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How Marion Barry could help the organ shortage

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Key Data: Thirteen people die daily waiting for a kidney transplant.

Marion Barry, the District's most famous kidney transplant recipient, is a very lucky man. If not for Kim Dickens, the friend who gave him one of her kidneys last month, the 72 year old former Mayor would have had little chance of surviving the years-long wait for a cadaver kidney from the national list.

At a Capitol Hill briefing recently, Mr. Barry looked dapper, if frail. He said he wanted to start a "movement" to increase the number of transplants.

A noble mission indeed. In the District, only 170 transplants were performed last year; yet over 1,100 Washingtonians waited. Nationwide, the list is up to 80,000 (with roughly another 100,000 dialysis patients who are good candidates for transplant but, for various reasons, not wait-listed). Everyday, thirteen in the queue die waiting for an organ that never comes.

The root of this needless suffering is confusion surrounding the 1984 National Organ Transplant Act (NOTA). The law makes it a felony to broker an organ or to exchange it for something of "valuable consideration." While the law says that reimbursing donors for medical expenses and lost wages is legal, it never explicitly defines "valuable consideration."

Consider what happened in Pennsylvania. In 1994 the state passed a law that would permit family members to receive a burial benefit of up to \$3,000 (paid directly to the funeral home) if their deceased loved one became a donor.

But fearing that this reward ran afoul of NOTA, the health officials in Pennsylvania would not implement it. Did they really think the federal government intended to punish a widow in Scranton for accepting a funeral benefit from the state?

The dire organ shortage compels us to revisit the meaning of NOTA, especially in light of a 2007 opinion from the Office of Legal Counsel of the Department of Justice. It concluded that valuable consideration "refer[red] to the buying and selling of organs for monetary gain or to organ exchanges

that are otherwise commercial.”

In other words, Congress did not intend that an organ donor who has been rewarded for his sacrifice be made a felon in return. Yet no state has ever tested this interpretation by rewarding donors.

This brings us back to Marion Barry. The long-time civil rights warrior and current Ward 8 Councilman can best create a “movement” to reduce the organ shortage by persuading the City Council to enact a law challenging the 1984 National Organ Transplant Act. It should enable charities or the District government itself to offer health and life insurance to donors. Not only will this reward donors but, critically important, it will encourage many others to consider making the same profound sacrifice for a stranger.

A more ambitious pilot might offer donors a tax credit or deduction or a contribution to their pension plan. Or perhaps a contribution to a charity of their choice – this way, the donation of a kidney can be leveraged to improve the lives of hundreds more.

If such benefits were offered to donors by the District government or by approved charities -- rather than by individuals – then organs will be available to all, not just to the wealthy.

Marion Barry has had a tumultuous life of ups and downs. And now faces looming tax problems. Here is a way for him to rebound yet again by aiding the medically downtrodden who wait in vain for a life-saving kidney. Mr. Barry could make Washington, DC the first in the country to save hundreds of lives by creating appropriate rewards for those who are willing to make a profound sacrifice to save the life of another.

Take-Home: To help remedy the organ shortage, the District should pass a law enabling donors to receive benefits for their sacrifice.

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