Allan Egolf - Pennsylvania's Defense of Marriage Law

From: Edward Hussie
To: Allan Egolf
Date: 1/23/2004 3:23 PM
Subject: Pennsylvania's Defense of Marriage Law

This is in response to your request for my thoughts on the adequacy of Pennsylvania's defense of marriage law.

In my opinion Pennsylvania's defense of marriage law does everything within the Commonwealth's power to safeguard against attempts by same-sex couples, who marry in accordance with the laws of some other state such as Massachusetts, to have their marriages recognized in Pennsylvania and thereby avail themselves of all the benefits and responsibilities that result from being a married couple in Pennsylvania (assuming the Massachusetts Supreme Court's ruling on same-sex marriage is ultimately implemented in that state).

Given the fact that Pennsylvania's recognition of marriage and given its enactment of a multitude of laws creating a host of rights, benefits, responsibilities and legal consequences related to marriage, any requirement that the Commonwealth recognize a same-sex marriage from another state would automatically entitle same-sex couples, who were validly married in that state, to all the benefits of being a married couple in Pennsylvania and subject them to the responsibilities that flow from marriage under Pennsylvania law if they were to migrate to the Commonwealth. Our defense of marriage law (as well as the federal law) is designed to foreclose this possibility.

However, it is questionable whether our defense of marriage law would apply to Vermont style same-sex unions which are entered into under the laws of another state. Congress and 37 states have enacted laws against the recognition of same-sex marriage, but only two states include (or are on the verge of including) prohibitions against the recognition of civil unions in their defense of marriage laws. In this regard, Nebraska adopted a constitutional amendment that encompasses civil unions, and Ohio is on the verge of enacting such a law.

Since Pennsylvania law does not recognize civil unions, it would seem to me that there are no spousal benefits and obligations that would automatically accrue to couples who entered a civil union in Vermont and subsequently move to Pennsylvania. However, the quasi-marital status of civil unions could prompt our courts to endow civil union couples with some of the rights, protections and responsibilities of marriage. In addition, the full faith and credit clause could require the Commonwealth to recognize judgments (such as support orders) from states with civil union laws. Accordingly, the potential impact of Vermont's civil union statute on the Commonwealth is likely to turn on unpredictable court decisions in a murky area of the law. Since Vermont only adopted its civil union law in 2000 and since I am aware of only 3 court decisions from Georgia (on visitation), New York (on the application of a wrongful death tort action) and Connecticut (on divorce) that have addressed its impact on other states, it is too early to assess the impact of one state's civil union laws on other states. It is suspected that the impact will sharply vary from state to state depending upon the ideological predispositions a judicial philosophy of a given state's court system. There is likely to be a proliferation of court decisions on this issue over the next several years as civil union couples return from Vermont to their home states. If you would like copies of these court decisions and the Ohio and Nebraska laws, please advise.

If you would like to discuss this issue in more detail, please let me know.

file

JOHN M. PERZEL
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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

May 23, 2000

TO: All Republican House Members

SUBJECT: Draft Letter to Teachers on Key Provisions of Senate Bill 652
(Education Empowerment/Mandate Waivers/FY 2000-2001 funding)

FROM: John M. Perzel
Majority Leader JMP

Many members have received letters from teachers in their districts regarding the recent passage of Senate Bill 652 (now Act 16 of 2000), particularly those provisions creating the Education Empowerment Act and permitting local school boards to apply for mandate waivers.

Attached you will find a draft letter that can be used to either respond to such correspondence, or simply to inform your local teachers of the particular details of this legislation. Republican Information Technology currently has in its data base names and addresses for over 40,000 public school teachers, sorted by legislative district, to assist you should you wish to send this as a mass mailing.

Please contact Donna Hetrick of my office at 787-6636 if you are interested in doing an individualized mass mailing of this letter to teachers in your district. Donna can advise you of the number of names and addresses in the data base for your district. Also, you will need to complete the enclosed pink sheet and return it to Donna so she can process payment for the mailing. Republican Information Technology will furnish you with a list of all those persons to whom this letter is being sent.

I hope you find this special service of use to you in communicating with the public school teachers in your district.

JMP/lal
Attachment

May , 2000

Dear Educator:

I am writing to discuss with you the key provisions of Senate Bill 652, which passed the House of Representatives on May 3, 2000 and was signed into law by Governor Ridge on May 10, 2000.

Initially, this legislation encompasses the newly-created Article XVII-B (the Education Empowerment Act). The article establishes an accountability system to identify those districts which are consistently failing to provide their students with the necessary academic tools to succeed in later life and to provide them with targeted assistance (both fiscal and technical) to improve. Specifically:

- This article effects only 11 districts statewide, none of them within this legislative district. And, with a sunset provision included which has this article expire on June 30, 2010, it is highly likely that few, if any, additional districts will achieve placement on the education empowerment list in the next 10 years.
- To be identified for intervention under this provision a district must have 50% or more of its students scoring in the bottom 25% (below basic) in **both** mathematics and reading on the Pennsylvania System of State Assessment test (PSSA) for two consecutive years. This means that districts placed on the empowerment list have failed to educate their students at even an average level on the two basic subject areas most crucial to becoming a productive member of society. Ask yourself if you would want to enroll your child in such a district.
- With the exception of the Harrisburg and Chester-Upland School Districts, the plan for recovery in these districts will be developed by a local school district empowerment team made up of representatives of the local community and school district staff, including teachers. This team will be provided with technical assistance from a team of statewide experts , which may also include teacher members, sent to the district on an advisory basis. With the exception of providing this technical assistance, and targeted grant funding, there is no additional state intervention for the first three years (with the possibility of an extension to a fourth) after the district is placed on the empowerment list. All decisions about the contents of the plan for improving the district and the measures to be taken to implement that plan will be

developed and implemented locally through the empowerment team and its locally-elected board of school directors.

- While the local board in a district on the empowerment list is given some dramatic new powers it can use to improve conditions within the district, the actions taken by the board must be consistent with the district's improvement plan as developed by the local empowerment team. The board cannot act unilaterally.
- To assist these 11 districts in accomplishing their improvement goals, $25 million dollars in school improvement grants is made available to be used for such things as reducing class sizes; establishing after-school, summer and weekend programs; funding curriculum develop; purchasing instructional materials; or to fund any program contained in their local improvement plan. Each district is guaranteed a base grant of $450,000 plus an additional $75 per pupil. This funding is in addition to state basic and special education funding, and other state and federal subsidies to which the district is otherwise entitled.
- Only if, after 3 (possibly 4) years, the school district improvement plan fails to meet its goals and objectives, and student performance indicates continued academic failure by over 50% of its students, would a state-controlled Board of Control be placed in one of these districts.

There are almost 235,000 students enrolled in these eleven districts. Currently, the PSSA test results indicate that half or more of these children do not even possess the basic skills in mathematics and reading to guarantee them a successful future. Many of these districts have been in distress for years, some even decades. Until last week no one—not their local school boards, not their local legislators, not the state or federal government—had offered any comprehensive plan to change their dismal outlook. SB 652 represented the first, and possibly only, hope offered to alter the status quo.

Since the passage of SB 652 much discussion has taken place regarding the mandates waiver section of this law and its impact on local school districts and their faculties. Waivers are applied for by a locally-elected board of school directors. A waiver cannot be granted by the Secretary of Education without such a request by a local school board. And, these waivers will be approved on a district-by-district basis. As a result, a waiver granted in one district will not automatically apply in another. Also, a local board of school directors may only apply for a waiver if it "will enable the school district to improve its instructional program or operate in a more efficient of economical manner". The board must provide supporting data to explain the benefits to be obtained by the waiver and an evaluation procedure to determine its effectiveness. The application

for the waiver also must be adopted by a resolution of the board at a regularly scheduled meeting, which would allow for public comment .If granted, the waiver is only applicable for three years and then is to be evaluated based on either an improvement in student performance, instructional program or school operations resulting from the waiver before it could continue in effect.

The legislation specifically provides that no Federal law or State law applicable to public schools not within the provisions of the school code can be waived—this would, for example, include as **unwaivable** Title 18 (Crimes and Offenses), which encompasses those laws governing possession of firearms by minors and drug trafficking; Title 23 (Child Protective Services) ,which includes provisions pertaining to child abuse reporting and employee background checks; Title 43 (Labor) which includes the Public Employee Relations Act; and the Federal Individuals with Disabilities Act which governs special education. Also, a stipulation is included stating that nothing in the section can supersede or preempt any provision of an existing collective bargaining agreement.

In addition to these specific prohibitions from waivers, the bill contains a lengthy list of items in the School Code which specifically **cannot be waived** by a local board. For example, these include in their entirety the following articles in the School Code:

- Article XIV (School Health Services)
- Article XIII-A (Safe Schools
- Article XI (Professional Employees)—which includes all provisions governing teacher salaries, sabbatical leaves; suspensions, demotions and dismissals; and tenure
- Article XI-A (Collective Bargaining)

Also specific regulations of the State Board of Education, as found in Title 22 of the Pennsylvania Code, **could not be waived** including, for example, the entire following chapters:

- Chapter 4 (Academic Standards and Assessment)
- Chapter 11 (Pupil Attendance) which includes requirements for length of school terms and minimum hours in the day, as well as defining compulsory school age
- Chapter 12 (Students) which includes provisions governing expulsions and suspensions
- Chapter 14 (Special Education)
- And, all regulations and School Code provisions which prohibit discrimination and protect civil rights

As you can see, the mandate waiver program established under SB 652 continues to protect the health and safety of teachers and their students; preserve those provisions of law and regulation that govern the basic educational program itself; protect civil rights and prohibit discrimination ; and, retain important employee rights including collective bargaining, tenure and certification.

Finally, SB 652 included crucial provisions necessary to distribute substantial additional state dollars to public schools and community colleges in the 2000-2001 fiscal year including:

- An unprecedented $7.4 million increase in funding for the school breakfast and lunch programs;
- $25 million in grants earmarked to help districts on the educational empowerment list to improve
- $10 million to assist area vocational-technical schools and school districts in buying equipment related to vocational curriculum
- Distribution of a $116 million increase in basic education funding
- Distribution of an additional $63.6 million in special education funding
- A $16 million (100%) increase in funding for school performance incentives and, for the first time, language recognizing those districts which already demonstrate high performance, and which continue to do so, by permitting them to receive incentive funding
- An additional $21.45 million to continue the Link-to-Learn program for yet another year
- An $11.5 million (22%) increase in funding for our community colleges

Senate Bill 652 offered a first ray of hope to children trapped in failing schools; granted for the first time some limited relief to school districts from burdensome state mandates; and provided for the distribution of significant additional funding (over $270 million in new dollars) in the 2000-2001 fiscal year to school districts, area-vocational technical schools and community colleges. For all of these reasons, I felt this bill deserving of my support.

Sincerely,

Mr. Speaker. This amendment does two simple things:

(1) It prohibits state-owned colleges and universities and community colleges from providing health insurance and other health care benefits to the domestic partners of university employees.

(2) It cuts off the receiving or spending of nonpreferred appropriation funding for any state-related university that adopts a domestic partners benefit program.

The Commonwealth has a big enough funding stake in these institutions to justify a say in how they structure their employee benefits program in cases where those programs raise important policy questions and values issues.

We have seen substantial controversies at Pitt and Penn State on this issue where those institutions are under heavy pressure from some of their faculty members to adopt such a policy. Thus far, both institutions have wisely resisted this pressure. The amendment will not affect existing domestic partners programs, such as the one in place at the University of Pennsylvania.

This amendment will limit our state and state-related colleges and universities to the same kinds of employment benefits that we, in the Commonwealth and the General Assembly, apply to our staff employees. That's what this amendment does.

154-47

I believe this amendment furthers an important Commonwealth interest in promoting legally cognizable family relationships, especially the legal institution of marriage. This amendment does that by according preference to marital relationships over nonmarital relationships.

In addition, this amendment will protect our taxpayers against the prospect of absorbing a significant part of the cost of an expensive new entitlement program of debatable merit. In this regard, I would like to quote the comments of Jerry Cochran, an Executive Vice Chancellor of the University of Pittsburgh:

> **"We now have 3,292 employees receiving 'individual' benefits at the university. So if only 10 percent of those who now have single coverage said, 'I want benefits for either my same-sex or my opposite-sex partner,' we estimate the cost to the university of over $750,000. If it was 25 percent, $2 million. At 50 percent, $4 million, and if it was all 3,292, more than $7 million."**

Frankly, Mr. Speaker, I think there are better ways that we can spend our education dollar.

I urge an affirmative vote.

Appropriations Committee

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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

June 16, 1999

The Honorable Allan Egolf
403 South Office Building
Harrisburg, PA 17120

RE: Fiscal Note
SB 652 PN 1215
Amendment #A2879

Dear Representative Egolf:

This amendment adds an article to the Public School Code of 1949 which would prohibit state-owned colleges, universities and community colleges from providing health insurance or other health care benefits to an individual who lives together with an employee of the colleges or university, unless the individual is a spouse or child of the employee. No state-related university shall receive or expend any funds during any time that the university is providing health insurance or other employment benefits to any prohibited individual.

The 1999-2000 budget contains the following appropriations for state-related universities:

$314,134,000 for the Pennsylvania State University
$167,609,000 for the University of Pittsburgh
$169,288,000 for Temple University
$11,358,000 for Lincoln University

In order to comply with the rules of the House, you should provide a copy of this fiscal note to the Amendment Clerk for distribution to the members prior to offering your amendment. This committee is not responsible for circulating the note as the decision to offer the amendment or not lies with you as sponsor.

Sincerely,

John E. Barley

JEB/SFE/jhh

Mr. Speaker. When I drafted this amendment, I had prepared two options. One option grandfathered existing programs. The other option merely honored existing contracts until they expired.

I prepared this option because I can fully support either one. However, I had agreed to go along with an amendment which contained a grandfather clause. Through a mistake, we filed a certificate for the option which merely protected existing contracts when we intended to qualify the one containing the grandfather clause.

In order to comply with the spirit of my original intent, I would like to make a motion to suspend the rules in order to consider the option which contains the grandfather clause.

INCLUDING THE FISCAL NOTE RULE,

If this motion fails, I still intend to offer the amendment which only protects existing contracts.

CONSTITUTIONALITY

Mr. Speaker. I believe this amendment is clearly constitutional. It applies across the board to opposite sex partners, as well as to same-sex partners. It doesn't even raise the issues that concerned the United States Supreme Court in the case of Romer versus Evans. Romer struck down a Colorado constitutional amendment abrogating laws and ordinances which were designed to protect the status of persons based on their homosexual orientation, conduct, practices or relationships.

By contrast, this amendment simply gives preference to marital relationships over nonmarital relationships.

Just last year, the Texas Court of Appeals rejected a constitutional challenge to an Austin, Texas, referendum amendment which repealed that city's domestic partners program for its employees. In upholding the Austin referendum amendment against a claim that it violated the Supreme Court's ruling in the Romer case, the Texas court of appeals said the following:

> **"Appellants argue that Romer v. Evans, a recent United States Supreme Court decision, compels a decision that Proposition 22 is unconstitutional. We disagree. The amendment in Romer targeted a specific group—homosexuals—and prohibited all legislative, executive, or judicial action at any level of state or local government from protecting that class. The Court**

could find no rational relation between the target class and a legitimate state purpose because the amendment was 'at once too narrow and too broad' by identifying persons by a single trait and then denying them protection across the board. . . . The only purpose the amendment had was 'a bare desire to harm a politically unpopular group' which is not a legitimate governmental purpose and therefore is forbidden by the constitution. . . . The Colorado amendment was held unconstitutional because it denied a discrete group the ability to participate in the political process. . . .

"Similar circumstances do not exist here. . . . The proposition does not target a group identifiable by a single trait, such as sexual orientation, but rather targets all who choose domestic partners without the benefit of marriage. Moreover, Proposition 22 deals only with employee benefits, not with access to political and judicial redress. It classifies and excludes persons on the basis of marital status and other legal relationships. Proposition 22 does not deny domestic partners the ability to seek future political redress. It does not deny domestic partners—heterosexuals or homosexuals—the ability to organize and reinstate domestic partner health benefits through the democratic process of initiating a future petition to rescind Proposition 22. If a suspect class or a fundamental right is not implicated we ask only, as did the Romer court, whether the statute is rationally related to a legitimate purpose. The Romer court found

the Colorado amendment advanced no legitimate purpose. We must acknowledge, however, that Proposition 22 furthers the City's interest in recognizing legal relationships including marriage; therefore, we hold it is rationally related to a legitimate purpose."

I believe this court decision fully resolves the constitutional questions in favor of this amendment.