, at 8:08 p.m., the subcommittee was adjourned.]

[The prepared statement of Hon. Elijah E. Cummings follows:]

Opening Statement

Representative Elijah E. Cummings

"H.R. 2517, Domestic Partnership Benefits and Obligations Act of 2009"

Subcommittee on Federal Workforce, Postal Service and the District of Columbia

Committee on Government Reform

July 8, 2009

Mr. Chairman,

Thank you for holding this vitally important hearing on legislation introduced by our colleague, Congresswoman Tammy Baldwin of Wisconsin that will make the federal government an equitable workplace by extending health insurance, retirement and disability benefits to committee same-sex couples.

I am proud to be an original cosponsor of H.R. 2517 and welcome Congressman Baldwin and our other guests.

As this Subcommittee has jurisdiction over federal employees, it is our duty to ensure that provisions promoting basic fairness but also improve the quality of life and assist with the recruitment and retention of employees are reviewed and enacted.

The federal government last year employed approximately 2.7 million people. This workforce is charged with the

crucial task of running our nation, and we have traditionally honored that service by providing them with the best workplace environment that we can.

However, a 2008 study conducted by the Office of Personnel Management, reported that nearly 1.7 million federal employees will become eligible to retire within the next seven years—taking with them a wealth of knowledge. How will this pool of talent be replaced?

Some may argue that the current economic situation (9.5 percent national unemployment rate) will persuade those who may not otherwise be interested in public service to fill these vacancies. These people should keep in mind that the economy always improves and as that happens, many government employees will leave for the private sector.

Simply put, the federal government can no longer afford not to be competitive with other potential employers in attracting qualified applicants. Workers in the public sector are already grossly (37 percent below) underpaid in comparison to those in comparable private sector jobs. By providing competitive benefits, more people would consider federal employment.

As Mr. Guest pointed out in his testimony, he left a 26 year career with the Department of State because of this inequity, and I am sure that there are other examples of others who have left the federal government or did not or will not seek a career in public service because of this inequity. In the past, the federal government has served as a model for other employers in the private and public sectors,

and now is the time to once again take on a role of leadership.

I strongly believe that H.R. 2517, the "Domestic Partnership Benefits and Obligations Act of 2009," will make great strides in achieving this end.

This legislation will help the government recruit and retain the best possible employees as we move toward equity for all Federal employees.

We also understand that pay matters, but certain fringe benefits such as health care, vacation, retirement and life insurance are equally important.

For these reasons, we have an obligation to provide same-sex employees with the same superior workplace protections.

We simply must seize this opportunity, and I appreciate the efforts of Congresswoman Baldwin—and again thank you, Mr. Chairman for recognizing the importance and timeliness of this issue by calling today's hearing.

I look forward to the testimonies of today's witnesses and I yield back the remainder of my time.

Member of Congress
Elijah E. Cummings

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