

Gay, Lesbian, Bisexual, and Transgender Equal Rights

By Religious Action Center

Status

A new pattern is emerging as courts, spurred by cultural and political changes across the country, apply the principles of equality to sexual orientation. Just as homosexuality has moved from the fringe to the mainstream of American culture in recent years, gay rights has become a flourishing area of the law.

Proceeding in fits and starts, the changes in how the law treats gay men and lesbians has been less the result of a single court ruling or piece of legislation than collective responses to the shift in public attitudes about homosexuality. Polls show an increased acceptance of gays nationwide – movies and television programs are portraying more gay characters and advertisers have begun openly appealing to gay customers. In this political season, Democratic candidates are actively courting the gay vote, while some leading Republicans have tried to temper their party's anti-gay image.

Changes in laws affecting gay people have largely responded to the shift in public attitudes rather than driving them. For example, despite major shifts in areas such as employment, custody, and domestic partnership, there have been fewer gains. The prevailing national sentiment, it appears, remains one of tolerance toward sexual variation, but opposition to anything that could be viewed as promoting homosexuality.

Democratic pollster Geoff Garin noted that the public strongly rejects discrimination and intolerance, but when the politics of gay rights becomes more complicated, is when the public perceives that the government is putting its seal of approval on a group. While 57% of the people surveyed said homosexuality was unacceptable, 87% of those surveyed said homosexuals should have equal rights in terms of job opportunities. Legal experts note that change has come more slowly when the subject involves family matters that invoke religious beliefs about marriage, parenting and sexuality.

Legislative Summary

Local Law Enforcement Enhancement Act (S. 625 / H.R. 1343 For information on this bill and the efforts of the Religious Action Center, visit the RAC's Hate Crimes Issue Page.



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ENDA: The Employment Non-Discrimination Act

There is no federal law preventing workplace discrimination based on sexual orientation, and, in 39 states it is currently legal to discriminate on this basis. In those 39 states, gay and lesbian employees can be fired or otherwise discriminated against solely on the basis of their sexual orientation-real or perceived-regardless of their qualifications, length of employment, dedication, or any other factors.

In the 106th Congress, the Employment Non-Discrimination Act was introduced. This Act would prohibit employers from using sexual orientation as the basis for employment decisions such as hiring, firing, promotion, or demotion. ENDA extends to gays and lesbians the federal employment discrimination protections already provided based on race, religion, gender, national origin, age, and disability. ENDA does not offer any special protections, preferential treatment, or quotas. ENDA was crafted in order to exclude from its coverage small businesses, religious organizations, or uniformed members of the armed forces. Despite having 173 co-sponsors in the House, and 36 co-sponsors in the Senate, the Employment Non-Discrimination Act ended up stalled in the Senate Health, Education, Labor, and Pensions Committee and the House Judiciary Subcommittee on the Constitution. It never reached a floor vote.

While an Employment Non-Discrimination Act of 2001 has not yet been introduced in the 107th Congress, the Religious Action Center considers this legislation to be of utmost importance. We will work with the bill's cosponsors and our coalition partners to ensure that this basic civil rights protection is provided to all gay and lesbian Americans.

HCPA: Permanent Partners Immigration Act (H.R. 690)

United States immigration law is largely based on a premise of family unity. Currently, if a heterosexual American falls in love with a citizen of another country, he or she can marry that individual, and sponsor him/her for United States citizenship. In fact, according to the Human Rights Campaign, a leading gay and lesbian advocacy group, approximately seventy-five (75) percent of the one million green cards or immigrant visas issued each year go to family members of U.S. citizens and permanent residents.¹ However, the permanent partners of gay and lesbian Americans are excluded from these definitions of family and spouse. Even a marriage performed in the Netherlands, a country recognizing gay and lesbian marriages, would not qualify under United States immigration law. Every year, thousands of gay and lesbian Americans in love with non-American citizens are forced to either live apart from their loved ones, or leave their homes.

While many aspects of American law-such as domestic partnerships laws, etc-have begun to address the validity of committed same-sex partnerships, American immigration law has not advanced on the issue of same-sex partner immigration benefits. There is no proof of



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commitment-financial, religious, or even legal in another country-that allows a gay or lesbian American citizen or permanent resident to bring his/her same-sex partner over through a legal green-card arrangement. The argument resides mainly on the fact that there is no official federal recognition of gay and lesbian partnerships. However, thirteen other countries- Australia, Belgium, Canada, Denmark, Finland, France, Iceland, the Netherlands (the only country which officially recognizes gay and lesbian marriages), New Zealand, Norway, South Africa, Sweden, and the United Kingdom-recognize same-sex couples for the purposes of immigration.²

On February 14, 2001, Representative Jerrold Nadler (D-NY), reintroduced the Permanent Partners Immigration Act. If passed into law, this act would amend the Immigration and Nationality Act (the main code of US immigration law) to allow for United States citizens and lawful permanent residents to sponsor their permanent partners for residence in the United States. The Act currently has 72 House co-sponsors and no companion legislation in the Senate.

Boy Scouts of America

James Dale, an assistant scout master, was removed from his Boy Scout troop nine years ago, after organizational leaders discovered that he was gay. Mr. Dale sued the Boy Scouts of America (BSA) seeking reinstatement. On August 4, 1999, the New Jersey State Supreme Court handed down a decision in favor of Mr. Dale. The Court unanimously held that the Boy Scouts of America constitute a “place of public accommodation” because it has broad-based membership and forms partnerships with public entities like police and fire departments. Therefore, the court decided that the BSA is subject to state laws and cannot deny any person “advantages, facilities, and privileges” on account of sexual orientation.

The case was appealed to the U.S. Supreme Court. The court considered the question of whether a state law requiring a Boy Scout Troop to appoint an avowed homosexual and gay rights activist as an Assistant Scout Master responsible for communicating the moral values of the Boy Scouts of America to youth members abridges the First Amendment rights of freedom of speech and freedom of association. The Court ruled in favor of the Boy Scouts, based on the BSA argument that homosexuality was in direct conflict with its guiding principles. Their 5-4 decision, on June 28, 2000, held that the BSA will be allowed to continue to discriminate on the basis of sexual orientation.

Following the Supreme Court decision, a number of groups across the country have expressed disagreement with the Boy Scout policy. Nationwide, the BSA has lost financial support from corporations and organizations such as Chase Manhattan Bank, Levi Strauss, and several local United Way chapters. In addition, at least nine public school districts-including District Two in



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Manhattan (NY) and the San Diego school system-have ended school sponsorship of Boy Scout troops/Cub Scout packs, although, as yet, they have not banned the BSA from using school property after school hours.

In late January 2001, the Boy Scouts of America boldly defended their discriminatory position by expelling seven troops in Oak Park, Illinois for refusing to comply with the BSA position. This marks the first time since the Supreme Court decision that a troop has been expelled for opposing the ban on gays. Unfortunately, it also suggests that the Boy Scouts of America does not plan to weaken or change their position on gays in Scouting.

Reform Movement Position on the Boy Scouts of America

The Reform Movement and the Boy Scouts of America have long-standing ties. Many leaders in the Reform Movement have been and continue to be leaders in the Boy Scouts. Congregations across the country sponsor Boy and Cub Scout troops. And even larger numbers of congregants belong to non-URJ affiliated Boy and Cub Scout troops.

However, the discriminatory Boy Scout policy clearly goes against Reform Jewish policy and beliefs on homosexuality. The Reform Movement, of course, has strongly-held positions in support of human rights, including the rights of lesbians and gays. We believe that all people have basic rights, regardless of their sexual orientation.

The North American Federation of Temple Youth, the North American Federation of Temple Brotherhoods, the Central Conference of American Rabbis, and the Commission on Social Action all have policy regarding the discriminatory practices of the BSA.

On January 5, 2001, after much discussion, the Commission on Social Action mailed out a new memo to congregations. This memo, which received a lot of press attention and garnered strong responses along the spectrum, recommended that congregations sponsoring/housing a troop/pack withdraw sponsorship and/or stop housing that troop/pack. In addition, parents with children in non-Reform affiliated troops/packs were encouraged to withdraw their children from these troops. It was a painful decision, but one that the leadership felt needed to be made.

However, understanding the long-standing relationship between Jews and the Boy Scouts, as well as the many positive aspects of Scouting, the memo does not require this decision to be made. Each congregation, and set of parents, has autonomy in choosing how to define their relationship with the Boy Scouts of America. To that end, the memo also offers 8 suggestions of protest actions to be taken while maintaining a relationship with the Boy Scouts of America.



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Civil Unions / Defense of Marriage

In December 1999, the Vermont Supreme Court handed down a groundbreaking decision granting gay and lesbian couples the same protections and benefits given to heterosexual couples. In addition, the Court ordered the state of Vermont to craft a solution for this situation. This led to the establishment of a “civil union” for same-sex couples—a sort of cross between a marriage and a domestic partnership. The bill, “An Act Relating to Civil Unions” allows both Vermont and non-Vermont residents to acquire a license certifying their relationship with a person of the same-sex. This license extends the same benefits of heterosexual marriage to same sex couples.

While Vermont made history as the first state officially recognizing civil unions, this past Election Day saw two more states pass Defense of Marriage amendments or referenda. Following the model of the 1996 federal Defense of Marriage Act, both Nevada and Nebraska passed amendments defining marriage as a union between a man and a woman, bringing the total number of states that have passed such laws to 35. Beyond the obvious meanings in the states passing such laws, the repercussions include not recognizing civil unions performed in a state that does recognize them.

Central Conference of American Rabbis and Same Gender Officiation

The Reform Movement has long been a proponent of civil unions on the secular, purely legal, level. However, in March 2000, the Central Conference of American Rabbis made history by becoming the first major group of North American clergy, as an organization, to give its support to those in its ranks choosing to perform same-gender ceremonies. The resolution, ‘Resolution on Same Gender Officiation,’ supports the decision of individual rabbis to officiate, or not officiate, at same-gender ceremonies.

The resolution calls for the Reform rabbinate to develop sample ceremonies, or liturgy, for those rabbis who choose to officiate at same-gender ceremonies. While it leaves the choice of officiation to the individual rabbis, the resolution does state that a relationship between two people of the same gender can serve as the foundation of stable Jewish families, and is worthy of affirmation through appropriate Jewish ritual. The resolution does not suggest that these ceremonies are “marriages”; each individual rabbi is given the power to decide, within the context of faith, as opposed to civil laws, what each ceremony represents.



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Gays and Adoption

The issue of gay and lesbian adoption is one that is related to the issue of gay and lesbian marriage. Nine states – California, Massachusetts, New Jersey, New Mexico, New York, Ohio, Vermont, Washington and Wisconsin – and the District of Columbia have allowed openly gay or lesbian individuals or couples to adopt. However, this remains a rare occurrence. There is currently no federal mandate regarding gay and lesbian adoption, and therefore the ability of gay men and lesbians to adopt is affected on a state level by state adoption statutes.

Florida, specifically bars the adoption of children by gay and lesbian adults. Similar legislation passed in Utah, prohibiting unmarried couples, including same-sex couples, from adopting children. The bill claims it is not in a child's best interest to be adopted by persons "cohabiting in a relationship that is not a legally valid (binding) marriage." In the spring of 2000, Mississippi passed a bill banning gay and lesbian couples from adoption and forbidding the State of Mississippi from recognizing gay and lesbian adoptions that have previously been granted by other State courts – an unprecedented and dangerous provision, that threatens the entire adoption process. As in Florida, the American Civil Liberties Union and other progressive groups are fighting this legislation. Anti-sodomy statutes in 19 states and the lack of legal recognition of homosexual couples complicate adoption in those states that do not specifically prohibit gay and lesbian adoption.³

Currently, there is no activity towards legalizing or derecognizing gay and lesbian adoption on the federal level. However, the issue continues to be active on a state level, and should be monitored on a state by state basis.

Don't Ask, Don't Tell

On February 28, 1994, after extensive hearings in Congress, the enactment of a federal statute, and coordination with Congressional Oversight Committees, the Servicemembers Legal Defense Network (SLDN), the sole national legal aid and watchdog organization that assists servicemembers hurt by the "Don't Ask, Don't Tell" policy, and issues which members of Congress and others had brought to the Department's attention.

The report found that the number of service members discharged for homosexual conduct had in fact risen since the new policy became effective in 1994, and that there were instances where inquiries were made without requisite factual basis. Although the Department concluded



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that the policy was generally being implemented properly, a number of areas were identified in which the policy could be usefully clarified or implementation could be otherwise enhanced.

On March 9, 2000, SLDN released its sixth annual report that cited 968 incidents-including a murder, assaults and verbal gay bashing-more than double the incidents since the last report. President Clinton said he and Defense Secretary William Cohen had not read the report, but "we will take appropriate action if this report is accurate, I would expect to see substantial improvement this year."

The report includes the July 5, 1999 murder of Pfc. Barry Winchell at Fort Campbell, Ky. His mother and stepfather, Pat and Wally Kutteles, are filing a wrongful death suit against the military in her son's death. His parents and gay rights advocates earlier said the military's policy failed to protect Winchell, who was rumored to be homosexual. In December, a military jury sentenced Army Pvt. Calvin N. Glover, 19, to life in prison for the slaying. Prosecutors said he was driven by hatred of homosexuals to bludgeon Winchell to death as he slept in his cot.

A Pentagon spokesman said the services investigate all allegations of harassment and officials do not believe it has increased. While declining to comment specifically on a report officers have not yet seen, spokesman Bryan Whitman pointed out that discharges for homosexuality decreased last year by 10 percent after several years of increase. "We do not believe there is growing anti-gay harassment in the military," Whitman said. The military last year issued guidance to ensure that "everyone from the newest recruit to flag officers, understands the policy and the law," he said.

The Pentagon's Inspector General is scheduled to issue a report on implementation of the policy in all of the services this year. That report, based partly on a survey of military personnel, also is intended to assess the level of anti-gay harassment in the ranks. Citing Pentagon statistics from last year, the SLDN report notes that 31 percent of the 1,034 service members discharged last year under the policy were women – the highest percentage in two decades – while women make up only 14 percent of the military. In describing "lesbian-baiting," the report says military women are being accused of being lesbians for retaliatory reason, sometimes for "rebuffing men's sexual advances, regardless of their sexual orientation."

Whitman, speaking for the Pentagon, confirmed those statistics but said officers follow the law and anti-harassment policies in dealing with both men and women. He said the vast majority – 83 percent – of those discharged volunteered statements that they were gay.

"We take every allegation seriously, and we investigate every claim of harassment," he said. The lawyers' report documents 495 reports of harassment since the Pentagon announced it was cracking down on anti-gay harassment in August – more than it listed for all of 1998.



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Military policy now includes a prohibition on beginning an investigation of a soldier simply because he or she has been subjected to anti-gay harassment.

Dr. Laura Schlesinger

For years, Dr. Laura – American’s number one radio show host – has been “attacking” gay and lesbian people as “deviants” and “biological errors,” despite the quarter-century, scientific consensus that gay men and lesbians are as normal and healthy as heterosexuals. The Horizons Foundation, the nation’s first lesbian and gay community foundation, coordinated a sign-on letter encouraging Dr. Laura to consider the impact of her words. The Horizons Foundation funds gay and lesbian organizations that assist people hurt by homophobia. Though they are not an advocacy group, upon reading transcripts of Dr. Laura’s show, the Foundation felt an obligation to speak out. Many Reform rabbis from across the country signed onto this letter.

In September 2000, Dr. Laura was given a television deal by Paramount Studios. The response was quick and organized. StopDrLaura.com (www.stopdrlaura.com) immediately went into effect to mobilize in the efforts to protest. In addition to protest by GLBT groups and their supporters, there was a push to pull advertising from the show. As of early 2001, over 95 companies had pledged not to run their advertisements during the show.

While Dr. Laura is still officially on TV, most gay rights supporters tend to view the anti-Dr. Laura campaigns as a victory. Over 150 advertisers dropped Dr. Laura’s TV show and over 30 advertisers dropped her radio show. In addition, the entire nation of Canada canceled the TV show completely, and TV stations across America continue to drop their broadcasts of Laura Schlessinger’s show, or banish her show to undesirable time slots.

Position of the Reform Jewish Movement

The Reform Movement has been an advocate of gay and lesbian rights since 1965, when the Women of Reform Judaism (WRJ) passed a resolution calling for the decriminalization of homosexuality. In 1977, the URJ and the CCAR passed their first resolutions dealing with this issue, calling for human rights for homosexuals. Since then, the URJ, CCAR, WRJ, CSA, and NFTY have passed resolutions dealing with issues specific to Reform Judaism, such as inclusion of gays and lesbians in the rabbinate and cantorate, as well as national issues, such as support for civil marriage, elimination of discrimination within the Armed Forces and the Boy Scouts, and support for explicit workplace non-discrimination and civil rights legislation. Gay, lesbian, and bisexual outreach and inclusion has been of great importance to the Reform Movement in



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recent years. The URJ Task Force on Gay and Lesbian Inclusion, headed by the late Rabbi Julie Spitzer, created a manual called *Kulanu (All of Us): A Program for Congregations Implementing Inclusion*. This text is aimed at helping congregations include gay and lesbian members and families and deal with gay and lesbian issues. The URJ's Department of Jewish Family Concerns also deals with gay and lesbian issues.

In addition, the Reform Jewish movement is committed to working to secure civil rights for gay men and lesbians, including the right to civil marriage. Both the URJ and the CCAR have adopted resolutions in support of gay and lesbian partnerships. In its 1993 resolution, the URJ resolved, among other things, to call upon congregations to extend the same benefits that are afforded to heterosexual spouses of staff members to homosexual partners of staff members. The CCAR, in its 1996 resolution on gay and lesbian partnerships, resolved to "oppose governmental efforts to ban gay and lesbian marriage." The most recent major Reform movement on the issue was the March 2000 passage of the CCAR resolution on "Same Gender Officiation," followed by the Commission on Social Action's January memorandum regarding the Boy Scouts of America.

Gay and Lesbian Rights and Jewish Values

The two most often cited Biblical texts concerning homosexuality are both found in the book of Leviticus, where they are in the context of a larger section directing sexual behavior. First, it is written: "Do not lie with a male as one lies with a woman; it is an abhorrence." (Leviticus 18:22) The second citation is from Leviticus 20:13, where we read that "If a man lies with a male as one lies with a woman, the two of them have done an abhorrent thing; they shall be put to death-their blood guilt is upon them."

However, we are also guided by the very basic belief that all human beings are created *b'tselem Elohim* (in the Divine image), as it says in Genesis 1:27, "And God created humans in God's own image, in the image of God, God created them; male and female God created them." Rabbi David Saperstein said in Congressional testimony in support of ENDA that "regardless of context, discrimination against any person arising from apathy, insensitivity, ignorance, fear, or hatred is inconsistent with this fundamental belief. We oppose discrimination against all individuals, including gays, lesbians, and bisexuals, for the stamp of the divine is present in each and every one of us."

Each of us, created in God's image, has a unique talent, with which we can contribute to the high moral purpose of *tikkun olam*, the repair of our world. Excluding anyone from our community lessens our chance of achieving this goal of a more perfect world.



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