



February 23, 2004

Hon. Shirley Franklin
Office Of The Mayor For The City of Atlanta
55 Trinity Avenue
Atlanta, Georgia 30303

Re: Human Relations Commission Findings Concerning Golf Club

Dear Mayor Franklin,

We seek to provide some insight regarding the Human Relations Commission's findings that the Druid Hills Golf Club ("the Club") engaged in unlawful discrimination. We believe that statutory authority and Georgia Supreme Court decisions support the City's power to ensure that domestic partnership status is not a basis for discriminatory treatment. The Georgia Constitution does not prohibit the ordinance at issue, nor does the ordinance exceed the City's legislative authority. Furthermore, a private club's constitutionally protected associational rights are plainly not violated by the application of the anti-discrimination ordinance in this particular case.

As you know, Atlanta has unambiguous authority to enact city ordinances to protect the health, safety, and general welfare of the public. The Home Rule Act grants this right so long as the ordinances are consistent with general law and the state Constitution. *O.C.G.A. § 36-35-3(a)(2002)*. There is simply no conflict between Atlanta's ordinance and state or constitutional law.¹ In fact, *the City of Atlanta's power to enact an anti-discrimination ordinance was expressly found to be constitutional by the Supreme Court of Georgia.*²

¹ *City of Atlanta v. Morgan*, 268 Ga. 586, 588-89 (1997) (where the Supreme Court of Georgia rejected the argument that Ordinance 94-131, relied on here to define domestic partnership, defined a family relationship in violation of state law).

² *City of Atlanta v. McKinney*, 265 Ga. 161, 165 (1995)(Chief Justice Fletcher wrote "the City of Atlanta has the authority to enact anti-discrimination laws under its general police power. This power enables the city to prohibit discrimination on the basis of race, color, national origin, religion, sex, and sexual orientation.").

In order to support its position, the Club fails to give full weight to Georgia Supreme Court decisions that *expressly* grant the City the authority to define domestic partnerships through the “[domestic partnership] registry ordinance which, according to controlling precedent, is constitutional” and does not “define a new family relationship contrary to State law.”³ Additionally, the Georgia Supreme Court announced that “Atlanta has the authority to enact anti-discrimination laws”⁴ and rejected the argument that an anti-discrimination law is an unconstitutional “special law relating to the status of private persons.”⁵

The Club also completely fails to acknowledge that the City’s authority to extend the discrimination ordinance to private clubs is firmly grounded in the City’s power to regulate and license private clubs generally. *O.C.G.A. § 3-7-40 (2002)*. Here, the City’s power is heightened because the Club has a liquor license issued by the City. State law broadly permits a municipality to “adopt all reasonable rules and regulations governing the qualifications and criteria for the issuance of [alcoholic beverage] licenses and may promulgate reasonable rules and regulations governing the conduct of any licensee...including [the regulation of] matters which may fall within the police powers of such municipalities.” *O.C.G.A. § 3-7-43 (d) (2003)*.

We have contemplated any potential constitutional freedom of association concerns that this case implicates but have concluded that any challenges brought on these grounds are without merit. Although forced inclusion of unwanted persons may infringe expressive association,⁶ this right is not at issue here. Druid Hills Golf Club does not exclude gay and lesbian members or their domestic partners so it cannot assert a right not to associate.⁷ Moreover, Atlanta’s ordinance was adopted to serve a compelling state interest in combating discrimination.⁸

³ *Morgan*, 268 Ga. at 589.

⁴ *McKinney*, 265 Ga. at 165.

⁵ *Id.*, at 166 (“Individuals can be subjected to more than one type of irrational discrimination which the government is at liberty to prohibit. The ordinances do not require any special treatment of the specified classes; they just forbid differential treatment.”)

⁶ *Boy Scouts of America v. Dale*, 530 U.S. 640 (U.S. 2000).

⁷ “EQUAL TIME: Debate about golf club's policy, not law,” *Atlanta Journal*, Jan. 26, 2004 (“With respect to our existing policies, the club does not discriminate based upon race, religion, gender or sexual orientation.”); *see also Roberts v. United States Jaycees*, 468 U.S. 609, 627(1984) (“Jaycees already invites women to share the group's views and philosophy and to participate in much of its training and community activities. Accordingly, any claim that admission of women as full voting members will impair a symbolic message conveyed by the very fact that women are not permitted to vote is attenuated at best.”)

⁸ *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984) (“[A]cts of invidious discrimination in the distribution of publicly available goods, services, and other advantages cause unique evils that government

After researching this matter, we are confident that the HRC's findings were correct, and that further investigation and action by the City's police and regulatory agencies is appropriate. Because your decision in this case is a matter of first impression, we fear any refusal to apply this ordinance to the discriminatory practices of the Druid Hills Golf Club will empower other groups to follow suit. Using this controversy to create an exception for private clubs is not only inappropriate, but would undermine the important goal that the ordinance was established to achieve. The City passed an anti-discrimination *law* to offer tangible relief from unequal treatment, not a resolution to make a mere public and moral statement.

The ACLU supports your efforts in seeking to resolve this matter through negotiations short of litigation. That said, we believe the City is on solid legal footing should litigation prove unavoidable. Should you have any questions, or wish to discuss the matter, please do not hesitate to contact us.

Respectfully yours,

Beth Littrell, Staff Counsel
Gerald Weber, Legal Director

cc: Linda DiSantis, City Attorney

has a compelling interest to prevent .").