The following document is the Report of the Subcommittee on Domestic Partners' Benefits to the [Stanford] University Committee on Faculty and Staff Benefits. The Committee consists of Stanford University faculty and staff and was asked by the Faculty Senate in the spring of 1991 to provide information to guide the Senate's decision whether to extend benefits to domestic partners of faculty and staff at Stanford. The subcommittee unanimously approved this report, which was then sent to the full committee, which approved the report in the summer of 1992. The Faculty Senate is expected to vote on whether to extend domestic partnership benefits in the fall of 1992.

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Report of the Subcommittee on Domestic Partners' Benefits
University Committee on Faculty and Staff Benefits

June, 1992

SUMMARY

At the request of the University Committee on Faculty and Staff Benefits, this subcommittee has studied the implications of Stanford's extending fringe benefits that are now made available to employees' spouses and children to the domestic partners of employees and such partners' children. We considered a number of factors, including the ethical, administrative, legal, and cost implications of extending coverage. The following summarizes the analysis and conclusions contained in the body of the report.

1. Recommendations.

The subcommittee unanimously recommends that the University extend all benefits now available to spouses and children of faculty and staff to the same-sex (gay and lesbian) and opposite-sex domestic partners of faculty and staff and such partners' children. The relevant benefits include health benefits, benefits under the tuition grant program,athletic privileges, library privileges, the right to audit University courses, and the partner's right to remain in on-campus housing after an employee's death under the same terms now provided for surviving spouses. The subcommittee is unanimous in the view that the case for extending benefits to heterosexual partners is weaker than for gay and lesbian partners. As a result, the subcommittee recommends that if current cost considerations militate against extending coverage to both groups, coverage be extended now to gays and lesbians, and the question of coverage for heterosexual partners be reconsidered at a later date.

We recommend that ''domestic partnership'' for these purposes be defined to mean two individuals who live together in an intimate, longterm relationship of indefinite duration, with an exclusive mutual commitment similar to that of marriage, in which the partners share the necessities of life and agree to be financially responsible for each other's wellbeing, including basic living expenses, and each others' debts to third parties. It should further be stipulated that partners are not married to anyone else, do not have another domestic partner, and are not related by blood, closer than would bar marriage in their state of residence. Employees should be required to sign a declaration that the foregoing conditions have been met, as part of the process of enrolling their partners.

The definition of ''domestic partnership'' we propose here is similar, but not identical, to that currently used by Stanford for domestic partners of <u>students</u>. Unlike the definition for students, this definition explicitly requires that the partners agree to be financially responsible for each others' debts. We recommend that the same definition be used for students and employees, and would recommend changing the student definition to coincide with the more stringent requirements outlined above.

2. Policy Considerations in Extending Coverage.

The core case for extending benefits to domestic partners and their children rests on the University's express policy barring discrimination in employment (including in compensation) on the basis of sexual orientation or marital status. Were Stanford to pay a different cash salary to employees based on their marital status or sexual orientation, it would clearly violate Stanford's nondiscrimination policy. The effect of the current benefits program is on its face identical. Employee benefits are a form of compensation, currently representing a significant percentage (roughly 30 percent) of total compensation. By providing benefits to married employees that are not available to unmarried employees living in domestic partnerships that are the functional equivalents of marriage, it is argued, Stanford therefore discriminates in compensation on the basis of sexual orientation and/or marital status.

In evaluating the nondiscrimination claim, the subcommittee has followed the conventional philosophical interpretation given to the principle of nondiscrimination. Under that view, Stanford is not barred from making <u>any</u> distinctions between married and unmarried, or heterosexual and gay or lesbian, employees. Rather, it must show that any distinction it does make between the groups has a strong justification that overrides the presumption of equal treatment. We considered a number of grounds that are frequently suggested, or might be suggested, for differentiating between traditional families and domestic partnerships in setting the benefits portion of compensation. They include the claims that (1) Stanford must offer benefits to traditional families in order to remain competitive with other employers, but need not offer them to domestic partners; (2) the tax advantages of employer-provided family benefits are available only for traditional families; (3) traditional families have greater financial needs that family benefits are intended to alleviate; (4) Stanford ought not to endorse domestic partnerships by treating them as the moral equivalent of marriage; and (5) the costs to Stanford of extending coverage to domestic partners would be prohibitive.

We conclude that the first three arguments do not justify differentiating between domestic partnerships and marriages. As to(1), we believe the optimal competitive strategy for Stanford is at best indeterminate. More importantly, we believe it would violate important norms of fairness, reflected in Stanford's general compensation policies, to discriminate against unmarried employees simply because competitive forces make it economically efficient to do so. As to (2), at least some of the family benefits Stanford provides would be tax-preferred for domestic partners as well. Moreover, the existence of tax advantages for employer-provided benefits does not explain why we pay employees different total compensation based on the composition of their families. It merely explains why we provide the option for employees to use a portion of their compensation to purchase tax-preferred benefits. As to (3), we believe that need-based considerations explain at least partly the most costly family benefits Stanford provides–<u>subsidized</u> family health coverage and college tuition grants to employees' children. If family benefits were extended to domestic partnerships, we presume that "domestic partnerships" would be defined to reach those relationships that are the functional equivalents of marriage–longterm, intimate, committed relationships, in which as a practical (and in some cases legal) matter the partners assume financial responsibility for each other,akin to the responsibility that is practically and legally imposed by marriage. Given that fact, we see no reason for assuming that the financial needs of an employee in a domestic partnership would differ from those in a traditional marriage.

Thus, we believe that the case for domestic partner benefits ultimately turns on the last two issues: whether the University should treat domestic partnerships as the moral equivalent of marriage, and how it should weigh cost considerations.

<u>The moral equivalence of domestic partnerships and marriage</u>. We believe there is a strong claim on behalf of gay men and lesbians to have their longterm, committed relationships treated with the same respect as marriage for purposes of Stanford's benefits program. While we think there is a case to be made on behalf of heterosexual domestic partners in longterm, committed relationships, we think the case is considerably weaker. We base this conclusion on a number of considerations.

First, we believe Stanford has already implicitly committed itself to treat domestic partnerships as equivalent to marriage for these purposes in its internal nondiscrimination policy. While that policy probably has no legal force in determining benefits policy, we believe it has significant moral force. If we conclude otherwise, we are in effect stating that while unmarried heterosexual, gay and lesbian employees are entitled to equal treatment and respect with married employees, the intimate, longterm committed relationships they form are not. At least in the case of gay and lesbian employees–for whom such relationships are the core fact of group identity–we do not think that is a morally persuasive reading of Stanford's nondiscrimination policy. In the case of heterosexual partners, who have the legal option to marry, the question is more complicated. We believe the argument for covering heterosexual domestic partnerships notwithstanding the availability of marriage is that for some heterosexual partners, the choice not to marry reflects a political or ideological opposition to marriage, not merely the absence of commitment. The argument that the University ought not to penalize such political or ideological convictions is reasonably powerful. But we believe the argument that it ought not to penalize the longterm relationships of those (gay and lesbian) who do not have the option to marry at all is more compelling.

Second, Stanford has already concluded that its nondiscrimination policy commits it to benefits parity for the domestic partners of <u>students</u>. In October 1990, citing among other things the University policy ''against discrimination on the basis of sexual orientation,'' the University extended all benefits available to students' spouses to students' domestic partners as well. These benefits include access to campus housing previously reserved to married students, access to medical services through Cowell Student Health Center, and a courtesy card permitting access to libraries, athletic facilities and campus events on an equal basis with spouses. Benefits parity for <u>employees</u> would obviously be far more costly than for students, as the University does not subsidize medical coverage for student spouses or provide any other derivative benefits of significant cost. But it is hard to see how the principles of fairness implicated in the decision would be any different for employees than for students. Indeed, the mere fact that we now have two different policies for employees and students is one important reason for change.

Third, we think that redefining "family" for purposes of the benefits program to include longterm, committed domestic partnerships appropriately reflects the changing social reality and values of the Stanford community.

Finally, we believe that a decision to extend benefits will have enormous symbolic significance for all gays and lesbians at Stanford, conveying more forcefully than any general statement of nondiscrimination ever could the University's belief that they are full and valued members of this community, whose relationships and whose needs are as deserving of attention as others'. In this respect as well, we believe the case for extending coverage to heterosexual domestic partners is less compelling. Unmarried heterosexuals face little if any social stigma at Stanford or most other parts of American society anymore. Few if any would think to conceal their private living arrangements out of fear of social or professional ostracism, loss of jobs, or physical or verbal violence. All of these are daily realities for gays and lesbians in our society. Given the almost total acceptance that heterosexual partners can count on in the rest of their lives, the symbolic importance of this additional gesture is (we believe) relatively slight.

<u>Cost considerations</u>. Finally, some may agree in principle that Stanford ought to extend family benefits to domestic partners, but be reluctant to incur the costs that entails. Our conclusions as to costs are summarized below. In brief, our best guess is that out-of-pocket costs will be relatively small, given the overall benefits budget. We find it harder to estimate potential costs in alumni/ae relations.

We do not believe such practical considerations should be ignored. However, they must inevitably be weighed against the arguments for extending coverage. The stronger the arguments for extending benefits on fairness grounds, the heavier the burden on the University to show that practical considerations outweigh it. We believe that at least with respect to gays and lesbians, the fairness arguments for extending benefits are very strong.

3. Costs to the University of Extending Coverage.

<u>Out-of pocket costs</u>: Of the benefits at issue, only three are likely to involve any significant out-of-pocket costs for the University: medical coverage, dental coverage, and the tuition grant program(TGP).

With respect to medical coverage, our best guess, based on the experience of other employers to date, is that between 40 and 60 employees would enroll same-sex domestic partners, and between 90 and 135 employees would enroll opposite-sex domestic partners. On those assumptions, our best guess is that it would cost the University in the range of $30,000 to $60,000 a year to cover gay and lesbian partners, and $70,000 to $140,000 a year to cover gay, lesbian <u>and</u> heterosexual partners. These estimates represent a relatively trivial portion of the University's current $24 million budget for medical benefits–ranging from 0.014 percent to 0.05 percent. The estimates are based on the assumptions that the percentage of Stanford employees that would enroll would be consistent with the experience of other comparable employers; that Stanford would contribute the same amount to domestic partner coverage as it does now to spousal and family coverage; and that domestic partner coverage would be no more expensive than spousal coverage. The last assumption is supported by the experience of all employers to date who have adopted domestic partner coverage. The first assumption (that our enrollments will be consistent with comparable employers) is the more troubling one. Unlike the available data on cost per enrollee–which consistently points to the conclusion that domestic partner coverage is no more expensive than spousal coverage–the percentages of employees that have enrolled domestic partners has varied significantly for different plans. We have based our projections on the experience of those employers whose medical plans we believe are most comparable to Stanford's (principally in the percentage of the total premium cost borne by the employee), and within that range have chosen what we think is a fairly conservative figure. However, it is possible that Stanford's experience will diverge in ways that cannot now be anticipated. We believe if our ''best guess'' projections are vulnerable, it is more likely to be on the numbers of domestic partners enrolled than the cost per enrollee.

Since the cost experience of other employers to date is rather limited, we also developed numbers for what we considered to be the plausible worst-case scenario. For these purposes, we hypothesized very pessimistic cost experience for the domestic partner pool(primarily as a result of HIV-related illnesses) and a significant degree of adverse selection. Under that worst-case scenario, assuming the same range of enrollments as above, the incremental cost of coverage, over the costs of covering the same numbers of spouses,would range from $115,000 to $175,000 a year for gay and lesbian partners only, and from $135,000 to $200,000 for gay, lesbian and heterosexual partners. If the University bore that incremental cost itself, its total annual costs would range from $150,000 to $230,000 for gay and lesbian partners only, and from $220,000 to $325,000 for gay, lesbian and heterosexual partners. If the incremental cost were instead added to all employees' share of the premiums, it would increase employee costs by amounts ranging from $1 a month for 40 same-sex partners to $1.85 a month for 135 same-sex and opposite-sex partners. **We wish to stress that these worst-case numbers do not reflect any employer's actual experience to date with domestic partner medical coverage.**

As to dental and TGP benefits, we have no data available from other employers on which to estimate the likely costs of extending coverage under either program to domestic partners and their children. With respect to dental benefits, we expect the numbers of enrollees to be higher than for medical benefits, because the University subsidizes a higher portion of the costs. On the other hand, the per enrollee costs to the University are relatively trivial as compared to medical care. With respect to TGP grants, the opposite is true: the annual costs per child receiving TGP grants are quite high, but we believe the numbers of additional children that would claim such benefits each year if the benefits were extended to domestic partners' children is likely to be extremely small. Given the foregoing, and given that both programs are only a small portion of the benefits budget as compared to medical costs, our best guess is that extending either program would not entail significant costs for the University. However, the absence of any empirical data from other employers makes it difficult to be certain.

Administrative costs: Based on the experience of other employers, we estimate that the costs of administering a domestic partners' benefits program will be relatively trivial. The main costs are likely to be the one-time costs of collecting and circulating eligibility, tax, and other information to employees, and setting up the payroll systems to withhold taxes for those employees who are subject to tax on the University's contribution to benefits. Unless enrollment figures are much higher than anticipated, we expect the ongoing administrative costs of handling additional enrollments to be negligible.

Costs in alumni/ae relations: There are also potential costs to the University in loss of alumni/ae support as a result of a decision to extend domestic partner benefits. Based on the response to Stanford's decision two years ago extending student spousal privileges to domestic partners of students, we expect that a comparable decision with respect to employees would be unpopular with at least a vocal minority of alumni/ae. Whether that displeasure would translate into a significant loss of moral or financial support for the University is much harder to say. On the other side, we note that the recent decisions of high profile employers like Levi Strauss, Lotus and MCA extending health benefits to domestic partners have received uniformly positive press coverage. We also assume that a decision to extend benefits would generate good will among some (particularly gay and lesbian) alumni/ae, although it is again impossible to guess how much of that good will would translate to vocal, concrete support. On balance, we expect that at least in the shortrun, a decision to extend benefits will adversely affect alumni/ae support.

4. Legal Considerations in Extending Coverage.

Antidiscrimination law. We conclude that all of the alternatives under consideration– Stanford's current policy, a policy expanding the definition of family to include same-sex partners only, or one that includes same-sex and opposite-sex partners–are likely to be upheld under current antidiscrimination law. Thus, we believe the decision must be made on policy grounds, not legal ones.

Tax considerations. Under current federal and state tax law, at least some of the benefits provided on behalf of the employee's domestic partner or partner's children will be treated as taxable income to the employee. These include college tuition grants for a partner's child, and Stanford's contribution towards health benefits for the partner or partner's child, unless the employee can claim the covered party as a dependent for tax purposes. For those employees who are taxable on such benefits, Stanford will be obligated to withhold both income and payroll taxes.

5. Administration of Domestic Partners' Benefits:

(a) Definition of "Domestic Partnership": Most employers offering some form of domestic partners' benefits have adopted the same basic requirements for a domestic partnership, with minor variations. We have followed that definition in our recommendation in section 1 above.

(b) Registration and Deregistration Process: We recommend that one central registration process be used for all employees' domestic partners' benefits, analogous to that now used by Stanford for student domestic partner benefits. Where possible, we recommend that the same process be used for partners and spouses---the current procedure for students. We recommend that as part of the registration process, all employees seeking to cover a domestic partner be required to sign a declaration that they meet all the requirements of ‘‘domestic partnership,’’ and advise Stanford whether, under applicable tax laws,the University should withhold taxes on its contribution towards benefits. Finally, all employees should be informed at the time of registering that they are required to notify the University of any change in eligibility, and that the same time period for notification in the case of termination of marriage applies to termination of domestic partnerships.

Subcommittee on Domestic Partners’ Benefits,
University Committee on Faculty and Staff Benefits

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