



Santa Clara Valley Water District

File No.: 17-0163

Agenda Date: 8/8/2017

Item No.: 4.3.

BOARD AGENDA MEMORANDUM

SUBJECT:

Consideration of Action Prohibiting Use of District Funds for Employee Travel to States Listed on the California State Attorney General's Website that Have Laws Discriminatory to the Lesbian, Gay, Bisexual, and Transgender Community, and Consideration of Rescission of Previously Adopted Resolution No. 10-42, Prohibiting Use of District Funds for Employee Travel to Arizona (Response to BMR-17-002).

RECOMMENDATION:

- A. Authorize the Interim Chief Executive Officer to order all District departments to prohibit use of District funds for employee travel to states identified by the California State Attorney General (AG) on the AG's website because these states have passed discriminatory laws against the Lesbian, Gay, Bisexual, and Transgender (LGBT) community as described in California Government Code section 11139.8, except for the following purposes:
1. Enforcement of California law, including auditing and revenue collection;
 2. Litigation;
 3. To meet contractual obligations incurred before August 8, 2017;
 4. To comply with requests by the federal government to appear before committees;
 5. To participate in meetings or training required by a grant or required to maintain grant funding;
 6. To complete job-required training necessary to maintain licensure or similar standards required for holding a position, in the event that comparable training cannot be obtained in California or a different state; or
 7. For the protection of public health, welfare, or safety, or critical to the mission of the Santa Clara Valley Water District (District), as determined by the District; and
- B. Rescind Board Resolution 10-42 adopted on May 25, 2010 that prohibited the use of District funds for official business and employee travel to Arizona, because the Arizona laws that were the subject of that Resolution, Senate Bill 1070 and House Bill 2162, which were discriminatory laws against immigration, have been struck down by the U.S. Supreme Court.

SUMMARY:Recommendation 1 Summary

Over the last year, eight states-Alabama, Kansas, Kentucky, Mississippi, North Carolina, South Dakota, Texas, and Tennessee-have been identified and listed by the AG as states that have passed laws that discriminate against the LGBT community. In recognition of the District's commitment to diversity and inclusion of all staff, and the District's values of protecting employees from risk while performing their duties, staff recommends that the Board authorize the Chief Executive Officer to order all District departments to prohibit District funds to be used for official business in and employee travel to states listed on the AG's website unless critical to the mission of the District, because these states have passed laws that discriminate against the LGBT community, and therefore could place District employees at increased risk of unfair treatment and discriminatory practices. This proposed action is consistent with a Board action taken on May 25, 2010, when the Board also authorized the Chief Executive Officer to order all District departments to prohibit the use of district funds for official business in and employee travel to Arizona to attend conventions, meetings, or other events, because Arizona had passed two discriminatory laws against immigrants.

Recommendation 2 Summary

Senate Bill 1070 (SB 1070) and House Bill 2162 (HB 2162) were signed into law by Arizona Governor Brewer in April 2010. This law allowed law enforcement officers to randomly stop individuals and question their immigration status. Due to the discriminatory nature of this law, on May 25, 2010, the Board passed Resolution No. 10-42 prohibiting the use of district funds for official business and employee travel to Arizona, unless critical to the mission of the district. Since then, the U.S. Supreme Court has struck down this legislation. In recognition of these actions, staff recommends that the Board rescind its resolution prohibiting travel to Arizona.

ANALYSISAnalysis for Recommendation 1*Background*

The District demonstrates a strong commitment to inclusion and workforce protections through its robust governance policies and legislative principles. This recommendation to prohibit District funds to be used for official business in and employee travel to states listed on the AG's website builds upon Board Action taken on May 25, 2010, when the Board authorized the CEO to prohibit the use of District funds for official business and employee travel to Arizona, unless critical to the mission of the District, because Arizona had passed two discriminatory laws against immigrants---SB 1070 and HB 2162.

In California, there is precedent of an adopted measure with similar intent. The State recently enacted Assembly Bill 1887, as of January 1, 2017, which adopts a prohibition on State-funded and State-sponsored travel to states with discriminatory laws.

Below is a brief description of how Alabama, Kansas, Kentucky, Mississippi, North Carolina, South Dakota, Texas, and Tennessee either have adopted or are currently considering passing discriminatory laws against the LGBT community, which contrasts with the District's values and policies. A review of the respective laws in each state will inform the Board to what extent District employee travel and exposure to the respective state could subject them to increased risk of unfair, discriminatory, and unlawful scrutiny.

States with Codified or Proposed Discriminatory Laws

Alabama

In May 2017, Alabama Governor Kay Ivey (R) signed House Bill 24 into law, which allows private child adoption and foster placement agencies the right to discriminate in, or refuse, the services they offer to LGBTQ families and children. Specifically, the bill prohibits the state from “discriminating against or refusing to license a provider of child placing services...on the basis that the provider declines to provide a child placing service or carry out an activity that conflicts with the religious beliefs of the provider”. Prior to this bill passing, it had been brought to the Alabama House floor on two separate occasions, failing both times. This bill is unique from others like it (i.e. South Dakota SB 149), in that it does not disallow the child placement agencies to be discriminatory. Rather, it prevents the state from revoking or refusing to license a faith based child placement agency if they plan to or do act in a discriminatory manner. This law also allows agencies to discriminate on any characteristic of a potential foster placement or adoption by not defining what individual characteristics fall under “sincerely held religious belief”, the term which is the basis for refusing child placement.

Kansas

In March 2016, Kansas Governor Sam Brownback signed Senate Bill 175 (SB 175) into law, which makes LGBTQ and other minority college students more vulnerable to discrimination by university-funded student groups. Specifically, SB 175 allows public universities to fund religious student associations that discriminate by restricting their membership and denying LGBTQ students from participating based on the associations “religious beliefs.” Prior to the passage of SB 175, many Kansas educational institutions, including the Kansas Board of Regents and the University of Kansas, adopted non-discrimination policies which prohibit student organizations from receiving financial and other support from the school if they are determined to be discriminating against students based on race, sex, religion, sexual orientation, or gender identity. Passage of SB 175 codifies discriminatory practices by allowing a cause of action to be brought against the postsecondary institution by a student or religious student association aggrieved by a violation of this provision. The aggrieved party may seek appropriate relief, including monetary damages, and may assert such violation as a defense or counterclaim in a civil or administrative proceeding brought against the aggrieved party. SB 175 operates to nullify individual university-adopted non-discrimination policies.

Mississippi

On April 5, 2016, Mississippi Governor Phil Bryant signed into law House Bill 1523 (HB 1523), which identifies the official religious beliefs of Mississippi that “marriage is or should be recognized as the union of one man and one woman”; and “sexual relations are properly reserved to a marriage

between one man and one woman.” The new law allows individuals, religious organizations, private businesses and associations to use religion to discriminate against LGBT Mississippians in some of the most important aspects of their lives, including their place of employment, at educational institutions, and in their communities. Specifically, HB 1523 permits businesses to refuse to provide “accommodations, facilities, or goods” as long as they relate to the “solemnization, formation, celebration, or recognition” of a marriage. The law also allows private citizens to refuse to provide counseling and psychological treatment, which is in clear violation of professional medical guidelines.

North Carolina

In March 2016, North Carolina signed into law House Bill 2 (HB 2), which requires that people use public restrooms and locker rooms that correspond to the gender listed on their birth certificates. This measure has had far-reaching consequences beyond codifying discrimination against transgender persons. Not only does HB 2 reverse a City of Charlotte ordinance that had extended some rights to people who are gay or transgender, but it also nullified local ordinances around the state that would have expanded protections for the LGBT community. In fact, it makes it illegal for cities to expand upon state laws regulating workplace discrimination, as more than a dozen cities had previously done.

Businesses, athletic associations, and social justice groups have demonstrated vocal opposition to HB 2 by withdrawing their events or operations from North Carolina. For example, the National Basketball Association (NBA) announced it was moving the 2017 All-Star Game, while the National Collegiate Athletic Association (NCAA) and the Atlantic Coast Conference (ACC) pulled various events from the state and relocated them elsewhere. More than 200 major CEOs and business leaders signed an open letter calling for full repeal of HB 2 - including many of North Carolina's largest employers. More than 50 investment managers with more than \$2.1 trillion in investments signed a similar letter. In May 2016, the U.S. Department of Justice (DOJ) filed suit in federal court, stating that HB 2's state-mandated discrimination against transgender people, including government workers and students, violates Title VII of the Civil Rights Act of 1965, Title IX of the Education Amendments of 1972 and the Violence Against Women Act of 2011, which could jeopardize billions in federal education funding. Moreover, the National Association for the Advancement of Colored People (NAACP) is calling for a national boycott of North Carolina in protest of their discriminatory policies.

The opposition to HB2 has resulted in the passage of what some characterize as a compromise bill, HB 142. HB 142 forbids government entities from enacting rules on multiple-occupancy bathrooms, showers, and changing rooms except in accordance with an act of the General Assembly. HB 142 continues to nullify the Charlotte ordinance and prohibits local governments from enacting or amending “an ordinance regulating private employment practices or regulating public accommodations.”

South Dakota

In South Dakota, Senate Bill 149 (SB 149) was enacted March 10, 2017. Similar to Alabama House Bill 24, it could prevent qualified LGBT couples from adopting or serving as foster parents. Promoted as a bill to protect faith-based or religious child-placement agencies, the statutory language reads:

“No child-placement agency may be required to provide any service that conflicts with, or provide any service under circumstances that conflict with any sincerely-held religious belief or moral conviction of the child-placement agency”. The Act states that the organizations are not allowed to decline services based solely on race, ethnicity, or national origin, however, the omission of discrimination based on sexual orientation provides a legal basis for disallowing LGBTQ couples from adopting or serving as foster parents. Although this bill is not overtly discriminatory, the implications of injustice is enough for civil rights, child welfare, and LGBTQ rights organizations such as the American Civil Liberties Union, the National Association of Social Workers, and the Movement Advancement Project to ban together in opposition. This law would also allow discrimination based on religion.

Texas

In May 2017, Texas passed House Bill 3859 (HB 3859) called “Protection of Rights of Conscience for Child Welfare Service Providers”. This bill, promoted as a way to maintain a diverse network of child placement service providers, protects faith based child placement services from ‘adverse action’, such as being denied an application, contract, or license by the state or having a current application, contract, license, or similar agreement terminated, suspended, or cancelled on the basis of refusing a placement if the organization stated that the refusal was based on a contradiction of a sincerely held religious belief. However, this bill does expressly state that race, ethnicity, or nation of origin cannot be considered contradictory to an organization’s belief system. Additionally, the law makes it the discretion of the organization to choose a household “in the best interest of the child’s physical, psychological, and emotional needs and development”. This includes allowing organizations to deny minors access to things such as medical care or medical care facilities that goes against the organization’s sincerely held religious belief, including those that provide contraceptives, abortions, or like services.

Additionally, in May, 2017, Texas passed Senate Bill 6, which contains an unrelated amendment that restricts restroom use in public schools by birth certificate gender and required the schools to build separate single stall facilities for transgender students.

Tennessee

In Tennessee, Senate Bill 127 (SB 127) was introduced that would allow contractors with state or local governments to discriminate against Lesbian Gay Bisexual, Transgender, and Queer (LGBTQ) people. Specifically, the proposal would prohibit state agencies and municipalities from requiring that businesses, organizations, contractors, and grantees have LGBTQ nondiscrimination policies. The proposal is currently making its way through the state legislature, and could be heard by the full Senate at any moment. Similarly, anti-transgender legislation, Senate Bill 771 (SB 771), is also being considered by the state legislature and would require people access restrooms and locker rooms in public schools and public institutions of higher education based on the gender noted on a student’s birth certificate.

In May 2016, Tennessee Governor Bill Haslam signed Tennessee Senate Bill 1556 (SB 1556) into

law that allows therapists and counselors with "sincerely held principles" to reject gay, lesbian, transgender and other clients. SB 1556 creates immunity for such action because it does not permit such action to be the basis for a civil cause of action or criminal prosecution; however, SB 1556 maintains liability for counselors who will not counsel a client based on the counselor's sincerely held principles when an individual seeking or undergoing the counseling is in imminent danger of harming themselves or others.

Analysis for Recommendation 2

Since January 1, 2017, the state of California has adopted a prohibition on State-funded and State-sponsored travel to states with discriminatory laws. Arizona no longer falls under this category and has been removed from the AG's list of discriminatory states, therefore, it is appropriate for the District to resume official business and employee travel to Arizona.

Importance to the District

The District is committed to cultivating a diverse workforce, and to enacting necessary worker protections. District employees often travel to other states for District business. As a responsible employer of more than 780 District employees, the Board is empowered to take appropriate action to protect District employees' rights and ensure that they are not subjected to increased risk of unfair treatment and discriminatory practices, should they travel on official District business to states listed on the AG's website. Given its strong commitment to equity, inclusion, and workforce protections, the Board may consider prohibiting the use of District funds for travel for official business, attendance at conventions, meetings, or other events in states listed on the AG's website, unless critical to the mission of the District.

The District is committed to diversity and inclusiveness for its workforce and is dedicated to the protection of the individuals that it employs. Although the prohibition on travel to Arizona was necessary in 2010 to prevent increased risk of unfair treatment and discrimination to District employees, it is no longer necessary, given that the discriminatory laws in Arizona were struck down by the U.S. Supreme Court.

Pros for Recommendation 1

- This action would bolster workforce protection.
- The action would underscore the District's ongoing commitment to inclusion and cultivating a diverse workforce.
- The action is consistent with prior Board Action taken on May 25, 2010, that prohibited the use of district funds for employee travel to Arizona, because Arizona had passed two laws discriminatory to immigrants.
- The District's funds and resources will not support states that actively work to codify measures promoting intolerance and bigotry.

Cons for Recommendation 1

- Those who support the enactment of discriminatory laws in these states may protest the District's position.
- Businesses and individuals who reside in states that have enacted discriminatory laws but who have not engaged in any discriminatory conduct are penalized by this prohibition.
- Cities located in effected states that have affirmatively taken steps to enact legislation prohibiting discrimination are economically penalized because of the preemptive laws adopted by their state legislature.

Pros for Recommendation 2

- This action will increase workforce participation in national and regional conventions, meetings, and other professional events.
- This action will provide an overture to Arizona contacts that the District continues to value its relationships with these organizations.
- This action will optimize District travel while still complying with State legislation.

Cons for Recommendation 2

- There is the potential for residual discrimination within the state by those who supported the original legislation.

Policy Basis for Recommended Actions:

1. The Board has several Governance Process and Executive Limitation Policies (GP-7.3, 7.7, 11.1, 11.3; EL-3.1, 3.4, 8.1, 8.9), and legislative guiding principles in place that codify the District's strong and ongoing commitment to protect workers against discriminatory practices or conditions, cultivate a diverse and inclusive work environment, and treat employees with fairness, dignity, and respect. This action is consistent with those policies.

Finally, this action is consistent with the Board's adopted 2017 Legislative Guiding Principle that speaks to the protection and stability of its workforce, which includes opposing legislation that places employees at risk while performing their duties.

2. The basis for the original Resolution 10-42 applying to Arizona was derived from the same Governance Process and Executive Limitation Policies listed in #1 above, as well as the same legislative guiding principles that reaffirmed the District's commitment to protecting its workers against overt and covert acts of discrimination.

Since the Arizona laws in question are no longer in effect, the Board Policies are no longer at odds with the State's legislation; therefore, the Board may consider rescinding the previous Resolution,

and lift the prohibition on expenditure of District funds for employee travel to Arizona.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

Neither recommended action constitutes a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: SCVWD Resolution No. 10-42

UNCLASSIFIED MANAGER:

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