

Arguments Against the Proposals for Domestic Partner Benefits

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Although the vote of the Budget and Faculty Welfare Committee was unanimous to forward the two proposals for domestic partner benefits to the USU Executive Committee, this should not be interpreted as a unanimous endorsement of the proposals by all the members of the BFW Committee. In my case, at least, my vote reflected my opinion that the proposals were of sufficient merit to be carefully examined and considered by the Executive Committee. However, some potentially serious concerns remain that I believe are not adequately addressed in the proposals, nor were they answered to my satisfaction during the BFW Committee deliberations. I have listed a few of those concerns below. I present them to the university community to provide another point of view, in the spirit of critical thinking and healthy debate on this important issue.

1. The assertion that a large number of institutions are paying for domestic partner benefits belies the fact that a much larger number of institutions is not doing so. For example, it appears that not a single major public university in the states of Arizona, Nevada, Idaho, Wyoming, Nebraska, Kansas, Oklahoma, Texas, or Utah pays for domestic partner benefits. Furthermore, of the eight members of the Western Athletic Conference that are public institutions, none pay for domestic partner benefits (the only two members of the WAC that do so are Rice and Southern Methodist). Moreover, it is possible to count on one hand the number of public research institutions in the mountain west that pay for domestic partner benefits. These facts do not support a conclusion that the health and vitality of USU is being damaged by its current policy. On the contrary, USU's policy appears to be in line with those of such institutions as Nebraska, Texas, Texas A&M, Texas El Paso, Oklahoma, Oklahoma State, Colorado State, Arizona, Arizona State, Boise State, Utah, Nevada Las Vegas, Nevada, Fresno State, San Jose State, etc., none of which expend state funds to pay for domestic partner benefits.
2. The argument that the current benefits policy constitutes discrimination is not compelling. It is not at all clear that a failure to extend the same benefits as those provided to legally married spouses of some employees to the non-married partners of other employees (i.e., in relationships not legally sanctioned and recognized by the state) constitutes discrimination against the latter under either state or federal law. Therefore, USU's policy prohibiting "discrimination in all aspects of employment" does not constitute a legal contradiction with USU's policy of providing spousal health benefits only to partners of employees who are legally married to such employees. In fact, the recent amendment to the Utah state constitution clarifies unambiguously that there is a different legal status conveyed by the state to the marriage relationship between one man and one woman that is not afforded to any other type of relationship.
3. The proposed action has significant strategic implications and potential consequences to the institution that have not been addressed in the proposal documents. Potential negative consequences to USU include but are not limited to the following:

First, the proposed action has the potential to damage relations with the state legislature. It is not difficult for anyone familiar with Utah state politics to predict the position the majority party and its leaders in the legislative branch of Utah state government would take on this issue. At a time when USU is seeking additional funding from the

legislature, a strategy that involves “biting the hand that feeds you” seems counterproductive. According to President Hall’s recent speech, higher education’s share of the state budget has declined from 17.3 percent to 15.4 percent in recent years. A declaration that USU intends to spend part of that percentage on unmarried partner benefits would not increase the likelihood of the decline reversing itself. The potential cost to USU in worsened relations with the legislature is potentially higher by orders of magnitude than the out-of-pocket cost of adding a few people to the health plan.

Second, there may be a potential impact upon relations with USU students. A simple exercise in empathy might be useful: Imagine yourself as an LDS student, married, with a child, working, and putting yourself through school (not an atypical situation at USU). The University says to you, in effect, “We need a 43% tuition increase because our salaries are too low, and oh, by the way, we’re going to start using university funds to subsidize behaviors and lifestyles that you believe are immoral.” Although tuition is not technically used for employee benefits, this distinction is not likely to be persuasive to students, particularly since, as the proposals correctly point out, total compensation consists of salary and benefits combined.

Third, the potential impact upon relations with alumni, donors, and potential donors cannot be lightly dismissed. The reality is, Utah is a very conservative state. USU is currently soliciting funds for many worthy projects, including upgrading sports venues and other buildings, scholarships, and endowments. It is important to honestly assess the potential effect that this proposed policy change might have on development efforts. Many donations to USU come from senior citizens who, if anything, may be even more conservative in their values than are legislators and students.

4. Even if approved by the Faculty Senate and the administration, it is by no means certain that domestic partner benefits would be approved by the USU Board of Trustees, many of whose members reflect the values of the community. For example, the University of Nebraska Board of Regents has rejected domestic partner benefits, both formal and informal, stating, “The state should not obligate taxpayers to pay for something that is not sanctioned by state law.” It seems unlikely that Utah’s culture could be considered less conservative in traditional family values than that of Nebraska, nor that USU’s trustees would be more favorable to a DP benefits policy than those of Nebraska. This raises the question: Is it wise to expose the institution to many of the potential negative consequences (as the issue is played out in the press), when the likelihood of the ultimate adoption of the proposals is not high?
5. The values underlying the proposals are in conflict with the core values of many USU stakeholders. Clearly, the proposals are rooted in the values of those who have put them forward. For example, they have argued that, regardless of any legal, political, or financial consequences, “it is still the right thing to do” because the institution’s current policy is not “fair.” In one BFW Committee meeting, a comparison was made to Rosa Parks refusing to sit at the back of the bus. Another values-based argument was that USU needs to “care” about its employees. According to the proposals’ sponsors, “caring” would include providing financial relief to an employee who cares for a disabled

or ill domestic partner.

While values should always be considered in important decisions, there are no easy solutions when stakeholders' values are in conflict, as they are in this case. While nearly everyone would agree that "fairness" and "caring" are correct principles, the internalization of these principles into personal values and the operationalization of those values into specific situations is by no means homogenous. For example, is it "fair" for taxpayers and students to be forced to financially subsidize behaviors they believe are immoral? And if "caring" is the ultimate standard, then shouldn't the University also "care" about other stakeholders who struggle with medical costs?

The stories of Beth, Alison, Jay, and others given the appendix of the proposal are compelling, but are no more so than are those of vast numbers of other USU stakeholders who are also not eligible for employee benefits. Certainly, we can all empathize with an employee whose same-sex partner is saddled with enormous medical costs and insurance premiums or who is struggling with tuition costs and only able to afford a minimum course load. On the other hand, we may also feel sorry other members of the USU community who struggle financially, such as a poor married student struggling to pay for tuition and health insurance, or the ex-spouse of a divorced University employee who must pay Cobra premiums to keep health insurance, or a USU employee who is caring for an unhealthy adult family member, such as a sibling or parent. Our sympathy for their difficult situations, however, does not mean it would be an appropriate use of taxpayer funds to cover them under USU's employee health plan.

This is not a clear-cut moral issue; rather, it is one upon which good people can and will disagree. Not everyone views domestic partner benefits as being in the same moral realm as civil rights. On the contrary, many people believe there are valid and ethical justifications for the granting of distinct legal privileges to the institution of traditional marriage that are not and should not be extended to other types of domestic relationships.

6. The proposals provide reasonably clear criteria for determining eligibility. Unfortunately, they fail to also provide such clear criteria for ending eligibility upon dissolution of domestic partner relationships. Marriage and divorce dates have the advantage of providing the university with unambiguous cut-offs for beginning and ending eligibility. The proposals provide no similar criteria for preventing abuse of the system by ex-partners of employees whose relationships were never recognized by the state.

In summary, some of the most important questions have been neither asked nor answered in the proposal documents. USU should carefully consider whether this is a strategically wise move for this particular institution at this time. Perhaps a less risky alternative would be to allow another institution to "fight the battle first" and see how it fares politically and financially. At a minimum, the potential consequences should be thoroughly researched and carefully considered before the adoption of proposals that have significant strategic implications to USU.