

**NLWJC - Kagan**

**DPC - Box 027 - Folder 010**

**Gay/Lesbian - Anti - Discrimination  
Executive Order**

gay/lesbian - executive order

Richard Socarides 02/21/99 05:01:47 PM

---

Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: Helms bill would nullify anti discrimination executive order

----- Forwarded by Richard Socarides/WHO/EOP on 02/21/99 05:01 PM -----



rwockner @ netcom.com  
02/21/99 03:20:00 PM

Record Type: Record

To: Stuart D. Rosenstein, Richard Socarides  
cc:  
Subject: NC9521: New Jesse Helms attack

Congressional Record, January 19, 1999  
<http://thomas.loc.gov>

#### AMERICA AT A MORAL CROSSROADS FREEDOM OF SPEECH ACT

Mr. HELMS. Mr. President, I am also pleased to introduce the Freedom of Speech Act, which makes sure that federal employees are not forced to check their moral beliefs at the door when they arrive at the federal workplace.

This bill attempts to make sure that President Clinton is not allowed to do by Executive Order what Congress has declined to enact in the past two Congressional sessions - namely, to treat homosexuals as a special class protected under various titles of the Civil Rights Act of 1964. Last year, President Clinton signed such an Executive Order, and in so doing, infringed upon the Constitutional rights of Federal employees who wish to express their moral and spiritual objections to the homosexual lifestyle.

President Clinton has instructed Federal agencies and departments to implement a policy that treats homosexuals as a special class protected under various titles of the Civil Rights Act of 1964. This necessarily prevents federal employees who have strong religious or moral objections to homosexuality from expressing those beliefs without running afoul of what amounts to a workplace speech code. Apparently, when the President's desire to write his belief system into federal workplace regulations

conflicted with the First Amendment right to free speech, the Constitution lost.

Congress should jealously protect its Constitutional prerogative to make laws, and prevent the executive branch from creating special protections for homosexuals, particularly in a way that doesn't take into account the Constitutional right of freedom of speech enjoyed by all Federal employees. That is the purpose of the legislation I offer today.

Under this bill, no Federal funds could be used to enforce President Clinton's Executive Order #13807. Further, no Federal department or agency would be able to implement or enforce any policy creating a special class of individuals in Federal employment discrimination law. This bill will also prevent the Federal government from trampling the First Amendment rights of Federal employees to express their moral and spiritual values in the workplace.

Mr. President, for many years the homosexual community has engaged in a well-organized, concerted campaign to force Americans to accept, and even legitimize, an immoral lifestyle. This bill is designed to prevent President Clinton from advancing the homosexual agenda at the expense of both the proper legislative role and the free speech rights of Federal workers. \*\*\*\*\* S. 45

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. SHORT TITLE.

This Act may be cited as the 'Freedom of Speech Act'.

## SEC. 2. PROHIBITION.

(a) In General: No agency, officer, or employee of the executive branch of the Federal Government shall issue, implement, or enforce any policy establishing an additional class of individuals that is protected against discrimination in Federal employment, other than a class of individuals specifically identified in a provision of Federal statutory law that prohibits employment discrimination against the class, including

(1) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(2) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.); and

(3) title V of the Rehabilitation Act of 1973 (29 U.S.C. 791 et seq.) or title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.).

(b) Prohibition on Use of Federal Funds: No agency, officer, or employee of the executive branch of the Federal Government shall use Federal funds to issue, implement, or enforce a policy described in subsection

(a), including implementing and enforcing Executive Order 13087, including any amendment made by such order.

Richard Socarides 08/06/98 09:17:06 AM

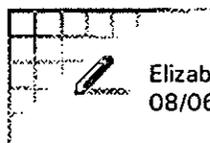
---

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: See the distribution list at the bottom of this message  
Subject: Statement by the President: Hefley Amendment

Thank you all for all the hard work we put into this victory. This is the first time in history that the Congress has voted to sustain civil rights protections for gay and lesbian Americans. The gay civil rights groups and our friends and supporters in the gay community are elated and enormously grateful to the President for his leadership.

----- Forwarded by Richard Socarides/WHO/EOP on 08/06/98 09:10 AM -----



Elizabeth R. Newman  
08/06/98 09:03:50 AM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: Statement by the President: Hefley Amendment

**THE WHITE HOUSE**

**Office of the Press Secretary**

---

**For Immediate Release**

**August 6, 1998**

**STATEMENT BY THE PRESIDENT**

I am gratified that the House has defeated an attempt to overturn my Executive Order providing a uniform policy to prohibit discrimination based on sexual orientation in the federal civilian workforce.

This vote reflected the values of our nation. The American people believe in fairness, not discrimination, and the Hefley amendment would have legitimized government sponsored discrimination against its own citizens based on their sexual orientation.

It has always been the practice of this Administration to prohibit employment discrimination in the federal civilian workforce based on sexual orientation. Most federal agencies and departments have taken actions to memorialize that policy.

The Executive Order does no more than make that policy uniform across the federal government. It does not authorize affirmative action, or preferences, or special rights for anyone.

The Executive Order reflects this Administration's firm commitment that the federal government make employment related decisions in the civilian workforce based on individual ability and not on sexual orientation.

-30-30-30-

Message Sent To: \_\_\_\_\_

*Gay/les - antidiscrim exec order*

**POSSIBLE STATEMENT REGARDING HEFLEY AMENDMENT  
IN THE EVENT OF A GOOD RESULT**

Today, the House of Representatives defeated a Republican attempt to overturn Executive Order 13087. The Order provides a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation in the federal civilian workforce.

I am gratified by the House vote. The American people believe in fairness, not discrimination, and they reject efforts like this one that would have legitimized government sponsored discrimination against its own citizens based on their sexual orientation .

It has always been the practice of this Administration to prohibit employment discrimination in the federal civilian workforce based on sexual orientation. Most federal agencies and departments have taken actions to memorialize that policy. The Executive Order does no more than make that policy uniform across the federal government. It does not authorize affirmative action, or preferences, or special rights for anyone.

The Executive Order reflects this Administration's firm commitment that the federal government make employment related decisions in the civilian workforce based on individual ability and not on sexual orientation. I assure each and every American that the Republicans in Congress cannot and will not force this Administration to discriminate.

**Richard Socarides** 08/04/98 03:49:05 PM

---

Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: Log Cabin's Action Alert on Hefley Amendment

----- Forwarded by Richard Socarides/WHO/EOP on 08/04/98 03:49 PM -----



**Doug.Case @ sdsu.edu**  
08/04/98 04:13:00 PM

Record Type: Record

To: Stuart D. Rosenstein, Richard Socarides  
cc:  
Subject: Log Cabin's Action Alert on Hefley Amendment

August 4, 1998

#### LOG CABIN REPUBLICANS ACTION ALERT

A vote is expected on the floor of the House of Representatives TODAY on the Hefley Amendment to the Commerce, Justice, State appropriations bill. This is the amendment which seeks to roll back all the non-discrimination policies in the federal government which include sexual orientation. It is a defining moment for the 105th Congress -- CALL YOUR REPRESENTATIVES TODAY AT 202-225-3121 AND URGE THEM TO VOTE NO ON THE HEFLEY AMENDMENT!!

-----  
July 30, 1998

TO: GOP Members of Congress  
FROM: Richard Tafel, Executive Director

#### VOTE NO ON THE HEFLEY AMENDMENT

##### I. IT IS BAD POLICY

On CNN's "Crossfire" last week, Rep. Bob Barr (R-GA), a leading supporter of the Hefley Amendment to the Commerce, Justice, State appropriations bill, said he believes in discriminating against gays and lesbians. Passage of the Hefley Amendment will mean that the 105th Congress agrees with Rep. Barr. That will be the message to your

constituents, to your campaign supporters, to your colleagues in the House and to the staff members you employ in your own office -- if you vote yes on the Hefley Amendment.

Rep. Joel Hefley (R-CO) wrote recently to you that his amendment is merely to ensure that gays do not receive affirmative action as a result of federal non-discrimination policies. **LOG CABIN REPUBLICANS IS FIRMLY OPPOSED TO AFFIRMATIVE ACTION.** We are giving our organization's highest award to Proposition 209 leader Ward Connerly at our national convention next month. **THE FACTS ARE CLEAR: IT IS ALREADY ILLEGAL (42 U.S.C. 2000e) TO EXTEND ANY FORM OF TITLE VII REMEDIES ON THE BASIS OF SEXUAL ORIENTATION TO FEDERAL WORKERS.** There is nothing about the President's executive order that can possibly change that.

## II. IT IS WRONG POLITICALLY FOR OUR PARTY

A poll published in The Hill on July 29 showed the following:

-- Americans support President Clinton's executive order banning discrimination against gays in federal hiring and employment by 66-24. The Hefley Amendment would roll back this order.

-- Even the GOP base -strong Republican voters - back Clinton's order by 50-41. Very conservative "strong" Republicans would either be less likely to support or say it would make no difference in their votes by 54%.

A poll conducted by the Republican Leadership Council showed the following [Kieran Mahoney & Associates - National Survey of Swing Congressional Districts, July 17-20, 1998]:

-- Question: DO YOU FAVOR THE FEDERAL GOVERNMENT PASSING LEGISLATION IN SUPPORT OF A SPECIFIC MORAL AGENDA?

58% all voters OPPOSED

55% of Republicans OPPOSED

60% of Independents OPPOSED

-- Voters are more likely to support a Republican candidate for Congress focused on economic issues over "moral issues" by a 58.6% to 18.9% margin.

-- Ticket-splitters agree with the GOP economic agenda 44.5% to 30.4%. Independents agree 41.4% to 34.4%.

-- Ticket-splitters DISAGREE with the GOP agenda on moral issues "like gay rights" -- 40.7% to 22.4%.

-- Independents DISAGREE with the GOP agenda on moral issues "like gay rights" -- 52.3% to 19.5%.

-- Question: DO YOU FAVOR EXCLUDING HOMOSEXUALS FROM LEADERSHIP POSITIONS IN THE REPUBLICAN PARTY BECAUSE THEY ARE GAY?

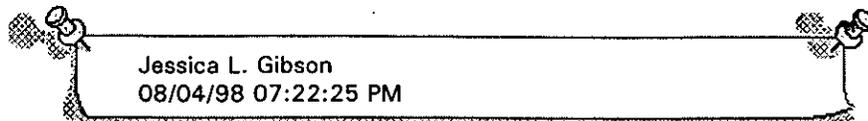
61% of Republicans OPPOSED

**BAD POLICY.**

**BAD POLITICS.**

**VOTE NO ON THE HEFLEY AMENDMENT TO THE COMMERCE, JUSTICE, STATE APPROPRIATIONS BILL.**

gay/les - antidiscrimination exec order



Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Hefley

*Martha Foley/Larry Stein's edits are below. Pls let me know if there are any questions-- x62230:*

**POSSIBLE STATEMENT REGARDING HEFLEY AMENDMENT  
IN THE EVENT OF AN ADVERSE RESULT**

Today, the ~~Republican~~ House of Representatives voted to overturn Executive Order 13087. The Order provides a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation in the federal civilian workforce.

I am deeply disappointed that the House of Representatives has taken action that legitimizes government sponsored discrimination against its own citizens based on their sexual orientation. The American people believe in fairness, not discrimination, and I am confident they will reject this unseemly and unjust action by the House.

It has always been the practice of this Administration to prohibit employment discrimination based on sexual orientation in the federal civilian workforce. Most federal agencies and department have taken actions to memorialize that policy. The Executive Order does no more than make that policy uniform across the federal government. It does not authorize affirmative action, or preferences, or special rights for anyone.

The Executive Order reflects this Administration's firm commitment that the federal government make employment related decisions in the civilian workforce based on individual ability and not on sexual orientation. ~~Assure each and every American that the Republicans in Congress cannot and will not force this Administration to discriminate.~~

**POSSIBLE STATEMENT REGARDING HEFLEY AMENDMENT  
IN THE EVENT OF A GOOD RESULT**

Today, the House of Representatives defeated a ~~Republican~~ an attempt to overturn Executive Order 13087. The Order provides a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation in the federal civilian workforce.

I am gratified by the House vote. The American people believe in fairness, not discrimination, and they reject efforts like this one that would have legitimized government sponsored discrimination against its own citizens based on their sexual orientation .

It has always been the practice of this Administration to prohibit employment discrimination in the federal civilian workforce based on sexual orientation. Most federal agencies and departments have taken actions to memorialize that policy. The Executive Order does no more than make that policy uniform across the federal government. It does not authorize affirmative

action, or preferences, or special rights for anyone.

The Executive Order reflects this Administration's firm commitment that the federal government make employment related decisions in the civilian workforce based on individual ability and not on sexual orientation. ~~I assure each and every American that the Republicans in Congress cannot and will not force this Administration to discriminate.~~

**Message Sent To:**

---

Charles M. Brain/WHO/EOP  
Michael Deich/OMB/EOP  
Joshua Gotbaum/OMB/EOP  
Mary L. Smith/OPD/EOP  
Janet Murguia/WHO/EOP  
Charles E. Kieffer/OMB/EOP  
Virginia Apuzzo/WHO/EOP  
Thomas L. Freedman/OPD/EOP  
Bruce N. Reed/OPD/EOP  
Elena Kagan/OPD/EOP  
Martha Foley/WHO/EOP  
Dario J. Gomez/WHO/EOP  
Karen Tramontano/WHO/EOP  
Tracey E. Thornton/WHO/EOP  
Sylvia M. Mathews/OMB/EOP  
Minyon Moore/WHO/EOP  
Barry J. Toiv/WHO/EOP  
Craig T. Smith/WHO/EOP  
Robert N. Weiner/WHO/EOP  
Elizabeth Gore/OMB/EOP  
Julia M. Payne/WHO/EOP  
Nanda Chitre/WHO/EOP  
Richard Socarides/WHO/EOP  
Martha Foley/WHO/EOP  
Elizabeth R. Newman/WHO/EOP  
Joseph P. Lockhart/WHO/EOP  
Barry J. Toiv/WHO/EOP  
Linda Ricci/OMB/EOP  
CROWLEY\_P @ A1 @ CD @ VAXGTWY

gay/les - antidiscrim exec order

Tim Boygs

Helen Rosen 775-7253

Elizabeth Birch 347-5323

Karen Tramontano 456-6797

Richard Soakerides 456-6682

ABC/WSJ

30b. Do you think that being homosexual is something people choose to be, or do you think that people are born homosexual and it is something they cannot change? \*

Choose to be homosexual	38
Born homosexual	41
Neither/other (VOL)	1
Some of both (VOL)	8
Not sure	12

\* Asked of one-half the respondents (FORM A).

30c. As you may know, President Clinton issued an executive order that prohibits federal agencies from discriminating against homosexuals. Do you favor or oppose President Clinton's effort to prohibit discrimination against homosexuals working in federal agencies? \*

Favor	72
Oppose	20
Not sure	8

\* Asked of one-half the respondents (FORM A).

~~I Am getting the Danneus & will circulate from Mike B~~

→ Copy to  
BANK E  
BROOK REED  
CA EMA  
KATIE M  
R. GOR

*Gay/les - antidiscrimination exec order*

## **FACT SHEET**

**Revised July 29, 1998**

### **EXECUTIVE ORDER ISSUED MAY 28, 1998 PROHIBITING DISCRIMINATION IN THE FEDERAL CIVILIAN WORKFORCE BASED ON SEXUAL ORIENTATION**

#### **Background:**

- Executive Order 13087 was issued on May 28, 1998. It amends an earlier executive order, Executive Order 11478. It restates the pre-existing policy of the Executive Branch of the Federal Government to prohibit discrimination based on sexual orientation in federal civilian employment.
- Representative Hefley of Colorado and others have indicated that they will attempt to amend an appropriations bill to prohibit the use of federal funds to implement, enforce or administer the Executive Order. The Administration opposes this effort.

#### **What exactly does the Executive Order provide?**

- The Executive Order will ensure that there is a uniform policy throughout the Federal Government's Executive Branch by adding sexual orientation to the list of categories (i.e. race, color, religion, sex, national origin, handicap, or age) for which discrimination is prohibited in hiring, firing and promotion in the civilian federal workforce, as provided for in Executive Order 11478.
- This policy is about basic fairness, not about "special rights."

#### **Some say a recent CRS study states that the executive order mandates affirmative action and creates new enforcement rights. Is that true?**

- No. Nothing in the executive order requires affirmative action, and the Administration has stated in writing conclusively that Executive Order 13087 does not authorize affirmative action, nor does it require or even permit statistical record-keeping. White House Counsel Charles F.C. Ruff, in a letter dated July 22, 1998, has clearly stated that "Executive Order 13087 does not authorize affirmative action policies, such as recruitment, reporting, or goal-setting based on sexual orientation."
- The White House, which has the authority to issue the executive order and to promulgate rules regarding the conduct of employees in the Executive Branch, has stated its unequivocal intent that the executive order does not authorize affirmative action on the basis of sexual orientation and that there

will be no reporting on that basis either. Accordingly, there is no need for the speculation about affirmative action contained in the CRS study -- the White House has clearly set forth that there will be no affirmative action on the basis of sexual orientation. With regard to all these issues, as this is the President's order, the President's intent informs the meaning of the executive order. See Sea-Land Service, Inc. v. Interstate Commerce Commission, 738 F.2d 1311, 1314 (D.C. Cir. 1984) ("The 'law' at issue in this instance is an Executive Order promulgated by the President, and it is to his intent that we must turn for guidance . . .").

- Even the CRS study concludes that "E.O. 13087 essentially makes [the prohibition against discrimination based on sexual orientation] universal in the Federal Executive Branch and with respect to civilian employees of the military departments . . . , but would not create judicial enforceable rights in the absence of congressional action."

**Would the executive order require federal contractors or state and local governments to hire gays?**

- This executive order applies only to employees of the Executive branch; it does not apply to federal contractors, subcontractors or grant recipients, or to State and local governments. Federal contractors are not "employees" of the Federal government.

**Does this affect affirmative action policy or create special treatment for certain groups?**

- No. As White House Counsel Charles F.C. Ruff has made clear in a letter dated July 22, 1998: Executive Order 13087 does not **authorize** affirmative action based on sexual orientation. It does not allow preferential treatment. It does not require that agencies find out which of their employees are gay, or how many gay employees they have hired. There are not quota programs in place for federal civilian hiring, and Executive Order 13087 does not create one.

**Will this lead to collecting information regarding the sexual orientation of employees?**

- No. Executive Order 13087 does not authorize collecting or reporting information about the sexual orientation of employees. Currently, federal agencies report information regarding the race, disability, national origin and gender of employees, but not regarding other classifications included in Executive Order 11478, such as religion. Similarly, information will not be collected or reported regarding sexual orientation.

**Is this a new policy?**

- No. It has always been the practice of this Administration to prohibit discrimination in employment based on sexual orientation in the civilian workforce, and most federal agencies and department have taken actions, such as the issuance of policy directives or memoranda from the agency heads, to memorialize that policy. The Executive Order states this policy uniformly and for the first time in an Executive Order of the President.
- Moreover, federal law has for a long time provided that discrimination in federal civilian employment based upon sexual orientation is a prohibited personnel practice if it is found that sexual orientation did not adversely affect the performance of the employee. [Title 5 of the U.S. Code, section 2302(b)(10) prohibits "discriminat[ion] for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others..."]
- As far back as 1980, OPM has issued its interpretation of existing federal law stating that "applicants and employees are to be protected against inquiries into, or actions based upon, non-job-related conduct, such as religious, community, or social affiliations, or sexual orientation."

**If this is not a new policy, why was an Executive Order necessary?**

- The Executive Order states a uniform policy throughout the Executive Branch of the Federal Government.

**What impact does this have on the uniformed military service?**

- None. This order does not apply to the uniformed military service.

**What, if any, enforcement rights are granted?**

- This Executive Order states Administration policy but does not create any new enforcement rights. Those rights would be granted by legislation passed by the Congress, such as the Employment Non-Discrimination Act, H.R. 1858, which the President supports. White House Counsel Charles F.C. Ruff has stated: "The executive order does not create any rights to file a complaint alleging discrimination on the basis of sexual orientation with a court or with the EEOC. The order leaves intact the current procedures for dealing with such complaints. An employee who believes he or she has suffered adverse action may seek redress under procedures now available

within each agency.”

#### **What is the authority for the President to issue this executive order?**

- Presidents since George Washington have directed Executive Orders to their employees in the Executive Branch. In 1966, Congress specifically reinforced the President’s Constitutional authority to “prescribe regulations for the conduct of employees in the executive branch.” 5 U.S.C. § 7301. Presidents have frequently exercised that authority over the federal workforce, issuing scores of Executive Orders. This particular Order by President Clinton amends Executive Order 11478, issued in 1969 by President Nixon, barring federal employees from discriminating based on race, color, religion, sex, national origin, handicap or age. The same authority that supported that Order supports this one. President Reagan issued Executive Order 12564, requiring a drug-free federal workplace, and Executive Order 12353, governing charitable fundraising by federal employees. President Bush issued Executive Order 12674, setting forth principles of ethical conduct for government employees. It would be contradictory to contend that the President can regulate the ethical conduct of federal employees, that he can prescribe standards for fundraising and require drug testing, but cannot instruct federal employees to refrain from discriminating on the basis of sexual orientation.

#### **What is the meaning of the phrase “sexual orientation?”**

- The President intends the term to have the common meaning stated in the Employment Non-Discrimination Act, “homosexuality, bisexuality, or heterosexuality.” With regard to all these issues, as this is the President’s order, the President’s intent informs the meaning of the executive order. See Sea-Land Service, Inc. v. Interstate Commerce Commission, 738 F.2d 1311, 1314 (D.C. Cir. 1984) (“The ‘law’ at issue in this instance is an Executive Order promulgated by the President, and it is to his intent that we must turn for guidance . . .”).

#### **Is this an attempt to legislate by executive order?**

- This executive order does not amend Title VII or Executive Order 11246 or create new rights or remedies for discrimination based on sexual orientation. It is the role of Congress, and not the Executive Branch, to amend federal statutes.
- Unlike Title VII, which applies to employers generally, including private employers, Executive Order 13087 merely sets internal employment policy for the Executive Branch.

**Is there public support for the Executive Order?**

- Recent national polls by Newsweek and the Associated Press indicate that between 84-85% of Americans favor equal rights for gay people in the workplace.
- The proposed federal legislation on this topic, the Employment Non-Discrimination Act, H.R. 1858 and S. 869, enjoys strong bipartisan support in the 105th Congress, with 33 Senator cosponsors and 159 House cosponsors. In addition, a majority of House Members and over two-thirds of the Senate have specifically indicated that sexual orientation was not a consideration in their own employment practices.

*Gay/les - antidiscrimin exec order*

## THE WHITE HOUSE

WASHINGTON

July 22, 1998

The Honorable Janice R. Lachance  
Director, Office of Personnel Management  
Theodore Roosevelt Federal Building  
1900 E Street, N.W.  
Washington, D.C. 20415

Dear Ms. Lachance:

On May 28, 1998, the President issued Executive Order 13087. It amends Executive Order 11478, which pertains to discrimination against federal civilian employees. Federal law has long prohibited discrimination for or against an employee or applicant based on "conduct which does not adversely affect the performance of the employee or applicant or the performance of others." 5 U.S.C. 2302(b)(10). In the case of civilian employees and applicants, OPM has interpreted this statute to prohibit discrimination based on sexual orientation, and that has been the policy of this Administration from the outset. Most federal agencies and departments have issued regulations or other directives to implement this bar on discrimination. The new executive order is intended to restate and make uniform across the executive branch the pre-existing policy prohibiting discrimination based on sexual orientation in federal civilian employment. I am writing to provide guidance on the intent behind this order.

**Definition of Sexual Orientation**

It is intended that the term "sexual orientation" have the common meaning stated in the Employment Non-Discrimination Act, "homosexuality, bisexuality, or heterosexuality."

**Responsibilities of Agencies**

The purpose of Executive Order 13087 is to confirm and make uniform the existing bar on discrimination based on sexual orientation by amending Section 1 of Executive Order 11478 to add sexual orientation to the categories for which discrimination has been expressly prohibited. Executive Order 13087 does not authorize affirmative action policies, such as recruitment, reporting, or goal-setting based on sexual orientation. As a result of this executive order, it is not intended that agencies take steps to determine the sexual orientation of current or prospective employees or to keep tallies regarding the sexual orientation of current or prospective employees.

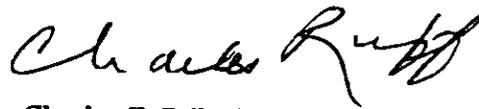
Hon. Janice R. Lachance  
July 22, 1998  
Page 2

### **Procedures for Enforcing Prohibition**

The executive order does not create any rights to file a complaint alleging discrimination on the basis of sexual orientation with a court or with the EEOC. The order leaves intact the current procedures for dealing with such complaints. An employee who believes he or she has suffered adverse action may seek redress under procedures now available within each agency. The order does not authorize appeals of agency actions to the EEOC.

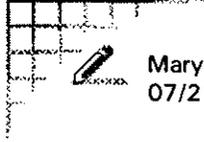
The President appreciates your assistance in furthering the policy of this important order. OPM can play a useful role in informing federal employees about applicable procedures, including the way in which claims may be raised by individual employees. Please let me know if you have any questions about the meaning or appropriate implementation of Executive Order 13087.

Sincerely,



Charles F.C. Ruff  
Counsel to the President

gayles - antidiscrimination executive order



Mary L. Smith  
07/21/98 12:17:01 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Thomas L. Freedman/OPD/EOP

cc:

Subject: Sexual orientation executive order

WH Counsel's office, EEOC, DOJ, and OPM had a meeting today to discuss the executive order. It seems that Bill Lann Lee's testimony last week raised some concerns because he could not answer some questions, and he is testifying again tomorrow. In addition, there are confirmation hearings for the EEOC on Thursday. WH Counsel's office proposed sending a letter from Chuck Ruff to OPM to clarify the President's intent in the executive order, specifically with respect to the definition of "sexual orientation," that the EEOC will not be enforcing discrimination claims based on sexual orientation, and that this order does not mandate any affirmative action policy. They are going to try to send the letter out today -- I will show you a draft when I get it.

**FACT SHEET**  
**Revised July 14, 1998**

**EFFORTS TO REPEAL EXECUTIVE ORDER ISSUED MAY 28, 1998  
PROHIBITING DISCRIMINATION IN THE FEDERAL CIVILIAN  
WORKFORCE BASED ON SEXUAL ORIENTATION**

**Background:**

- Executive Order 13087 was issued on May 28, 1998. It amends an earlier executive order, Executive Order 11478. It restates the pre-existing policy of the Executive Branch of the Federal Government to prohibit discrimination based on sexual orientation in federal civilian employment.
- Representative Hefley of Colorado and others have indicated that they will attempt to amend the Treasury/Postal appropriations bill to prohibit the use of federal funds to implement, enforce or administer the Executive Order. The Administration opposes this effort.

**What exactly does the Executive Order provide?**

- The Executive Order will ensure that there is a uniform policy throughout the Federal Government by adding sexual orientation to the list of categories (i.e. race, color, religion, sex, national origin, handicap, or age) for which discrimination is prohibited in hiring, firing and promotion in the civilian federal workforce, as provided for in Executive Order 11478.
- This policy is about basic fairness, not about "special rights."

**Does this affect affirmative action policy or create special treatment for certain groups?**

- No. Executive Order 13087 does not mandate affirmative action based on sexual orientation. It does not allow preferential treatment. It does not require that agencies find out which of their employees are gay, or how many gay employees they have hired. There are not quota programs in place for federal civilian hiring, and Executive Order 13087 does not create one. Executive Order 13087 does not require reporting of sexual orientation, quotas, or any affirmative action program based on sexual orientation.

**Is this a new policy?**

- No. It has always been the practice of this Administration to prohibit discrimination in employment based on sexual orientation in the civilian workforce, and most federal agencies and department have taken actions, such as the issuance of policy directives or

memoranda from the agency heads, to memorialize that policy. The Executive Order states this policy uniformly and for the first time in an Executive Order of the President.

- Moreover, federal law has for a long time provided that discrimination in federal civilian employment based upon sexual orientation is a prohibited personnel practice if it is found that sexual orientation did not adversely affect the performance of the employee. [Title 5 of the U.S. Code, section 2302(b)(10) prohibits “discriminat[ion] for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others.”]
- As far back as 1980, OPM has issued its interpretation of existing federal law stating that “applicants and employees are to be protected against inquiries into, or actions based upon, non-job-related conduct, such as religious, community, or social affiliations, or sexual orientation.”

**If this is not a new policy, why was an Executive Order necessary?**

- The Executive Order states a uniform policy throughout the Executive Branch of the Federal Government.

**What impact does this have on the uniformed military service?**

- None. This order does not apply to the uniformed military service.

**What, if any, enforcement rights are granted?**

- This Executive Order states Administration policy but does not create any new enforcement rights. Those rights would be granted by legislation passed by the Congress, such as the Employment Non-Discrimination Act, which the President supports.

**What is the authority for the President to issue this executive order?**

- Presidents since George Washington have directed Executive Orders to their employees in the Executive Branch. In 1966, Congress specifically authorized the President to “prescribe regulations for the conduct of employees in the executive branch.” 5 U.S.C. § 7301. Presidents have frequently exercised that authority over the federal workforce, issuing scores of Executive Orders. This particular Order by President Clinton amends Executive Order 11478, issued in 1969 by President Nixon, barring federal employees from discriminating based on race, color, religion, sex, national origin, handicap or age. The same authority that supported that Order supports this one. President Reagan issued Executive Order 12564, requiring a drug-free federal workplace, and Executive Order 12353, governing charitable fundraising by federal employees. President Bush issued Executive Order 12674, setting forth principles of ethical conduct for government

employees. It would be nonsensical to contend that the President can regulate the ethical conduct of federal employees, that he can prescribe standards for fundraising and require drug testing, but cannot instruct federal employees to refrain from discriminating on the basis of sexual orientation.

**What is the meaning of the phrase “sexual orientation?”**

- The President intends the term to have the common meaning stated in the Employment Non-Discrimination Act, “homosexuality, bisexuality, or heterosexuality.” With regard to all these issues, as this is the President’s order, the President’s intent informs the meaning of the executive order. See Sea-Land Service, Inc. v. Interstate Commerce Commission, 738 F.2d 1311, 1314 (D.C. Cir. 1984) (“The ‘law’ at issue in this instance is an Executive Order promulgated by the President, and it is to his intent that we must turn for guidance . . .”).

**Is this an attempt to legislate by executive order?**

- This executive order does not amend Title VII or create new rights or remedies for discrimination based on sexual orientation. It is the role of Congress, and not the Executive Branch, to amend federal statutes.
- Unlike Title VII, which applies to employers generally, including private employers, Executive Order 13087 merely sets internal employment policy for the Executive Branch.

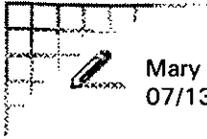
**Would the executive order require federal contractors or state and local governments to hire gays?**

- This executive order applies only to employees of the Executive branch; it does not apply to federal contractors or grant recipients. Federal contractors are not “employees” of the Federal government.

**Is there public support for the Executive Order?**

- Recent national polls by Newsweek and the Associated Press indicate that between 84-85% of Americans favor equal rights for gay people in the workplace.
- The proposed federal legislation on this topic, the Employment Non-Discrimination Act, enjoyed strong bipartisan support in the 104th Congress, with 49 Senators voting for it and 139 House cosponsors. In addition, a majority of House Members and over two-thirds of the Senate have specifically indicated that sexual orientation was not a consideration in their own employment practices.

gay/les - antidiscrimination executive order



Mary L. Smith  
07/13/98 07:33:12 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Thomas L. Freedman/OPD/EOP, Laura Emmett/WHO/EOP  
Subject: Floor fight on sexual orientation executive order

The Hefley amendment, which tries to block any funding for enforcement of the sexual orientation executive order, will probably come up for a vote later in the week. We met with the Human Rights Campaign and Martha Foley last week, who both thought this would be a close vote. Richard Socarides and others thought that a legal letter would help some of the undecided folks join in opposing the Hefley amendment.

Richard asked the counsel's office to draft a letter which essentially is a legal opinion that refutes the Republican arguments on the executive order, e.g. that the President exceeded his power, etc. Below is a draft.

The current draft of the letter says that the President would veto the bill. We need to decide whether to send this letter and from whom it would come (Chuck Ruff?). Let us know

----- Forwarded by Mary L. Smith/OPD/EOP on 07/13/98 07:02 PM -----



Robert N. Weiner

07/13/98 12:46:20 PM

Record Type: Record

To: Mary L. Smith/OPD/EOP  
cc:  
Subject: Re: Bullets on sexual orientation executive order



NEW.WP This is still rough.

gay/les - antidiscrimination exec  
order

July \_\_, 1998

The Honorable \_\_\_\_\_  
United States House of Representatives  
Washington, D.C.

Dear Congressman \_\_\_\_\_:

I am writing to state the Administration's vigorous opposition to the amendment offered by Congressman Hefley to H.R. 4104, the Treasury and General Government Appropriations bill for 1999. The Amendment is an effort to legitimize discrimination by the United States government against its own citizens simply based on their sexual orientation. This Administration will not tolerate such gross unfairness, and neither will the American people. If this Amendment is adopted, the President's senior advisers will recommend that he veto the bill.

The Amendment seeks to prevent the Administration from spending any funds to implement, administer or enforce Executive Order 13087, which the President issued on May 28, 1998. That order amends Executive Order 11478, which bars discrimination by the federal government based on race, color, religion, sex, national origin, handicap or age. The amendment merely adds sexual orientation to the list of prohibited bases of discrimination.

The arguments mustered against this Executive Order are spurious. First, the Order confers no "special rights." It bars the Government from discriminating. The right to be free from governmental discrimination is not a special right. It is the inalienable right of every American. No one should be denied a job based on attributes that have nothing to do with their ability.

Second, the wild claims that have been made about what this Executive Order means are false and distorted. The Order is clear. Plainly and simply, it bars discrimination based on sexual orientation in the federal civilian workforce. It does not mandate affirmative action based on sexual orientation. It does not allow preferential treatment. It does not require that agencies find out which of their employees are gay, or how many gay employees they have hired. It does not cover federal contractors. And -- to confront the most irresponsible charges -- it does not authorize sexual misconduct in the workplace. Sexual orientation has the commonly understood meaning stated in the Employment Non-Discrimination Act of 1995, "homosexuality, bisexuality, or heterosexuality." These false issues should be forever laid to rest. This is the President's order, and the President's intent as to what it means is conclusive. See Sea-Land Service, Inc. V. Interstate Commerce Commission, 738 F.2d 1311, 1314 (D.C. Cir. 1984) ("The 'law' at issue in this

instance is an Executive Order promulgated by the President, and it is to his intent that we must turn for guidance . . . ”).

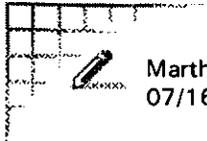
Third, this order does not reflect any new policy and creates no new law. The Civil Service law, enacted in 1978, prohibits “discrimination for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others.” 5 U.S.C. 2302(b)(10). In 1980, the Office of Personnel Management interpreted this law to mean what it clearly said, “applicants and employees are to be protected against inquiries into, or actions based upon, non-job-related conduct, such as religious, community, or social affiliations, or sexual orientation.” OPM reiterated this interpretation in 1994 and 1997. Most federal agencies and departments have issued regulations, policy directives, or memoranda from agency heads to implement this law. All President Clinton’s Executive Order does is make the policy uniform for the entire civilian federal workforce.

Fourth, the President unquestionably has the power to issue this Order. Presidents since George Washington have directed Executive Orders to their employees in the Executive Branch. In 1966, Congress specifically authorized the President to “prescribe regulations for the conduct of employees in the executive branch.” 5 U.S.C. § 7301. Presidents have frequently exercised that authority over the federal workforce, issuing scores of Executive Orders. This particular Order by President Clinton amends Executive Order 11478, issued in 1969 by President Nixon, barring federal employees from discriminating based on race, color, religion, sex, national origin, handicap or age. The same authority that supported that Order supports this one. President Reagan issued Executive Order 12564, requiring a drug-free federal workplace, and Executive Order 12353, governing charitable fundraising by federal employees. . President Bush issued Executive Order 12674, setting forth principles of ethical conduct for government employees. It would be nonsensical to contend that the President can regulate the ethical conduct of federal employees, that he can prescribe standards for fundraising and require drug testing, but cannot instruct federal employees to refrain from discriminating on the basis of sexual orientation.

When we strip away all these specious arguments, the sole remaining basis for this appropriations rider is prejudice. That is not an appropriate basis for legislation. We will oppose this effort to sanction discrimination by the federal government.

Sincerely,

97 927/63 - anti-discrimination executive order



Martha Foley  
07/16/98 09:56:26 AM

Record Type: Record

To: Mary L. Smith/OPD/EOP

cc: See the distribution list at the bottom of this message

Subject: Re: Final talking points on sexual orientation executive order

Barney Frank told me last night that Hefley has agreed to offer his amendment on Commerce Justice State (up next week) and NOT on Treasury Postal today. I want to reconfirm that. Then we should modify the talking points to reflect the different vehicle.

Karen -- can you call me on this?

Message Copied To:

---

Bruce N. Reed/OPD/EOP  
Elena Kagan/OPD/EOP  
Karen Tramontano/WHO/EOP  
Robert N. Weiner/WHO/EOP  
Thomas L. Freedman/OPD/EOP  
William P. Marshall/WHO/EOP  
Lisa Zweig/OMB/EOP  
Edward W. Correia/WHO/EOP  
Richard Socarides/WHO/EOP  
Cathy R. Mays/OPD/EOP  
Laura Emmett/WHO/EOP

gay/les - anti-discrimination executive order

Richard Socarides 07/06/98 04:01:02 PM

---

Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: Challenge to Clinton's Executive Order

----- Forwarded by Richard Socarides/WHO/EOP on 07/06/98 04:05 PM -----



Doug.Case@sdsu.edu  
07/01/98 04:22:00 PM

Record Type: Record

To: Stuart D. Rosenstein, Richard Socarides  
cc:  
Subject: Challenge to Clinton's Executive Order

From Family Research Council's CultureFacts Newsletter, July 1, 1998:

**A Challenge to Clinton**

House Republicans will challenge President Clinton's executive order adding sexual orientation to existing affirmative action mandates in the federal civil service (see CF Vol. 1, No 18, June 3, 1998). When the House returns after the July recess, Rep. Joel Hefley (R-CO) will sponsor a floor amendment to the Treasury Postal Appropriations bill to prohibit federal funds from being used to enforce it. Along with GOP Reps. Tom Delay (TX), Robert Aderholt (AL) and John Hostettler (IN), Hefley circulated a "Dear Colleague" letter calling for support for the amendment. Shortly afterward, GOP Reps. Chris Shays (CT), Connie Morella (MD), Nancy Johnson (CT), and openly homosexual Rep. Jim Kolbe (AZ) responded with a "Dear Colleague" letter opposing the amendment.

\*\*\*\*\*

This message has been distributed as a free, nonprofit informational service, to those who have expressed a prior interest in receiving this information for non-profit research and educational purposes only. Please do not publish, or post in a public place on the Internet, copyrighted material without permission and attribution. (Note: Press releases are fine to reprint. Don't reprint wire stories, such as Associated Press stories, in their entirety unless you subscribe to that wire service.) Forwarding of this material should not necessarily be construed as an

gay/les - anti-discrimination exec order

**Richard Socarides** 07/07/98 10:30:39 AM

---

Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: GOP Tries To Stop Clinton's Ban on Discrimination of Gays

----- Forwarded by Richard Socarides/WHO/EOP on 07/07/98 10:34 AM -----



**Doug.Case @ sdsu.edu**  
07/07/98 01:58:00 AM

Record Type: Record

To: Stuart D. Rosenstein, Richard Socarides  
cc:  
Subject: GOP Tries To Stop Clinton's Ban on Discrimination of Gays

Scripps Howard News Service, July 7, 1998  
GOP Tries To Stop Clinton's Ban on Discrimination of Gays  
By JOAN LOWY

WASHINGTON -- Republican lawmakers will attempt next week to approve legislation preventing President Clinton from implementing his recent executive order barring discrimination against gays and lesbians in the federal workplace.

The Republican effort follows controversial remarks by several GOP leaders regarding homosexuality and sets the stage for a showdown between conservatives and the president over gay rights just four months before the midterm election.

Rep. Joel Hefley, R-Colo., with the backing of GOP leaders, plans to offer an amendment to an annual spending bill that would prevent federal agencies from spending any money to implement the anti-discrimination policy. The bill is expected to be one of the first measures the House takes up when lawmakers return to work.

Clinton said in May that he was expanding an existing executive order signed in 1969 by President Richard Nixon to include a ban on discrimination based on sexual orientation in the federal civilian workforce. Nixon's order already prohibited discrimination based on race, religion, color, sex, national origin, handicap or age.

Most federal agencies already have policies banning discrimination against gays and lesbians in hiring, but Clinton said the executive order would bring a uniformity to those policies.

"There are all kinds of laws on the books to protect against discrimination in employment, we shouldn't be creating a protected class," Hefley said. "When you do that, invariably you get quota systems and all kinds of things."

Rebecca Isaacs, political director of the National Gay and Lesbian Task Force, rejected the assertion that adding sexual orientation to federal non-discrimination policies creates a "special right" for homosexuals, as critics of the policy contend.

"There is nothing special about equal rights and being free from discrimination," Isaacs said. Nor would the policy create hiring quotas for gays and lesbians as critics claim, she said.

"Have they noticed any other quotas? The brazen lying doesn't seem to phase [sic] them at all. They are completely dishonest," Isaacs said.

Hefley also said he believes Clinton was misusing his power to issue executive orders. He said he wasn't familiar enough with Nixon's order to say if that also was an inappropriate use of power.

The debate arises at a time when Republican congressional leaders are under pressure from Religious Right activists to more vigorously pursue a conservative social agenda.

Republican leaders are refusing to allow a vote to confirm philanthropist James Hormel, who is gay, to be ambassador to Belgium, even though he clearly has the support of a majority of senators.

Senate Republican leader Trent Lott of Mississippi provoked a national controversy recently when he told a conservative radio talk-show host that he considers homosexuality to be a sin and likened it to psychological illnesses like kleptomania. Similar comments were made by other GOP leaders, including Senate Republican Whip Don Nickles of Oklahoma and House Republican leader Dick Armey of Texas.

Lott was scolded for his comments by Democrats and some moderate Republicans, but he was applauded by conservatives.

"I believe the Bible defines this practice as a sin," Lott explained in a recent column distributed to newspapers. "I know from the thousands of calls my office has received from Mississippians and others across the country that most Americans overwhelmingly share my view on this subject.

"There is a philosophy in our society today that suggests individuals can define what is right and wrong for themselves," Lott continued. "But in my view right and wrong is ultimately outlined by our maker, not individuals."

Gay rights activists accuse GOP leaders of gay-bashing in order to energize conservative Christian voters whom they need to turn out in strong numbers on election day in order to retain control of the House.

"This shows what a stranglehold the right wing has on the House and Senate Republican leadership," said Winnie Stachelberg, political director of the Human Rights Campaign, a leading gay rights group.

Said Isaacs: "Gay people are not allowed to live in peace and work on merit and live their lives without interference from these folks, who are really scary."

The Family Research Council, a leading religious right lobbying group, labeled the Hefley amendment an "urgent pro-family vote" in a recent flyer, urging lawmakers to "oppose funding for special privileges for homosexuals."

"Why is there this constant drumbeat that the federal government, or different levels of government, are supposed to put their seal of approval on a type of activity (homosexuality) when many people personally feel it is wrong?" said Marty Dannenfels, the council's chief lobbyist.

A close vote is expected on the amendment. A majority of the House, including 70 Republicans, have signed pledges not to discriminate against gays and lesbians in their congressional offices.

gayles - anti-discrimin exec order

Richard Socarides 07/08/98 08:52:36 AM

---

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Conservatives vow effort to undo directive on gays

----- Forwarded by Richard Socarides/WHO/EOP on 07/08/98 08:56 AM -----



GSS1 @ aol.com  
07/08/98 02:43:00 AM

Record Type: Record

To: Richard Socarides

cc:

Subject: Conservatives vow effort to undo directive on gays

WASHINGTON TIMES, July 7, 1998

(<http://www.washtimes.com/>)

Conservatives vow effort to undo directive on gays

By Sean Scully

THE WASHINGTON TIMES

Christian activists say they will launch a major effort when the House returns to Washington to overturn President Clinton's executive order banning discrimination against homosexuals. "It gives the stamp of U.S. government approval to behavior that is immoral and destructive to individuals, families and communities," said Robert H. Knight, director of cultural studies for the conservative Family Research Council. "The government simply can't facilitate this immorality without opposition."

In May, Mr. Clinton issued an executive order adding sexual orientation to the federal government's nondiscrimination policy. Some individual federal agencies had already adopted such a policy, but it was not consistent across the executive branch. "Individuals should not be denied a job on the basis of something that has no relationship to their ability to perform their work," Mr. Clinton said at the time. The previous policy, established by President Nixon, banned discrimination based on race, color, religion, sex, national origin, disability or age.

Some members of Congress objected to Mr. Clinton's directive, on both moral and constitutional grounds, saying the president had exceeded his authority. When the House returns on July 14, it will confront a proposal by Rep. Joel Hefley, Colorado Republican, to undo the order. Mr. Hefley sponsored an amendment to the Treasury Department appropriation bill that would forbid the

federal government to spend any money to enforce the president's executive order -- in effect, nullifying it. "We hope we are moving in this country toward a time when there will be no need to grant special rights and privileges to any group over any other," Mr. Hefley and three other members wrote in a June letter supporting the amendment. "While we do not support discrimination, we also do not believe in giving special protected status because of sexual orientation or for most other reasons."

Homosexual rights groups say they are launching an equally vigorous effort to defend the president's order. Wayne Besen, spokesman for the Human Rights Campaign, calls the order a "good-government measure" because it streamlines and clarifies the former patchwork of agency policies. "Some of the opponents are trying to demagogue this issue to score political points," he said. "If the truth means anything, this political football won't have any air in it."

Opposition to the executive order comes at a time when congressional Republicans are increasingly vocal about homosexual issues. In June, Senate Majority Leader Trent Lott, Mississippi Republican, compared homosexuality to kleptomania and alcoholism. "You should not try to mistreat [homosexuals] or treat them as outcasts," Mr. Lott said in a TV interview. "You should try to show them a way to deal with that problem, just like alcohol ... or sex addiction ... or kleptomaniacs." House Majority Leader Dick Armey, Texas Republican, promptly came out in support of his colleague, saying "The Bible is very clear on this."

The Senate, meanwhile, is locked in a battle over homosexual activist James C. Hormel, heir to the meat-packing company fortune and Mr. Clinton's nominee to become ambassador to Luxembourg. Senate leaders, including Mr. Lott, have refused to allow a vote on the nomination, saying Mr. Hormel's advocacy of homosexual causes makes him an inappropriate representative of the United States. "There is a philosophy in our society today that suggests individuals can define what is right and wrong for themselves," Mr. Lott wrote in a recent newspaper column. "But in my view, right and wrong is ultimately outlined by our maker, not individuals."

Democrats and homosexual advocates have seized on the GOP positions, saying they show the disproportionate influence of the religious right. GOP leadership "has decided in order to mobilize its base in the upcoming election, it's going to have to throw some red meat," Mr. Besen said, predicting the strategy would backfire.

But conservatives say the Democratic strategy is risky. Mr. Knight said Americans are uncomfortable protecting homosexuality on the same level as race or ethnicity. "I think [the Democrats] are so far out of touch. ... They don't realize how odd their views would seem to the average American," Mr. Knight said.

Gay/Les - Antidiscrimination exec order

Richard Socarides 06/26/98 03:26:50 PM

---

Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: Hefley upset by order on gays

----- Forwarded by Richard Socarides/WHO/EOP on 06/26/98 03:30 PM -----



Doug.Case @ sdsu.edu  
06/25/98 06:37:00 PM

Record Type: Record

To: Stuart D. Rosenstein, Richard Socarides  
cc:  
Subject: Hefley upset by order on gays

DENVER POST, June 25, 1998  
(<http://www.denverpost.com>)

Hefley upset by order on gays

By Marilyn Robinson  
Denver Post Staff Writer

U.S. Rep. Joel Hefley, a Colorado Springs Republican, introduced legislation on Wednesday to neutralize, at least in part, an executive order issued last month by President Clinton that Hefley says gives homosexuals special status as a protected class throughout the federal government.

Hefley announced in a news release the amendment to the 1999 Treasury-Postal Appropriations bill. The amendment would prevent any of the funds appropriated in the bill to be used "to implement, administer or enforce" the executive order.

It doesn't affect other appropriations.

The order, signed by the president on May 28, protects homosexual federal workers from job discrimination.

"Bill Clinton has added a new category to the nation's civil rights laws," Hefley said. "With this action, the president effectively established institutional quotas for homosexual employees."

His amendment would "neutralize this order," Hefley announced.

"Apparently Bill Clinton has decided to rule by executive order," Hefley said in the release. "Last time I checked, amending federal law was Congress' job, and not the role of the executive branch. This is not the time to carve out additional protected classes of people. Current law is sufficient to protect against discrimination."

A White House spokeswoman called the amendment a continuation of comments

made recently by Sen. Trent Lott, R-Miss.

"This is about discrimination," said Nanda Chitre, the spokeswoman. "If this is what the Republicans want to focus on, we're willing to engage on this issue because we are anti-discrimination."

Ken Alford, Hefley's Democratic opponent in the 5th Congressional District this November, supported the president.

"I would have to support something that prevents discrimination, even for sexual orientation," Alford said.

"I doubt that it's an attempt to overthrow the civil rights laws."

"Individuals should not be denied a job on the basis of something that has no relationship to their ability to perform their work," Clinton said in a statement accompanying the order.

Gay and lesbian political activists heralded the move for adding sexual orientation to the list of categories for which discrimination is illegal. The others are race, color, religion, sex, national origin, disabilities and age.

Clinton's order amended the 1979 executive order signed by President Nixon, according to Hefley's press aide, Leigh LaMora. The effect of the order extends beyond just federal workers, LaMora said.

"It does affect non-federal employees because it becomes a condition of receiving federal grants," she said.

Chitre disagreed.

"The order did not create any new rights," she said. "It does not apply to federal contractors."

The order merely formalizes an administration policy that has been in effect since 1993, Chitre said.

\*\*\*\*\*

This message has been distributed as a free, nonprofit informational service, to those who have expressed a prior interest in receiving this information for non-profit research and educational purposes only. Please do not publish, or post in a public place on the Internet, copyrighted material without permission and attribution. (Note: Press releases are fine to reprint. Don't reprint wire stories, such as Associated Press stories, in their entirety unless you subscribe to that wire service.) Forwarding of this material should not necessarily be construed as an endorsement of the content. In fact, sometimes messages from anti-gay organizations are forwarded as "opposition research."

**Richard Socarides** 06/26/98 03:27:14 PM

---

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Unprecedented Attacks On Gay And Lesbian Americans Continue

----- Forwarded by Richard Socarides/WHO/EOP on 06/26/98 03:30 PM -----



**Doug Case @ sdsu.edu**

06/26/98 02:00:00 AM

Record Type: Record

To: Stuart D. Rosenstein, Richard Socarides

cc:

Subject: Unprecedented Attacks On Gay And Lesbian Americans Continue

FOR IMMEDIATE RELEASE

CONTACT: Lina Garcia

June 25, 1998

202/863-8054

#### NEWS FROM THE DEMOCRATIC NATIONAL COMMITTEE

#### THE GAY-BASHING GOP CONGRESS OUT FOR MORE

Unprecedented Attacks On Gay And Lesbian Americans Continue

Washington, DC--The far right wing of the GOP intensified its attacks on gays and lesbians today as they threatened to nullify an Executive Order signed by President Clinton prohibiting discrimination based on sexual orientation in the federal civilian workforce.

The Executive Order, issued last month, added sexual orientation to the list of protected categories for which discrimination is already prohibited in the federal civilian workforce. The Order makes uniform previous policy directives already in place in some agencies and departments. The Executive Order does not create any new enforcement rights.

"I am sickened by the determination of the Republican Party to continue bashing gay Americans," said DNC National Chair Steve Grossman, "What they forget is that we are living in an America where 80 percent of the public believes that citizens should not be discriminated against on the basis of sexual orientation." [Pollster - the Tarrance Group, 1997]

"This Republican Party is getting out of hand. They are unwilling to pass

legislation to strengthen public education, to secure a patient's bill of rights, or to keep kids away from cigarettes" said DNC General Chair Roy Romer, "but they are sure willing to deny hard working men and women equal opportunity on the job."

Four Republican Members of Congress are attempting to garner support for an amendment by distorting the meaning and significance of the Executive Order. House Majority Whip Tom Delay (TX), Joel Hefley (CO), Joe Aderholt (AL), and John Hostettler (IN) have begun a campaign of lies to undermine the order.

"The Republicans are not listening to the people. Americans are tired of seeing their neighbors beat up -- on the streets and in the Chambers of Congress." said DNC Executive Committee Member and Chair of DNC Gay and Lesbian American Caucus, Jean O'Leary. "The public wants more from their leaders-safe streets, good schools, affordable health care and a place where all Americans -- including gays and lesbians -- have equal opportunity for success and happiness."

The attempt comes a day after the President called on Congress to pass legislation including broader and more strict enforcement of hate crime laws. The President's proposed legislation would expand existing hate crime laws to include crimes based on sexual orientation.

# # #

gay/les - antidiscrimination  
exec order

Richard Socarides 06/24/98 06:25:07 PM

Record Type: Record

To: Richard Socarides/WHO/EOP  
cc: See the distribution list at the bottom of this message  
bcc:  
Subject: Re: Amendment to Treasury/Postal repealing Non-Discrimination Executive Order 

I have the letter now, pretty serious, signed by Hefley, DeLay, Aderholt and Hostettler. I will circulate now.

Richard Socarides 06/24/98 05:45:17 PM

Richard Socarides 06/24/98 05:45:17 PM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: See the distribution list at the bottom of this message  
Subject: Amendment to Treasury/Postal repealing Non-Discrimination Executive Order

I understand that Cong. Hefley of Colorado is circulating a dear colleague letter indicating that he plans to introduce an amendment to Treasury-Postal approps repealing the President's Non Discrimination Executive Order of May 28, which banned sexual orientation discrimination in the federal civilian workforce. When is the bill up? Tomorrow?

Message Sent To:

Janet Murguia/WHO/EOP  
Charles M. Brain/WHO/EOP  
Dario J. Gomez/WHO/EOP  
Martha Foley/WHO/EOP  
Michael Deich/OMB/EOP  
Charles E. Kieffer/OMB/EOP

Message Copied To:

Bruce N. Reed/OPD/EOP  
Elena Kagan/OPD/EOP  
Thomas L. Freedman/OPD/EOP  
Virginia Apuzzo/WHO/EOP  
Tracey E. Thornton/WHO/EOP  
Karen Tramontano/WHO/EOP  
Mary L. Smith/OPD/EOP

Message Copied To:

gay/les - fed employees  
exec order

Richard Socarides 05/29/98 04:42:19 PM

---

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Bauer asks Congress to repeal Clinton executive order

----- Forwarded by Richard Socarides/WHO/EOP on 05/29/98 04:43 PM -----



Doug Case @ sdsu.edu

05/29/98 05:08:00 PM

Record Type: Record

To: Stuart D. Rosenstein, Richard Socarides

cc:

Subject: Bauer asks Congress to repeal Clinton executive order

**Bauer Calls on Congress to Rescind 'Outrageous' Clinton Order Dictating Affirmative Action for Homosexuals**

WASHINGTON, May 29 /PRNewswire/ -- "President Clinton's order mandating affirmative action on the basis of homosexuality should be rescinded by an act of Congress," said Family Research Council President Gary L. Bauer. "It discriminates against people with traditional views of sexual morality, and lends the prestige of the U.S. Government to promotion of homosexuality.

"This will affect not only all federal employees but possibly anyone who receives a federal grant or contract with the federal government. In other words, it will force a special preference for homosexuality into government and private workplaces," said Bauer.

The executive order signed by Bill Clinton on May 28 adds "sexual orientation" to an earlier executive order, No. 11478, which mandates affirmative action programs for federal employees. "By choosing to amend an affirmative action order, the President is tipping his hand to the real agenda, which is to use government power to force acceptance of homosexuality on everyone, regardless of their most deeply held beliefs," continued Bauer. "This creates a special advantage in employment for people who are defined solely by engaging in behavior that most people and all major religions declare to be immoral and destructive. This outrageous power grab should be swiftly dealt with by Congress.

"Homosexuality is not a civil right. It's not like skin color, or ethnicity or place of birth. It is defined by conduct, which is subject to moral concerns," said Bauer.

"Perhaps we should not be surprised that this president is passionate about crippling the ability of employers -- in this case, the taxpayers -- to take character into account in personnel matters. This same President tore up President Reagan's executive order on the family. Now he is demanding that all federal employees pretend that personal conduct is meaningless, that character is irrelevant, and that homosexuality is a plus for getting a job," said Bauer.

SOURCE Family Research Council

\*\*\*\*\*

This message has been forwarded as a free informational service. Please do not publish, or post in a public place on the Internet, copyrighted material without permission and attribution. (Note: Press releases are fine to reprint. Don't reprint wire stories, such as Associated Press stories, in their entirety unless you subscribe to that wire service.) Forwarding of this material should not necessarily be construed as an endorsement of the content. In fact, sometimes messages from anti-gay organizations are forwarded as "opposition research."

gay/les - anti-discrim  
exec order

**Richard Socarides** 05/19/98 04:20:43 PM

---

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Mary L. Smith/OPD/EOP, Thomas L. Freedman/OPD/EOP  
Subject: Non Discrimination Executive Order

OK, scratch the previous message (reprinted below). OPM has previously advised of their view that as a prohibited personnel practice, sexual orientation discrimination claims have some remedies through the Merit System Protection Board and the Office of Special Counsel as it now stands, so they certainly would not have any less after the EO. That's the answer I think we needed to proceed.

Bruce, you told me you thought we should do this the last week of May after Congress goes out. I'd like to raise with John P. the timing of this for next week. You will recall that when we last visited this, the agreement was that we would do it in April or May.

OK w/ DPC to proceed as outlined?

----- Forwarded by Richard Socarides/WHO/EOP on 05/19/98 03:47 PM -----

**Richard Socarides** 05/15/98 02:18:24 PM

---

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Mary L. Smith/OPD/EOP, Thomas L. Freedman/OPD/EOP  
Subject: Non Discrimination Executive Order

I am assuming the plan is still to do this the week after next. We could really use it. As I mentioned, I think OMB should send it over to EEOC for a quick look and to answer the question: What procedures are in place now or what types of procedures should be implemented to enforce the requirements of the order relating to sexual orientation. We will get this question and it would be good to have their answer ready. Thanks.

Enjoying the tobacco wars?

WHITE HOUSE STAFFING MEMORANDUM

Date: 5/28/98 ACTION / CONCURRENCE / COMMENT DUE BY: 5/28/98 2:00 PM

Subject: EQUAL EMPLOYMENT OPPORTUNITY EO STATEMENT

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McCURRY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BOWLES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McGINTY	<input type="checkbox"/>	<input type="checkbox"/>
McLARTY	<input type="checkbox"/>	<input type="checkbox"/>	NASH	<input type="checkbox"/>	<input type="checkbox"/>
PODESTA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REED	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MATHEWS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RUFF	<input type="checkbox"/>	<input type="checkbox"/>
RAINES	<input type="checkbox"/>	<input type="checkbox"/>	SMITH	<input type="checkbox"/>	<input type="checkbox"/>
BEGALA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SOSNIK	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BERGER	<input type="checkbox"/>	<input type="checkbox"/>	SPERLING	<input type="checkbox"/>	<input type="checkbox"/>
BLUMENTHAL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	STEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ECHAVESTE	<input type="checkbox"/>	<input type="checkbox"/>	STERN	<input type="checkbox"/>	<input type="checkbox"/>
EMANUEL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	STRETT	<input type="checkbox"/>	<input type="checkbox"/>
GIBBONS	<input type="checkbox"/>	<input type="checkbox"/>	VERVEER	<input type="checkbox"/>	<input type="checkbox"/>
IBARRA	<input type="checkbox"/>	<input type="checkbox"/>	WALDMAN	<input type="checkbox"/>	<input type="checkbox"/>
KLAIN	<input type="checkbox"/>	<input type="checkbox"/>	YELLEN	<input type="checkbox"/>	<input type="checkbox"/>
LEWIS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>RICHARD SOCARIDES</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LINDSEY	<input type="checkbox"/>	<input type="checkbox"/>	<u>VIRGINIA APUZZO</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MARSHALL	<input type="checkbox"/>	<input type="checkbox"/>	<u>ELENA KAGAN</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

COMMENTS TO STAFF SEC.

RESPONSE:

'98 MAY 27 PM9:11

DRAFT

THE WHITE HOUSE  
Office of the Press Secretary

---

For Immediate Release

May 28, 1998

Statement by the President

Today I have signed Executive Order \_\_\_\_\_ entitled *Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government*. The Order provides a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation in the federal civilian workforce and states that policy for the first time in an Executive Order of the President.

It has always been the practice of this Administration to prohibit discrimination in employment based on sexual orientation in the civilian workforce, and most federal agencies and department have taken actions, such as the issuance of policy directives or memoranda from the agency heads, to memorialize that policy. The Executive Order I have signed today will ensure that there is a uniform policy throughout the Federal Government by adding sexual orientation to the list of ~~protected~~ categories for which discrimination is prohibited in Executive Order 11478 (i.e. race, color, religion, sex, national origin, handicap, or age).

This Executive Order states Administration policy but does not and cannot create any new enforcement rights (such as the ability to proceed before the Equal Employment Opportunity Commission). Those rights can be granted only by legislation passed by the Congress, such as the Employment Non-Discrimination Act. I again call upon Congress to pass this important piece of civil rights legislation which would extend these basic employment discrimination protections to all gay and lesbian Americans. Individuals should not be denied a job on the basis of something that has no relationship to their ability to perform their work.

-30-30-30-

Kagan 6-5584  
Socarides 6-1611

WHITE HOUSE STAFFING MEMORANDUM

Date: 5/28 ACTION / CONCURRENCE / COMMENT DUE BY: 6/1

Subject: Proposed EO - Participation of Asian Americans in Fed'l Program

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McCURRY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BOWLES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McGINTY	<input type="checkbox"/>	<input type="checkbox"/>
McLARTY	<input type="checkbox"/>	<input type="checkbox"/>	NASH	<input type="checkbox"/>	<input type="checkbox"/>
PODESTA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REED	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MATHEWS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RUFF	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LEW	<input type="checkbox"/>	<input type="checkbox"/>	SMITH	<input type="checkbox"/>	<input type="checkbox"/>
BEGALA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SOSNIK	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BERGER	<input type="checkbox"/>	<input type="checkbox"/>	SPERLING	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BLUMENTHAL	<input type="checkbox"/>	<input type="checkbox"/>	STEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ECHAVESTE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	STERN	<input type="checkbox"/>	<input type="checkbox"/>
EMANUEL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	STRETT	<input type="checkbox"/>	<input type="checkbox"/>
GIBBONS	<input type="checkbox"/>	<input type="checkbox"/>	VERVEER	<input type="checkbox"/>	<input type="checkbox"/>
IBARRA	<input type="checkbox"/>	<input type="checkbox"/>	WALDMAN	<input type="checkbox"/>	<input type="checkbox"/>
KLAIN	<input type="checkbox"/>	<input type="checkbox"/>	YELLEN	<input type="checkbox"/>	<input type="checkbox"/>
LEWIS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Jennings</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LINDSEY	<input type="checkbox"/>	<input type="checkbox"/>	<u>Kagan</u> →	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MARSHALL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
			_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Please advise

RESPONSE:



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

91 MAY 27 1998

May 27, 1998

THE DIRECTOR

MEMORANDUM FOR THE PRESIDENT

FROM: Jacob J. Lew   
Acting Director

SUBJECT: Proposed Executive Order Entitled "Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs"

**SUMMARY:** This memorandum forwards for your consideration a proposed Executive order that was prepared by the White House Office of Public Liaison. The proposed order would direct Executive departments and agencies to take certain actions to increase the participation of Asian Americans and Pacific Islanders in Federal programs.

**BACKGROUND:** The proposed order would establish in the Department of Health and Human Services the "President's Advisory Commission on Asian Americans and Pacific Islanders" ("Commission"). The Commission would consist of not more than 15 members to be appointed by the President from the Asian American, Pacific Islander, or health and human services communities. The Commission would provide advice, through the Secretary of Health and Human Services, to the President on Federal efforts to promote and improve the delivery of health and human services to, and the collection of data related to, Asian American and Pacific Islander populations. The Commission would receive administrative support and funding from the Department of Health and Human Services.

The order would also establish in the Department of Health and Human Services the "White House Initiative on Asian Americans and Pacific Islanders" ("Initiative"). The Initiative would be an interagency working group that would assist the agencies in their efforts to increase Asian American and Pacific Islander ability to participate in Federal programs where they are underserved. The order would direct each agency to work with the working group and to prepare a plan for increasing Asian American and Pacific Islander ability to participate in relevant Federal programs. The plan would address, among other things: (a) increasing access to health and human services, (b) improving collection of data about Asian American and Pacific Islander populations, and (c) increasing outreach to Asian American and Pacific Islanders in community-based organizations.

The order would direct the Secretary of Health and Human Services to review the agency plans and to develop and submit to the President an integrated annual Federal plan to enhance the delivery of health and human services to Asian American and Pacific Islanders. The Secretary would disseminate the annual Federal plan to appropriate members of the Executive branch and attempt to ensure that recommendations of the working group are considered by the agencies.

None of the affected agencies objects to the proposed Executive order.

RECOMMENDATION: I recommend that you sign the proposed Executive order.

Attachments

Executive Order

-----

INCREASING PARTICIPATION OF ASIAN AMERICAN  
AND PACIFIC ISLANDERS IN FEDERAL PROGRAMS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to increase participation of Asian Americans and Pacific Islanders in Federal programs by providing for effective access to and utilization of health and human services and by fostering advances in relevant research and data collection, it is hereby ordered as follows:

Section 1. There shall be established in the Department of Health and Human Services the President's Advisory Commission on Asian Americans and Pacific Islanders ("Commission"). The Commission shall consist of not more than 15 members including a senior government official, who shall be appointed by the President, and shall report to the Secretary of Health and Human Services ("Secretary"). The Commission shall be composed of members who:

- (a) have a history of involvement with the Asian American and Pacific Islander communities;
- (b) are from the fields of health, human services, civil rights, or from the business community; or
- (c) are from civic associations representing the diversity within the Asian American and Pacific Islander communities.

In addition, the President may appoint other members within the 15 member limit as he deems appropriate. Members of the Commission will serve terms of two years and may be reappointed to additional terms. A Member may continue to serve until his or her successor is appointed. In the event a Member fails to serve a full term, an individual appointed to replace that Member will serve the remainder of that term. All terms will expire upon termination of the Commission.

The Commission shall terminate two years after the date of this Executive order unless the Commission is renewed by the President prior to the end of that two-year period. The Department of Health and Human Services shall provide administrative support and funding for the Commission.

Sec. 2. The Commission shall provide advice to the President, through the Secretary on:

- a) the development, monitoring, and coordination of Federal efforts to promote and improve both

access to delivery of health and human services to, and collection of relevant research and data related to, Asian American and Pacific Islander populations and sub-populations:

b) ways to increase public, private sector, and community involvement in improving the health and well-being of Asian Americans and Pacific Islanders; and

c) ways to foster advances in research and data on public health as related to Asian American and Pacific Islander populations and sub-populations.

Sec. 3. There shall be established in the Department of Health and Human Services the White House Initiative on Asian Americans and Pacific Islanders ("Initiative"). The Initiative shall be an interagency working group ("working group") whose members shall be selected by the Secretary. The working group shall be headed by a Director, who shall be a senior level Federal official selected by the Secretary. The working group shall include both career and non-career civil service staff, and commissioned officers, with expertise in health-related issues and shall provide advice to the Secretary on the implementation and coordination of health and human services and related Federal programs across Executive departments and agencies.

Sec. 4. Each Executive department and each agency designated by the Secretary shall appoint a senior official, who is a full-time officer of the Federal Government and responsible for management or program administration, to report directly to the agency head on activity under this Executive order and to serve as liaison to the Initiative. To the extent permitted by law and to the extent practicable, each Executive department and designated agency shall provide any appropriate information requested by the working group, including data relating to the eligibility for and participation by Asian Americans and Pacific Islanders in Federal programs that provide effective access to and utilization of health and human services. Where adequate data is not available, the Initiative shall suggest the means of collecting the data.

Sec. 5. Each Executive department and each designated agency (hereinafter referred to collectively as "agency") shall prepare a plan for, and shall document, that agency's efforts to increase the ability of Asian Americans and Pacific Islanders to participate in relevant Federal programs where Asian Americans and Pacific Islanders are underserved and that agency's efforts to improve health and human service outcomes for Asian Americans and Pacific Islanders that are affected by such programs. This plan shall address, among other things:

(a) increasing access to and utilization of health and human services by Asian Americans and

Pacific Islanders:

(b) increasing and improving collection, analysis and dissemination of data about Asian American and Pacific Islander populations and sub-populations; and

(c) increasing outreach to Asian Americans and Pacific Islanders in community-based organizations.

Each agency's plan shall provide appropriate measurable objectives and, after the first year, shall assess that agency's performance on the goals set in the previous year's annual plan. These plans shall be submitted by a date and time to be established by the Secretary.

Sec. 6. The Secretary shall review the agency plans and develop an integrated annual federal plan ("Annual Federal Plan") to enhance the delivery of health and human services to Asian Americans and Pacific Islanders to be submitted to the President. Actions described in the Annual Federal plan shall address improving access to Asian Americans and Pacific Islanders of health and human services, and foster advances in relevant research and data. The Secretary shall ensure that the working group is given the opportunity to comment on the proposed Annual Federal Plan prior to submission to the President. The Secretary shall disseminate the Annual Federal Plan to appropriate members of the Executive branch and make an attempt to ensure that the findings and recommendations of the working group are considered by the agencies in their policies and activities.

Sec. 7. Notwithstanding any other Executive order, the responsibilities of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, that are applicable to the Commission, shall be performed by the Secretary, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 8. Members of the Commission shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701-5707). To the extent permitted by law and appropriations, and where practicable, agencies shall, upon request by the Secretary, provide assistance to the Commission and to the Initiative.

THE WHITE HOUSE.

Richard Socarides 02/17/98 03:31:40 PM

---

Record Type: Record

To: Dawn L. Smalls/WHO/EOP  
cc: Elena Kagan/OPD/EOP  
Subject: Mtg on proposed Non-Discrimination Executive Order

As we discussed, John asked that we set up a meeting (1/2 hour), at the end of this week, to discuss positioning on DPC's proposed executive order banning sexual orientation discrimination in the federal civilian workforce.

He suggested we include the following, "and some others":

John  
Richard  
Rahm  
Bruce Reed and/or Elena

I would also think about including:

Sean Maloney (he's coordinating for staff secretary)  
Sylvia  
Ann Lewis  
Maria Echaveste  
Amy Tobe or press rep  
Ginny Apuzzo  
Ron Klain or VP rep  
Laura Marcus  
Chuck Ruff or rep

Thanks. R

Gay/les - non-discrimination exec  
order

Richard Socarides 02/20/98 06:27:19 PM

---

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Sean P. Maloney/WHO/EOP

cc: Mary L. Smith/OPD/EOP, Thomas L. Freedman/OPD/EOP

Subject: Outcome of meeting on Non-Discrimination Executive Order

The decision was to do the executive order April-May, with the preference being for early April.

Richard Socarides 02/17/98 04:05:41 PM

---

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Dawn L. Smalls/WHO/EOP, Miriam H. Vogel/WHO/EOP, Marjorie Tarmey/WHO/EOP

Subject: Report out Thursday shows 27% increase in 1997 of alleged violations of don't ask, don't tell

The Servicemembers Legal Defense Network will release its annual review of the cases under don't ask, don't tell for 1997 on Thursday. Among other things, it will again show an increase in alleged violations. They will be briefing us on the report before its release -- on Wednesday, February 18 at 4pm in room 180 OEOB and you are welcome to attend. We will be developing talking points after that briefing. DOD is receiving a separate briefing from them tomorrow.

Message Sent To:

---

John Podesta/WHO/EOP  
KERRICK\_D @ A1 @ CD @ VAXGTWY  
LUZZATTO\_A @ A1 @ CD @ VAXGTWY  
Michael D. McCurry/WHO/EOP  
Barry J. Toiv/WHO/EOP  
Joseph P. Lockhart/WHO/EOP  
Amy W. Tobe/WHO/EOP  
Laura S. Marcus/WHO/EOP  
Thurgood Marshall Jr/WHO/EOP  
Ann F. Lewis/WHO/EOP  
Stacie Spector/WHO/EOP  
Maria Echaveste/WHO/EOP  
Joseph D Eyer/OVP @ OVP  
Monica M. Dixon/OVP @ OVP  
Kay Casstevens/OVP @ OVP  
Sean P. Maloney/WHO/EOP  
Robert N. Weiner/WHO/EOP  
Virginia Apuzzo/WHO/EOP  
Sylvia M. Mathews/WHO/EOP  
Elena Kagan/OPD/EOP

December 19, 1997

MEMORANDUM TO THE PRESIDENT

FROM: FRANKLIN RAINES  
BRUCE REED

SUBJECT: Proposed Executive Order Entitled "Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government"

**SUMMARY:** This memorandum forwards for your consideration a proposed Executive Order that was prepared by the White House Office of Domestic Policy. The proposed order would provide a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation, to the extent permitted by law.

**BACKGROUND:** Current law prohibits discrimination in employment because of race, color, religion, sex, nation origin, handicap, or age. The law is applied to federal government employment through Executive Order 11478, which is entitled "Equal Employment Opportunity in the Federal Government."

It is the policy of this Administration to also prohibit discrimination in employment because of sexual orientation. Most federal agencies have taken actions, where possible, to prohibit discrimination because of sexual orientation in the employment of their personnel. To ensure that there is a uniform policy regarding sexual orientation in federal employment, the proposed order would add sexual orientation to the list of categories for which discrimination is prohibited in Executive Order 11478.

This amendment to the executive order merely makes a change in policy, and does not create any new enforcement mechanism. In addition, this proposed change does not affect any policy in the uniformed military or in the provision of health benefits to federal employees.

None of the affected agencies objects to the proposed Executive Order.

**RECOMMENDATION:** We recommend that you sign the proposed Executive Order.

Attachments.

Executive Order

-----

FURTHER AMENDMENT TO EXECUTIVE ORDER 11478,  
EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

By the authority vested in me as President of the United States by the Constitution and the laws of the United States, and in order to provide a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation, it is ordered that Executive Order 11478, as amended (“Order”), is further amended as follows:

Section 1. The first sentence of section 1 of the Order is amended by substituting “age, or sexual orientation” for “or age.”

Sec. 2. The third sentence of section 1 of the Order is amended by adding at the end of the sentence “, to the extent permitted by law.”

... United States Code, other than sections 4102, 4111(b), and 4112; and designate any such agency or part thereof, or any employee or employees therein previously excepted, as again subject to chapter 41 of Title 5, United States Code, or any provision of that chapter.

(b) The authority under section 4111(a) of Title 5, United States Code, to fix by regulation the extent to which the contributions, awards, and payments referred to in that section may be made to and accepted by employees.

[Sec. 401 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

SEC. 402. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than every three years.

PART V—REVOCATION OF PRIOR ORDER

SEC. 501. Executive Order No. 10800 of January 15, 1959, is hereby revoked.

Executive Order 11478—Equal employment opportunity in the Federal Government

SOURCE: The provisions of Executive Order 11478 of Aug. 8, 1969, appear at 34 FR 12985, 3 CFR, 1966-1970-Comp., p. 803, unless otherwise noted.

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

SECTION 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age; and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

[Preamble deleted and sec. 1 amended by EO 12106 of Dec. 28, 1978, 44 FR 1053, 3 CFR, 1978 Comp., p. 263]

SEC. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer

such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

SEC. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

[Sec. 3 amended by EO 12106 of Dec. 28, 1978, 44 FR 1053, 3 CFR, 1978 Comp., p. 263]

SEC. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

[Sec. 4 amended by EO 12106 of Dec. 28, 1978, 44 FR 1053, 3 CFR, 1978 Comp., p. 263]

SEC. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.

[Sec. 5 amended by EO 12106 of Dec. 28, 1978, 44 FR 1053, 3 CFR, 1978 Comp., p. 263]

SEC. 6. This Order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

SEC. 7. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

SEC. 8. This Order shall be applicable to the United States Postal Service and to the Postal Rate Commission established by the Postal Reorganization Act of 1970.

**Richard Socarides** 10/31/97 10:30:01 AM

---

Record Type: Record

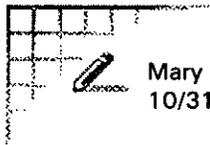
To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Thomas L. Freedman/OPD/EOP

cc:

Subject: Executive Order on Sexual Orientation

As I mentioned, the Communications types want to wait until after November 10th.

----- Forwarded by Richard Socarides/WHO/EOP on 10/31/97 10:28 AM -----



Mary L. Smith  
10/31/97 10:18:36 AM

Record Type: Record

To: McGavock D. Reed/OMB/EOP

cc: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Richard Socarides/WHO/EOP, Thomas L. Freedman/OPD/EOP

Subject: Executive Order on Sexual Orientation

Are we going to be able to do this today or Monday? Let me know, Mary

**MEMORANDUM**

**TO: BRUCE REED, ELENA KAGAN**

**FROM: TOM FREEDMAN, MARY L. SMITH**

**RE: EXECUTIVE ORDER ON SEXUAL ORIENTATION**

**DATE: JULY 15, 1997**

---

**SUMMARY**

In response to your request to draft an executive order prohibiting discrimination regarding sexual orientation, enclosed is a draft executive order modifying Executive Order 11478 which concerns discrimination in the Federal Government.

There currently is no executive order concerning discrimination based on sexual orientation. As the result of an Office of Personnel Management recommendation, most of the agencies currently have explicit policies that prohibit discrimination based on sexual orientation, with the notable exceptions of the Department of Defense and NASA. Statutory authority seems to exist for prohibiting discrimination based on sexual orientation in the Civil Service Reform Act (CSRA), which covers certain federal employees.

Currently there are two bills on the Hill, one in the House and one in the Senate, that would prohibit discrimination based on sexual orientation.

**STATE OF THE LAW**

**I. POLICY STATEMENTS**

On March 10, 1997, OPM issued a recommendation to all agencies that they "issue a strong management statement which clearly defines the Federal Government's policy with regard to discrimination based on conduct which does not adversely affect the performance of employees or applicants for employment." The Federal Government's policy includes discrimination based on sexual orientation. The March 10, 1997 memo was a reiteration of two previous OPM memoranda that discussed the Federal Government's policy on discrimination in employment, one dated May 12, 1980, and one dated February 17, 1994. During President Clinton's first term, most of the agencies complied with OPM's recommendation by issuing a policy statement prohibiting discrimination, explicitly including discrimination based on sexual orientation, with two notable exceptions. The Department of Defense appears to have taken no action to issue a policy statement. In addition, NASA's General Counsel explicitly refused to issue a policy because he believed that a policy statement was not necessary because employees were already adequately protected and to issue a new policy would elevate discrimination based on sexual

orientation above other types of discrimination.

## II. CIVIL SERVICE REFORM ACT

5 U.S.C. section 2302(b) states that “[a]ny employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority:

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining the suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, or the District of Columbia, or of the United States.

In a Civil Service Bulletin dated December 21, 1973, the Civil Service Commission stated:

You may not find a person unsuitable for Federal Employment merely because that person is a homosexual or has engaged in homosexual acts, nor may such exclusion be based on a conclusion that a homosexual person might bring the public service into contempt. You are, however, permitted to dismiss a person or find him or her unsuitable for Federal employment where the evidence establishes that such person’s homosexual conduct affects job fitness --excluding from such consideration, however, unsubstantiated conclusions concerning possible embarrassment to the Federal service.

In Ashton v. Civiletti, 613 F.2d 923, 927 (D.C. Cir. 1979), the court cited the above bulletin as the policy “applicable to the great bulk of employees in the federal service.”

In the May 12, 1980 OPM memorandum cited above, the Director of OPM elaborated on the Civil Service Reform Act’s prohibition of discrimination based on non-job-related conduct by stating: “Thus, applicants and employees are to be protected against inquiries into, or actions based upon, non-job-related conduct, such as religious, community or social affiliations, or sexual orientation.” In February 17, 1994, OPM reiterated that the “1980 memorandum continues to reflect the Federal Government’s longstanding policy on the matter of discrimination based on non-job-related conduct.”

## THE HILL

1. **H.R. 1858 by Rep. Shays (R-CT) on 6-10-97 (150 cosponsors). EMPLOYMENT NON-DISCRIMINATION ACT OF 1997.** This Act prohibits employment discrimination based on sexual orientation. The Act provides the remedies provided in Title VII of the Civil Rights Act of 1964 for aggrieved individuals. However, the Act does not apply to the provision of employee benefits.

2. **S. 869 by Sen. Jeffords (R-VT) on 6-10-97(33 cosponsors). EMPLOYMENT NON-DISCRIMINATION ACT OF 1997.** This Act is essentially the same as H.R. 1858 above.

3. **S. 47 by Sen. Helms on 1-21-97.** This bill prohibits the executive branch of the federal government from establishing an additional class of individuals that is protected against discrimination in federal employment other than those classes identified in the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973.

#### **WHAT AGENCIES HAVE**

- NASA refused to adopt a policy.
- The Department of Defense does not have a policy.
- Agencies that have adopted a policy of prohibiting discrimination based on sexual orientation: Department of Commerce, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of Treasury, Department of Veterans Affairs, Small Business Administration

#### **OPTIONS**

1. Modify Executive Order 11478 entitled "Equal employment opportunity in the federal government" to add sexual orientation as a category to Section 1.

**PROS:** This would be the most efficient method to include sexual orientation because E.O. 11478 already covers the topic of discrimination.

**CONS:** Sections 3 through 5 of E.O. 11478 discuss the EEOC. Title VII of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e, prohibits discrimination only on the basis of race, color, religion, sex or national origin. The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age. The Rehabilitation Act of 1973 prohibits discrimination on the basis of physical or mental disability. By adding "sexual orientation" to Section 1 of E.O. 11478, Section 1 will no longer mirror the classes of prohibited discrimination in Sections 3-5. Some persons may perceive that the President is trying to legislate via executive order.

2. Create a new executive order with only sexual orientation as a category of prohibited discrimination.

**CONS:** This may single out sexual orientation too much. Some persons may perceive that sexual orientation is entitled to greater protection than other types of discrimination.

Gay/les: Anti-discrimination Exec Order

Tam, Mary -  
Make changes  
and check with  
Bruce.  
Elena

July 25, 1997

MEMORANDUM FOR FRANKLIN D. RAINES

THROUGH: MAC REED

FROM: BRUCE REED  
ELENA KAGAN

SUBJECT: EXECUTIVE ORDER TO PROHIBIT DISCRIMINATION BASED ON  
SEXUAL ORIENTATION

~~This is a request that you process this executive order pursuant to Executive Order No. 11030, as amended. For the reasons described below, we request that you complete this process by Friday, August 15, 1997.~~  
*the attached*

~~The Administration would like to enact an executive order to prohibit discrimination based on sexual orientation in federal civilian employment. Although most agencies currently have some sort of policy prohibiting discrimination on the basis of sexual orientation, this executive order is needed to provide a uniform policy to replace the patchwork of policies in the agencies. In addition, this executive order should be enacted in August before the Employment Non-Discrimination Act of 1997, which the Administration supports, is scheduled for a hearing this fall. The Employment Non-Discrimination Act would prohibit discrimination based on sexual orientation, in both the public and private sectors, with certain exemptions for small businesses, charitable organizations, and the military.~~

~~Attached is a draft of the executive order which would amend Executive Order No. 11478 entitled "Equal Employment Opportunity in the Federal Government."~~

(Add to 1st paragraph)

*Mac Reed*

**DRAFT**

EXECUTIVE ORDER #

Equal Employment Opportunity in the Federal Government

By the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

SEC 1. Executive Order No. 11478, as amended, is further amended by substituting "age, or sexual orientation" for "or age" in the first sentence of Sec 1.

Gay and lesbian -  
federal nondiscrimination policy



UNITED STATES  
OFFICE OF PERSONNEL MANAGEMENT  
WASHINGTON, DC 20415-0001

OFFICE OF THE DIRECTOR

**MEMORANDUM FOR MICHAEL MCCURRY,  
ASSISTANT TO THE PRESIDENT AND  
WHITE HOUSE PRESS SECRETARY**

**THROUGH: RICHARD SOCARIDES,  
SPECIAL ASSISTANT TO THE PRESIDENT FOR PUBLIC LIAISON**

**FROM: JANICE R. LACHANCE** *Janice R. Lachance*  
**CHIEF OF STAFF**

**SUBJECT: Discrimination Based upon Sexual Orientation in Federal Employment**

**DATE: April 21, 1997**

The following are answers to your questions on discrimination based upon sexual orientation in Federal employment:

Is it OPM's view that discrimination based on sexual orientation is prohibited or banned?

- Although sexual orientation is not specifically mentioned in title 5 of the U.S. Code or in civil rights statutes, section 2302(b)(10) of title 5 prohibits "discrimination for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others." It is OPM's position that discrimination based upon sexual orientation would be a prohibited personnel practice if it was found, on a case by case basis, that sexual orientation did not adversely affect the performance of the employee or applicant or the performance of others. This is the longstanding "nexus" test that has been adopted by the courts in Federal employment matters.
- Section 2302(c) of title 5 holds agency heads responsible for the prevention of this prohibited personnel practice. Thus, OPM has continued to remind agency heads and personnel directors of the importance of publicizing non-discrimination policies, avenues of redress, and issuing policy statements which send a strong message that agency management will not tolerate any discriminatory actions which are based on conduct which does not adversely affect the performance of the employee or applicant or the performance of others.

- In 1980, the first OPM Director, Alan Campbell, issued a policy statement affirmatively stating that "applicants and employees are to be protected against inquiries into, or actions based upon, non-job-related conduct, such as religious, community or social affiliations, or sexual orientation."
- In February 1994, Director King reiterated that "the 1980 memorandum continues to reflect the Federal Government's long standing policy on the matter of discrimination based on non-job-related conduct." In the memo he outlined avenues of redress. These may include appeal to the Merit Systems Protection Board, filing a complaint with the Office of Special Counsel, utilizing a Negotiated Grievance Procedure or other agency grievance procedure or review by the agency's Office of Inspector General. The proper channel depends upon the circumstances.
- In March 1997, OPM again distributed the 1980 and 1994 memoranda and reiterated OPM's commitment "to helping agencies ensure that Federal employees or applicants for Federal employment are protected against actions taken for non-job-related conduct such as religious beliefs, community or social affiliations, or sexual orientation." OPM specifically recommended that agencies issue strong policy statements and communicate this policy throughout their organizations and incorporate the policy into orientation sessions for new employees to ensure that all employees understand the agency's position.

What is the policy of the Department of Defense?

Based on our inquiry to them, the Department of Defense has issued no policy on this matter.

CC: Kitty Higgins

Gay and lesbian - federal  
non-discrimination policy

Congress of the United States (new file)

Washington, DC 20515

0002  
HPD  
cc: AM  
TCGL

February 27, 1997

Mr. James B. King  
Director  
Office of Personnel Management  
1900 E Street, N.W.  
Washington, DC 20415

Dear Director King:

As strong proponents of equal rights for gay and lesbian Americans, we applaud the steps the Administration has taken to implement sexual orientation non-discrimination policies in the federal workplace. However, we are concerned by reports that several federal agencies have not yet adopted these policies for their civilian federal employees.

According to a recent survey by the Washington Blade, a number of federal agencies have not added the category of "sexual orientation" to their employee non-discrimination policy statements. By some accounts, the number of employees working in these agencies totals nearly 75,000.

Although most gay and lesbian federal employees are protected under Office of Personnel Management regulations that classify sexual orientation discrimination as "a prohibited personnel practice," many have not received any notification that sexual orientation discrimination is illegal. We are particularly disturbed by reports that many personnel or public affairs officials in the agencies in question are unaware that sexual orientation discrimination is prohibited in the federal workforce. This is unacceptable.

Particularly in light of the Administration's endorsement of legislation (the Employment Non-Discrimination Act) to prohibit discrimination in the workplace against gays and lesbians, it is incumbent upon the Office of Personnel Management to ensure that all federal agencies promptly adopt policy statements on sexual orientation discrimination. We would appreciate being informed of what steps are being taken in this regard.

Thank you for attention to this matter.

Sincerely,

Nita Lowmy  
Charles E. Scherer

Janice Morella  
Barney Frank

Donald V. Bell

W. Thom Bell

Ade E. Kildes

Dana Dault

John Kennedy

Johnny H. Davis

John Kennedy

Sam Fann

John W. Oliver

Amil Guterrey

Mat Med

Maurice Diefrey

Vin Fayir

Stewart Brown

Jane Hansen

Pete Stark

Wm Jefferson

Ellenoff Hart

George E. Brown, Jr.

James P. Mc Dowen

Pete D. Fayir



UNITED STATES  
OFFICE OF PERSONNEL MANAGEMENT  
WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

**DRAFT**

Honorable Dale E. Kildee  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Kildee:

I want to thank you, and the other members of Congress who concurred in the February 27, 1997, letter, for your strong commitment to ensuring that Federal employees are protected from actions taken on the basis of non-job related issues such as an employee's race, religion, sex, color, national origin, age, disabling condition, marital status or political affiliation, community or social affiliations, or sexual orientation. OPM is equally committed to this goal and has continued to remind agency heads and personnel directors of the importance of publicizing non-discrimination policies. We firmly believe that policy statements which send a strong message that agency management will not tolerate any discriminatory actions based on conduct which does not negatively affect the performance of employees, or even applicants for employment, will help foster an environment that is free from discrimination. Of equal importance, these policies explain to employees the avenues of redress available if they believe their rights have been violated.

In February 1994, I issued a statement to the Heads of Departments and Independent Establishments which clarified the Federal Government's long standing policy prohibiting any action taken based on non-job related activities which have no adverse impact on the Federal service. That memorandum outlined the avenues of redress available to employees who believe such an action has been taken against them. On February 3rd of this year, we circulated copies of that memorandum to Directors of Personnel with a reminder that agencies should be communicating their policy statements throughout their organizations to ensure that all employees understand the agency's position on non-discrimination.

Based on the concerns raised in your letter, I authorized a second memorandum to Directors of Personnel which once again expressed OPM's strong belief in the need for a policy statement and in the equally important need that all employees be informed of the appropriate avenues of redress if they believe that discriminatory action has been taken against them. This memorandum also states

**DRAFT**

OPM's recommendation that agency policies be incorporated into orientation sessions for new employees and that these sessions include coverage of the merit principles and prohibited personnel practices contained in the law. Further, we have identified an OPM office which will serve as a clearinghouse for agency policy statements that can be shared with other agencies who are still in the early stages of developing their statement. This memorandum was issued on March 10, 1997, and a copy is enclosed for your information.

Please be assured that I share your concerns, and that I am personally committed to the process of publicizing policies prohibiting discrimination based on non-job related conduct.

Sincerely,

James B. King  
Director

Enclosure

6-3-97

Gay + lesbian -  
antidiscrim. exec order

Marsha/Rich

AIDS etc Mtg

Thurman - Natl Press / Policy person  
- 2 people -

Talk to Andrew  
DOD / VA / USDA (?) / DOT

Executive Order - Fed civ. nondiscrim. policy?

King memo - "non-merit factors"

Patchwork - indiv memos (agencies)

DOD not done

Right thing  
"Why not get each agency?"