

**TESTIMONY BEFORE THE COUNCIL OF THE CITY OF PHILADELPHIA
IN SUPPORT OF BILL NO. 960849
AN ORDINANCE TO GRANT NURSING MOTHERS AN ABSOLUTE RIGHT
TO BREASTFEED IN PUBLIC ACCOMMODATIONS**

TERRY L FROMSON
FOR THE WOMEN'S LAW PROJECT
125 S. 9th Street, Suite 401
Philadelphia, PA 19107

June 3, 1997

I am very pleased to be here today to testify in support of a bill which will grant nursing mothers an absolute right to breastfeed in any place that is open to the public. My name is Terry Fromson and I am Managing Attorney of the Women's Law Project.

The Women's Law Project is a nonprofit public interest law firm dedicated to improving the legal and economic status of women and their families through litigation, public policy development, public education and individual counseling. Since its founding in 1974, the Law Project has engaged in extensive activities challenging gender discrimination in a wide variety of areas, including employment, education, insurance and family matters. Our telephone counseling service provides advice to over 5000 callers a year.

The Law Project knows first hand the need for this bill. We have received calls from mothers who have been asked to stop breastfeeding or to leave a public facility. These calls include:

- The mother who was interrupted while reading to her 5 year old in the public library and told by the librarian "we don't allow breastfeeding in the library; you'll have to

go out to do it.” The library subsequently enacted a policy defining restricted areas for breastfeeding and the amount of breast that could be exposed while breastfeeding.

- The mother who was nursing her baby in a children’s store in a mall while her 3 year old watched a store video. She was approached by a mall security officer who told her that there was a “family bathroom” down the hall in the mall for what she was doing.
- The mother volunteering in her children’s elementary school who discreetly breastfed her baby in the counselor’s office. She later received a call from the school principal summoning her to his office to meet with him, at which time he told her that breastfeeding in the school was completely unacceptable and not to do it again.
- The mother who was traveling from Trenton to Jenkintown on a SEPTA train with her 4 year old daughter and 9 month old son who was told by the conductor to get off the train at the next stop because breastfeeding was indecent exposure.

These mothers should not be intimidated, harassed and evicted for providing nature’s best nutrition to their children. Yet the law does not at present do a good job protecting breastfeeding mothers. In responding to these calls, the Law Project has not been able to definitively inform callers of their rights or give them reliable advice as to what they can do to stop discrimination against breastfeeding mothers.

Breastfeeding is obviously an activity that is unique to women. It is logical to look to laws prohibiting discrimination on the basis of gender as a source of protection for mothers who are subject to discrimination because they are breastfeeding. However,

the courts which have confronted this question have routinely refused to interpret such laws to prohibit discrimination against breastfeeding women.

The United States Constitution, which protects fundamental personal liberties in marriage and family life from undue state interference offers another logical source of protection. The Supreme Court has long recognized that parental interest in nurturing and rearing children is deserving of protection against state interference. The Fifth Circuit Court of Appeals is the only court that has explicitly recognized that such protection extends to a woman's decision to breastfeed her child. The decisions in that circuit have not resulted in complete or certain protection for the breastfeeding mother, however. Constitutional protection extends only to state action and is limited by compelling state interests which may be found to dominate. In the only reported case in which the court fully resolved the competing interests, the Fifth Circuit held that the interests of the breastfeeding mother and child were outweighed by compelling state interests.

The Law Project believes that the courts in these cases have incorrectly limited the reach of statutes prohibiting gender discrimination, and will, if necessary, seek redress for breastfeeding mothers under those statutes as well as the Constitution. The outcome, however, is by no means certain. Clarification of the rights of breastfeeding mothers is accomplished with greater speed, certainty and clarity through legislative means.

If the bill under consideration by City Council becomes law, the Women's Law Project and others who counsel women will be able to give callers clear advice. We will

be able to tell them that they cannot be told to stop breastfeeding, to go to the bathroom to breastfeed or to leave a public establishment if their baby has to be fed. We will be able to direct them to the Human Relations Commission of the City of Philadelphia to seek relief if they have been subjected to such interference. And the Commission will be able, based on the clearly worded rights set forth in this bill, to stop stores, libraries and other establishments open to the public from continuing to interfere in the rights of breastfeeding mothers.

Breastfeeding is natural and its benefits undeniably significant. Increasing breastfeeding is a recognized public health goal and many public and private resources are committed to encouraging women to breastfeed. It is important to make clear in Pennsylvania that those who choose to follow that advice are protected from undue interference in exercising that choice.

Thirteen states have enacted legislation that protects breastfeeding mothers. either by clarifying that breastfeeding is not unlawful or by extending civil protection. Pennsylvania has not. By adopting this bill, Philadelphia will lead Pennsylvania in guaranteeing a mother the right to breastfeed wherever and whenever her child is hungry and must be fed.

I urge you to adopt this bill unanimously and thereby provide necessary and effective protection for one of the most basic of parental choices.

Thank you for the opportunity to appear before you today.