Law Office of Thomas F. Coleman
Post Office Box 65756, Los Angeles, CA 90065
(213) 258-5831 / Fax 258-8099

January 30, 1996

Honorable Rod Tam
Hawaii State Senate

Fax transmission: 5 pages
* Cover letter on public policy (*pages 1-2*)
* Chart comparing partnership bills (*page 3)*
* Constitutional commentary *(pages 4-5*)

Re: Analysis of SB 1800, SB 795, HB 117, HB 118
Judiciary Committee Hearing: February 3, 1997

Dear Senator Tam:

I am writing to you so that you will have ample time to consider these bills, since all Senators will be called upon to vote on one or more of them a few days after the Judiciary Committee hearing.

Attached to this covering letter which deals with public policy issues, you will find a constitutional commentary on the bills to be considered in your committee on February 3, 1997. Also attached is a chart comparing various domestic partnership proposals made in the past two years.

Although the constitutionality of these bills should be of major concern, there also are several policy issues that deserve attention. The most important of these is whether an inclusive measure should be enacted or whether reform should focus only on the needs of a special interest group.

Exclusion of blood relatives. It is interesting to note that it was a Republican legislator's proposal (HB 4030) which was the most inclusive (in terms of people who could participate) and the most comprehensive (in terms of benefits conferred). By permitting blood relatives to register as domestic partners, that bill effectively removed the presumption of sexual conduct from the concept of domestic partnership. Since this is a totally new secular institution that is being created, it would seem appropriate to allow two adults who do not have a sexual relationship -- but who are living together in a family relationship -- to register as domestic partners. Although it confers too few benefits, the Souki proposal (HB 118) would allow blood relatives to participate in its registration program. Excluding blood relatives is patently discriminatory. While it is appropriate to assume that people who get married will be involved in an ongoing sexual relationship -- and most people view marriage in this way -- such an assumption is misplaced in terms of a family partnership. As an historical note, it was the exclusion of blood relatives that caused then-mayor Diane Feinstein to veto the first domestic partnership law that was passed by the San Francisco Board of Supervisors in 1981.

Exclusion of opposite-sex partners. The Commission on Sexual Orientation originally proposed that domestic partnership be open to any two unrelated adults regardless of gender. As it was introduced last year, SB 3113 was open and inclusive. Then an amendment was made which turned SB 3113-SD1 into special interest legislation by limiting registration to same-sex couples. The argument was made that opposite-sex couples can get married if they want to. There are several objections to that argument.

First, there are some couples who want and need legal recognition under state law but who, for economic reasons, can not get married. They fear a loss of pension survivor benefits, a federal "marriage penalty" tax, or a loss or reduction in federal SSI or other benefits. This group includes seniors, pensioners, and people with disabilities.

Second, there are persons who have taken a personal or religious vow to marry only once in their lifetime -- a vow to which they may adhere even though their spouse has died or even though they have been divorced against their wishes. Domestic partnership would allow them to be true to their principles and yet participate in a secular institution which confers family benefits.

Third, many feminists view marriage as an institution that historically has oppressed women; they would prefer to participate in a new secular institution as an alternative.

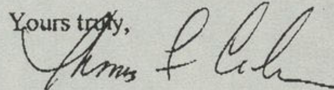
Next, there are people who are not religious and who justifiably see marriage as essentially a religious institution and therefore they do not want to participate in it for that reason. The current "civil" marriage laws do not provide a truly secular option since "marriage" is intertwined with religious rules. For example, the so-called civil marriage statute uses terms often associated with religious rituals, e.g. solemnization, ceremony, rite. The religious nature of marriage is further underscored by the fact that the only private individuals and private-sector organizations that are authorized to perform marriages are ministers ordained by religious organizations.

Hawaii could join the trend of inclusiveness. Most of the hundreds of public and private employers in the nation that offer domestic partnership benefits do allow opposite-sex couples to participate. This group includes the State of New York and the State of Vermont.

Separation of Church and State. In keeping with the principle of separation of church and state, it would be appropriate to create a totally new, and truly secular, institution that is open to any two adults, regardless of gender or blood relationship. While the exclusion of opposite-sex partners and blood relatives may cast doubt on the constitutionality of the bills currently under consideration, the question to be faced by legislators is, in the first instance, a political one: Should not public policy favor solutions that help the greatest number of people rather than focusing only a select group?

I hope that these observations, and the attached chart and related commentary, are helpful to legislators as political decisions are made that will have national ramifications for years to come.

Yours truly,



THOMAS F. COLEMAN