



## **The Bush-Cheney Administration on on 12 Key Issues of Concern to Lesbian, Gay, Bisexual, and Transgender People**

By Jason Cianciotto and Roddrick Colvin

### **Introduction**

Under the banner of “compassionate conservatism,” President George W. Bush has successfully positioned himself and his administration as moderate on a number of issues, including issues of concern to lesbian, gay, bisexual and transgender (LGBT) people. President Bush often cultivates an image of tolerance by offering contradictory statements on particular issues. For example, on October 3, 2003, Bush signed an official proclamation designating the week of October 12 through October 18, 2003 as “Marriage Protection Week,” declaring, “Marriage is a sacred institution, and its protection is essential to the continued strength of our society. ...Marriage is a union between a man and a woman.”<sup>1</sup> During the same week that President Bush endorsed the anti-gay Marriage Protection Week, he sent congratulations to the Metropolitan Community Church (MCC) on the occasion of the congregation’s 35th anniversary. Nationwide, MCC churches perform more than 6000 same-sex weddings annually.<sup>2</sup>

A more recent example occurred when Bush was interviewed on ABC’s *PrimeTime*, on December 16, 2003. When asked about marriage equality for same-sex couples, Bush said, “If necessary, I will support a constitutional amendment which would honor marriage between a man and a woman, codify that.”<sup>3</sup> However, he also said, “The position of this administration is that whatever legal arrangements people want to make, they’re allowed to make, so long as it’s embraced by the state or at the state level.”<sup>4</sup> The first statement suggests codifying marriage discrimination against lesbians and gay men by amending the US Constitution to ban same-sex marriage, as well as the use of state or federal law to mandate any of the protections for same-sex couples. Bush’s second statement, however, suggests allowing states the freedom to decide how to recognize same-sex couples absent federal intervention.

---

<sup>1</sup> Marriage protection week, 2003, by the President of the United States of America: A proclamation. (2003, October 3). Retrieved January 13, 2004, from <http://www.whitehouse.gov/news/releases/2003/10/print/20031003-12.html>

<sup>2</sup> City News Service. (2004, January 8). Gay church group announces national ‘freedom to marry week’ actions. *City News Service*.

<sup>3</sup> The Federal Marriage Amendment (FMA) would deny same-sex couples the right to marry and restrict the recognition of relationships outside of marriage, such as domestic partnerships and civil unions.

<sup>4</sup> ‘Ultimate penalty:’ Excerpts from an interview with President Bush – part 3. (2003, December 16). *ABC News*. Retrieved December 17, 2003, from

[http://abcnews.go.com/sections/primetime/US/bush\\_sawyer\\_excerpts\\_3\\_031216.html](http://abcnews.go.com/sections/primetime/US/bush_sawyer_excerpts_3_031216.html)

The Bush Administration has been careful to cultivate this image of moderation, and the mainstream media often portrays Bush as moderate on gay issues.<sup>5</sup> However, despite his statements of tolerance and moderation on LGBT issues, Bush has consistently aligned himself with right-wing causes and policies, and his anti-LGBT policy record is clear:

- He opposes marriage equality for same-sex couples and supports the proposed Federal Marriage Amendment (FMA), which would amend the U.S. Constitution to define marriage as only between a man and a woman, and would also prevent state legislatures or courts from mandating more limited benefits through civil unions or domestic partnerships.
- Bush opposes the adoption of children by gay and lesbian families, and his promotion of heterosexual marriage and fatherhood as solutions to child poverty sends the message that only heterosexual married couples are fully suited for raising children
- He opposes nondiscrimination laws and hate crimes legislation that include gender identity and sexual orientation.
- He continues to support the military's "Don't Ask, Don't Tell" policy, which prohibits lesbian and gay people from openly serving in the U.S. armed forces.
- He opposes age-appropriate, research-based sex education, and has increased funding for abstinence-only-until-marriage sex education programs, which teach that sex outside the context of marriage is inherently dangerous, both physically and psychologically, and essentially tells gay and lesbian people that they should remain abstinent throughout their lives since they can not get married.
- He has nominated numerous anti-LGBT judges, and has appointed federal officials who are openly hostile to LGBT people.
- He has advocated allowing faith-based service providers to ignore local and state nondiscrimination laws that include sexual orientation or gender identity when hiring for positions paid for with federal funds.
- The Bush Administration has conducted costly and time-consuming audits of AIDS service organizations. In 2003, National Institutes of Health (NIH) staff warned researchers to avoid certain terms connected with homosexuality in federal grant proposals to avoid extra scrutiny. And, in October 2003, the Traditional Values Coalition, an anti-LGBT, right wing religious organization, prompted the U.S. Department of Health and Human Services to audit 250 research projects funded by NIH that involved issues related to sexuality.

Bush's record on LGBT issues is not completely negative. Upon taking office in 2001, he did not repeal President Clinton's 1998 executive order banning sexual orientation discrimination in the

---

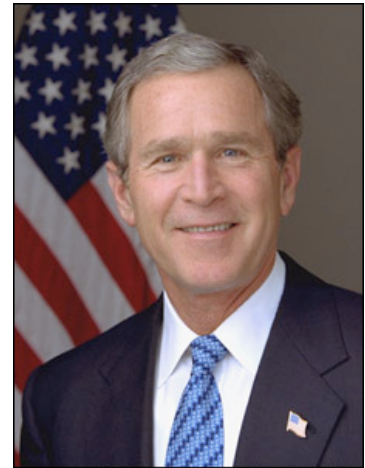
<sup>5</sup> Hutcheson, R. (2003, August 31). Bush takes middle ground approach on gay issues. *Knight Ridder/Tribune Information Service.*; Foer, F. (2003, December 29). Howard Dean's religion problem: Beyond belief. *The New Republic.* p.24. Foer writes that Bush has "struck a relatively moderate tone on gays..."

federal civilian workforce. Also, despite the concerns noted above, the federal health bureaucracy has continued to fund research and services for LGBT people.

This report documents President George W. Bush's record on lesbian, gay, bisexual and transgender issues. Despite his contradictory statements on LGBT-related issues and his media image as a moderate, George W. Bush is no friend to the LGBT community. By analyzing public statements, policy directives, executive orders, as well as a comprehensive analysis of secondary sources, this report highlights his administration's efforts to deny basic rights to LGBT people.

## About George W. Bush

On January 20, 2001, George W. Bush became the 43<sup>rd</sup> President of the United States. Born on July 6, 1946, in New Haven, Connecticut and raised in Midland and Houston, Texas, Bush received a bachelor's degree from Yale University in 1968, and served in the Texas Air National Guard until 1973. After receiving an MBA from Harvard Business School in 1975, he moved back to Midland, Texas and became the founder and CEO of Bush Exploration Oil & Gas Company. After an unsuccessful run for Congress in 1978, Bush re-entered the political arena in 1988, working as a senior advisor for his father's presidential campaign. In 1989, he assembled the group of partners that purchased the Texas Rangers baseball franchise and became the Managing General Partner. Before his Presidential campaign, George W. Bush served two terms as the Governor of Texas, from 1995 until December of 2000.<sup>6</sup>



White House photo by Eric Draper

## Marriage Equality:

## Opposes

George W. Bush opposes marriage equality for same-sex couples, and supports the Federal Marriage Amendment (FMA), which would ban the marriages of same-sex couples and threaten more limited forms of partner recognition like civil unions and domestic partnerships. He also clearly supports the 1996 Defense of Marriage Act (DOMA), and issued a proclamation in support of "Marriage Protection Week," which was sponsored by right-wing, anti-LGBT organizations in October 2003. He also opposes the recent Massachusetts Supreme Judicial Court ruling legalizing marriage for same-sex couples.

### *2000 Election*

- During the second presidential debate in October 2000, when asked about his thoughts on same-sex relationships, Bush replied, "I'm not for gay marriage. I think marriage is a sacred institution between a man and a woman. And I appreciated the way the administration signed the Defense of Marriage Act...I think marriage is a sacred institution. I'm going to be

---

<sup>6</sup> President George W. Bush. Retrieved July 9, 2003, from <http://www.whitehouse.gov/president/gwbbio.html>; George W. Bush biographical information. Retrieved July 8, 2003, from <http://www.politics1.com/bush.htm>

respectful for people who may disagree with me...but I feel strongly that marriage should be between a man and a woman.”<sup>7</sup>

### *Federal Marriage Amendment*

- On July 2, 2003, when asked about the proposed constitutional amendment banning same-sex marriage and undermining more limited forms of partner recognition Bush responded, “I don’t know if it’s necessary yet...what I do support is a notion that marriage is between a man and a woman.”<sup>8</sup>
- At a press conference in late July 2003, in which he was asked about the misleading and inaccurate statement in his State of the Union Address that Iraq had tried to purchase uranium in Africa, Bush also announced his intention to introduce legislation that would further codify the ban on same-sex marriage.<sup>9</sup> When also asked about his view on homosexuality, given that many of his supporters believe it is immoral, Bush responded:

Yes, I am mindful that we’re all sinners, and I caution those who may try to take the speck out of their neighbor’s eye when they got a log in their own. I think it’s very important for our society to respect each individual, to welcome those with good hearts, to be a welcoming country. On the other hand, that does not mean that somebody like me needs to compromise on an issue such as marriage. And that’s really where the issue is heading here in Washington, and that is the definition of marriage. I believe in the sanctity of marriage. I believe a marriage is between a man and a woman. And I think we ought to codify that one way or the other. And we’ve got lawyers looking at the best way to do that.<sup>10</sup>

- On July 31, 2003 White House Press Secretary Scott McClellan repeated Bush’s belief in the “sanctity of marriage” between one man and one woman, including his support for the Defense of Marriage Act (DOMA).
  - When asked how this view reflects on Bush’s “compassionate conservatism,” McClellan replied that while “the President very much respects people who disagree with his view,” this is not an issue where he is going to compromise, though “we all should remember that it’s important to respect one another...to treat one another with dignity and respect.”<sup>11</sup>
  - When asked to clarify Bush’s statements on July 30, 2003, which were interpreted to mean that he believes homosexuals are “sinners,” McClellan responded, “...The

---

<sup>7</sup> The 2000 campaign; 2nd presidential debate between Gov. Bush and Vice President Gore. (2000, October 12). *The New York Times*. p. A22.

<sup>8</sup> Anderson, N. (2003, July 3). Candidates leery of gay marriage debate. *The Los Angeles Times*. Retrieved July 9, 2003, from <http://www.latimes.com/news/nationworld/politics/la-na-marriage3jul03001429,0,2329538.story?coll=la-news-politics-national>

<sup>9</sup> President Bush discusses top priorities for the U.S. (2003, July 30). Retrieved July 31, 2003, from <http://www.whitehouse.gov/news/releases/2003/07/20030730-1.html>

<sup>10</sup> Ibid.

<sup>11</sup> Press Briefing by Scott McClellan. (2003, July 31). Retrieved January 13, 2004, from <http://www.whitehouse.gov/news/releases/2003/07/20030731-9.html>

President believes that in the eyes of God, we are all the same...that it's not his place to judge other people. So we need to treat one another with dignity and respect...it's a tolerant approach in terms of respecting one another...someone's sexual orientation is their personal business. The President is not someone who believes in politicizing someone's sexual orientation."<sup>12</sup>

- On December 16, 2003, in an interview with Diane Sawyer on ABC News, Bush remained unclear about his support for the Federal Marriage Amendment, stating both that he would support it "if necessary," and that the decision should be made "at the state level." According to Bush:

If necessary, I will support a constitutional amendment which would honor marriage between a man and a woman, codify that, and will—the position of this administration is that whatever legal arrangements people want to make, they're allowed to make, so long as it's embraced by the state or [?] start at the state level. Let me tell you, the court I thought overreached its bounds as a court. It did the job of the legislature. It was a very activist court in making the decision it made. As you know, I'm a person who believes in judicial restraint, as opposed to judicial activism that takes the place of the legislative branch.<sup>13</sup>

- On February 24, 2004, Bush officially endorsed an amendment to the Constitution banning same-sex marriage, saying in part, "If we are to prevent the meaning of marriage from being changed forever, our nation must enact a constitutional amendment to protect marriage in America. Decisive and democratic action is needed because attempts to redefine marriage in a single state or city could have serious consequences throughout the country."<sup>14</sup>

### ***Massachusetts Supreme Judicial Court Ruling on Marriage Equality for Same-Sex Couples***

- On November 18, 2003, Bush released an official statement opposing the Massachusetts Supreme Judicial Court ruling in *Goodridge v. Department of Public Health* which declared that the denial of civil marriage to same-sex couples violates the state constitution.<sup>15</sup> Bush said:

Marriage is a sacred institution between a man and a woman. Today's decision of the Massachusetts Supreme Judicial Court violates this important principle. I will work with congressional leaders and others to do what is legally necessary to defend the sanctity of marriage.<sup>16</sup>

---

<sup>12</sup> Ibid.

<sup>13</sup> ABC News. (2003, December 16).

<sup>14</sup> Stout, D. (2004, February 24). Bush backs ban in Constitution on gay marriage. New York Times. Retrieved May 3, 2004, from <http://www.nytimes.com/2004/02/24/politics/24CND-GAY.html?ex=1083729600&en=cd11a20470522f29&ei=5070>

<sup>15</sup> *Goodridge v. Dep't of Pub. Health*, 440 Mass. 309 (2003).

<sup>16</sup> Bush, G.W. (2003, November 18). President defends the sanctity of marriage: Statement by the President. Retrieved December 17, 2003, from <http://www.whitehouse.gov/news/releases/2003/11/20031118-4.html>

## ***Marriage Protection and Promotion, and Broad Anti-Gay Agenda***

- On October 3, 2003, Bush signed an official proclamation designating the week of October 12 through October 18, 2003 as “Marriage Protection Week.” Bush’s statement declared:

Marriage is a sacred institution, and its protection is essential to the continued strength of our society. Marriage Protection Week provides an opportunity to focus our efforts on preserving the sanctity of marriage and on building strong and healthy marriage in America... Marriage is a union between a man and a woman...we must support the institution of marriage and help parents build stronger families. And we must continue our work to create a compassionate, welcoming society where all people are treated with dignity and respect.<sup>17</sup>

- A coalition of 29 conservative political and religious organizations sponsored “Marriage Protection Week,” including the Concerned Women for America, Focus on the Family, the Family Research Council, and the public policy arm of the Southern Baptist Convention.
- In response, the National Gay and Lesbian Task Force Policy Institute conducted an analysis unmasking the people and organizations that sponsored “Marriage Protection Week.” A Task Force analysis of the 29 sponsors of Marriage Protection Week (MPW) found that these organizations disproportionately focus on homosexuality compared to issues that actually impact marriage and family life; that the resources of these organizations dwarf those of the supposedly “rich and powerful gay lobby” by at least a 4-1 margin; and that contrary to Bush’s official proclamation, the planned activities of the week had no focus whatsoever on “building strong and healthy marriages,” but rather were almost exclusively directed at building support for the anti-gay Federal Marriage Amendment.<sup>18</sup>
- The groups co-sponsoring “Marriage Protection Week” often use intemperate language to promote intolerance and explicitly promote discrimination against gay people.
  - The American Family Association, criticizing efforts to end widespread anti-gay harassment and violence in the schools, recently wrote:

What Would Jesus Do? Jesus never “tolerated” or “accepted” sin. While His response to sin was swift and sometimes harsh, His motive was always one of unconditional love. Jesus didn’t “pussy foot” around, fearful He may “offend” someone or worried He may appear “hate-filled,” “intolerant” or “bigoted.” No, Jesus called it like it was: sin is sin is sin. Many times He openly exhibited a holy, righteous anger and zeal for “His Father’s business.” Jesus rebuked and

---

<sup>17</sup> Bush, G.W. (2003, October 3).

<sup>18</sup> For a full analysis of “Marriage Protection Week,” see: Cahill, S., Cianciotto, J., & Colvin, R. (2003). *Marriage protection week sponsors: Are they really interested in building strong and healthy marriages?* The National Gay and Lesbian Task Force Policy Institute. Available at: [www.ngltf.org/downloads/MarriageProtectionWeek.pdf](http://www.ngltf.org/downloads/MarriageProtectionWeek.pdf)

exposed ... It's high time Christians—followers and Ambassadors of Christ—did the same.<sup>19</sup>

- Traditional Values Coalition leader Lou Sheldon, a lead co-sponsor of Marriage Protection Week, wrote earlier this year: “We are not tolerant of behaviors that destroy individuals, families and our culture. Individuals may be free to pursue such behaviors as sodomy, but we will not and cannot tolerate these behaviors...In short, we believe in intolerance to those things that are evil; and we believe that we should discriminate against those behaviors which are dangerous to individuals and to society.”<sup>20</sup> The Traditional Values Coalition opposes sexual orientation nondiscrimination laws, which are supported by overwhelming majorities of Americans, including 56% of Republican voters, 70% of independents and 75% of Democrats.<sup>21</sup>
- Sheldon also warned in a September 2003 fundraising letter that “this flood tide of perversion” of “homosexual activists” seeks to “abolish the idea of marriage altogether,” which is not true. Sheldon also predicted that the legalization of same-sex marriage would lead to marriages between “three women and two men, or two women and three men.”<sup>22</sup>
- Concerned Women for America recently warned that same-sex marriage “pose[s] a new threat to US border security” calling a legally married Canadian same-sex couple trying to enter the U.S. as a married couple “the latest pair of ‘domestic terrorists.’”<sup>23</sup>
- The groups co-sponsoring “Marriage Protection Week” also portray themselves as representing middle America, but in fact they promote the development of a theocratic state and have a vision of an intolerant America that is out of step with the views of most Americans.
  - A number of sponsoring organizations of Marriage Protection Week, including American Cause, led by Pat Buchanan, oppose affirmative action and abortion rights. Buchanan calls “mass immigration” a “suicide pill of the GOP.”<sup>24</sup>
  - Eagle Forum opposes statehood for the District of Columbia (an overwhelmingly black and Democratic-voting district) and Puerto Rico, and supports establishing English as the official language of the U.S. It opposes the Bush Administration’s

---

<sup>19</sup> Bennett, S. Homosexual agenda: The deception and desensitization of America’s youth. American Family Association. Retrieved October 8, 2003, from [http://www.afa.net/homosexual\\_agenda/getarticle.asp?id=81](http://www.afa.net/homosexual_agenda/getarticle.asp?id=81)

<sup>20</sup> Sheldon, L. (February 2003). Discrimination and Tolerance. *Traditional Values Coalition Report*. 21(1).

<sup>21</sup> Yang, A. (2001). *The 2000 national election study and gay and lesbian rights: Support for equality grows*. The National Gay and Lesbian Task Force Policy Institute. Available at: <http://www.nglft.org/downloads/NES2000.pdf>

<sup>22</sup> Sheldon, L. (2003, September 17). Traditional values coalition fundraising letter. Traditional Values Coalition.

<sup>23</sup> Kimball, J. (2003, September 24). Homosexuals pose new threat to U.S. border security. Concerned Women for America. Retrieved September 29, 2003, from

<http://www.cwfa.org/printerfriendly.asp?id=4629&department=cwa&categoryid=family>

<sup>24</sup> Buchanan, P. Mass immigration: Suicide pill of the GOP. Retrieved October 3, 2003, from <http://www.theamericancause.org/index.htm>

proposal to offer Social Security benefits to legal and illegal Mexican workers. It also brags about leading the fight to defeat the Equal Rights Amendment in the 1970s and early 1980s, and criticizes the use of women in combat in Iraq, claiming, “feminist ideology, like G.I. Jane standing naked in the shower, is an empress who has no clothes.”<sup>25</sup>

## Vice President Dick Cheney on Marriage

In 2000, Vice Presidential candidate Dick Cheney argued that the issue of marriage equality for same-sex couples should be decided at the state-level.

- At the October 5, 2000 Vice Presidential Debate, Cheney was asked about same-sex relationships. He responded, “The fact of the matter is, we live in a free society, and freedom means freedom for everybody. ... And I think that means that people should be free to enter into any kind of relationship they want to enter into. ... The next step then, of course, is the question you ask of whether or not there ought to be some kind of official sanction, if you will, of the relationship, or if these relationships should be treated the same as a conventional marriage is. ... I think the fact of the matter is that matter is regulated by the states. I think different states are likely to come to different conclusions, and that's appropriate. I don't think there should necessarily be a federal policy in this area. ... I think we ought to do everything we can to tolerate and accommodate whatever kind of relationships people want to enter into.”<sup>26</sup>

In January 2004 Cheney modified his position on state recognition of same-sex couples. While reaffirming his support for allowing states the freedom to decide how to recognize same-sex couples, Cheney pledged to support the President Bush if he pursues a Constitutional amendment banning same-sex marriage.

- On January 9, 2004 Vice President Cheney told the *Denver Post* “that the recent action by courts in Massachusetts and other states that recognize the rights of gays to the civil benefits of marriage has caused the administration to revisit the need for a constitutional amendment,” according to reporter John Aloysius Farrell. “Vice President Cheney said today he would support a presidential push to ban same-sex marriage,” Farrell continued. Cheney is directly quoted as saying the following:

What I said in 2000 was that the question of whether or not some sort of status, legal status or sanction ought to be granted in the case of a relationship between two individuals of the same sex was historically a matter the states had decided and resolved, and that is the way I preferred it, but at this stage, obviously, the president is

---

<sup>25</sup> Schlafly, P. (2003, April 9). Who pays for feminist ideology? *The Eagle Forum*. Retrieved January 9, 2004 from, [www.eagleforum.org/column/2003/apr03/03-04-09.shtml](http://www.eagleforum.org/column/2003/apr03/03-04-09.shtml)

<sup>26</sup> The 2000 Lieberman–Cheney Vice Presidential Debate: October 5, 2000. Commission on Presidential Debates. Retrieved December 4, 2003, from <http://www.debates.org/pages/trans2000d.html>

going to have to make a decision in terms of what administration policy is on this particular provision, and I will support whatever decision he makes.<sup>27</sup>

- In remarks made on August 24, 2004, Cheney returned to his position of 4 years ago, saying that he disagrees with President Bush's position and prefers that there not be a federal policy in this area:

The question that comes up with respect to the issue of marriage is, what kind of official sanction or approval is going to be granted by government, if you will, to the particular relationship?

Historically, that's been a relationship that's been handled by the states. States have made the basic fundamental decision what constitutes a marriage. I made clear four years ago when this question came up...that that's appropriately a matter for the states to decide and that's how it ought to best be handled.

The president has...felt that he wanted to support a constitutional amendment to define at the federal level what constitutes marriage...So where we're at at this point is, he's come out in support of a federal constitutional amendment and I don't think that, so far, it hasn't had the votes to pass.

There is the federal Defense of Marriage Act that passed in 1996 and, to date, it has not been successfully challenged in the court, and it may be sufficient to resolve the issue. At this point my own preference is as I've stated, but the president makes basic policy for this administration and he's made it clear that he does in fact support an amendment on this issue.<sup>28</sup>

## **Domestic Partnership:**

## ***Unclear***

- In 2000 Bush said, "In the private sector [domestic partner benefits] are perfectly fine." On the governmental level, he said, the decision should be left up to cities and states.<sup>29</sup> Bush has not indicated whether or not he supports domestic partner benefits for same-sex partners of federal employees. Such a bill was introduced into Congress in 2003.<sup>30</sup> The White House Press Office did not respond to a Task Force request to clarify the president's position on domestic partner benefits for federal employees.

---

<sup>27</sup> Farrell, J. (2004, January 11). VP would back ban on gay marriage: Cheney pledges support if Bush seeks amendment. *The Denver Post*. Retrieved January 12, 2004, from <http://www.denverpost.com/Stories/0,1413,36~11676~1881360,00.html>

<sup>28</sup> Toner, R. (2004, August 25). Cheney stakes out stance on gay marriage. For Cheney's full remarks, see National Gay and Lesbian Task Force. (2004, August 24). Vice President Cheney comes out against blatantly discriminatory Federal Marriage Amendment, acknowledges 'gay' daughter. Available at <http://www.thetaskforce.org/media/release.cfm?releaseID=728>

<sup>29</sup> Mitchell, A. (2000, April 14). Bush talks to gays and calls it beneficial. *The New York Times*, p. A26.

<sup>30</sup> Domestic Partners Benefits and Obligations Act, H.R. 638, 107<sup>th</sup> Cong. (2003).

## Civil Unions:

## Unclear

- On July 31, 2003 White House Press Secretary Scott McClellan was asked how the President feels about the “concept of civil unions as an alternative to gay marriage.” McClellan responded that Bush supports the Defense of Marriage Act, which “states that other states don’t have to recognize the civil unions or same-sex marriages of other states. So his position is very clear in support of that.”<sup>31</sup> The White House Press Office did not respond to a Task Force request to clarify the president’s position on whether states should enact civil unions for same-sex couples, which afford a separate form of equality at the level of state policy but no federal protections. Texas, which Bush used to lead as governor, does not offer civil unions or domestic partnerships to same-sex couples.

## Anti-Gay Judicial Nominees and Appointments:

## Supports

President George W. Bush has nominated and appointed a series of anti-gay judges during his three years in the White House.<sup>32</sup>

- Jay Bybee was confirmed to the U.S. Court of Appeals for the 9<sup>th</sup> Circuit in March 2003. In 1997 law review article Bybee compared discrimination against gays and lesbians to discrimination against the “illiterate, ... licensed cosmeticians, the tall, the short, persons with male pattern baldness, and so forth.”<sup>33</sup>
- Timothy Tymkovich was confirmed to the U.S. Court of Appeals for the 10<sup>th</sup> Circuit in 2003. Tymkovich criticized the Supreme Court for its *Romer v. Evans*<sup>34</sup> decision striking down Colorado’s Amendment 2, which banned local or state nondiscrimination laws covering sexual orientation. Tymkovich argued both that the amendment was permissible and that it was provoked by aggressive self-promotion on the part of gays and lesbians.<sup>35</sup>
- Michael McConnell was confirmed to the U.S. Court of Appeals for the 10<sup>th</sup> Circuit in 2002. McConnell wrote the brief on behalf of the Boy Scouts in *Boy Scouts of America v. Dale*,<sup>36</sup> defending the Boy Scouts’ right to ban homosexual scouts and scoutmasters from the organization.
- William Pryor was nominated for the U.S. Court of Appeals for the 11<sup>th</sup> Circuit in 2003, and his nomination was held-up by a filibuster in the U.S. Senate. Judge Pryor has taken numerous anti-gay positions. In 1995, as Alabama’s Deputy Attorney General, Pryor filed an amicus brief in support of Colorado’s position in *Romer v.*

---

<sup>31</sup> Press briefing by Scott McClellan. (2003, July 30). Retrieved August 1, 2003, from <http://www.whitehouse.gov/news/releases/2003/07/20030731-9.html>

<sup>32</sup> For more information on Bush’s judicial nominees, see: Alliance for Justice. Available at: [www.afj.org](http://www.afj.org) and <http://www.independentjudiciary.com>, and the People for the American Way. Available at: [www.pfaw.org](http://www.pfaw.org).

<sup>33</sup> Jay S. Bybee, *The Equal Protection Clause: A Note on the (Non)Relationship between Romer v. Evans and Hunter v. Erickson*, 6 WM. & MARY BILL RTS. J. 201, 224 (1997).

<sup>34</sup> 517 U.S. 620 (1996).

<sup>35</sup> Timothy M. Tymkovich, John Daniel Dailey, Paul Farley, *Gay Rights and the Courts: The Amendment 2 Controversy: A Tale of Three Theories: Reason and Prejudice in the Battle over Amendment 2*, 68 U. COLO. L. REV. 287 (1997).

<sup>36</sup> 530 U.S. 640 (2000).

*Evans*. Explaining why his office felt compelled to join the brief, Pryor stated, “The attorney general of Alabama felt strongly that we don’t need to be finding new rights in our Constitution [because] we’ve done enough of that in recent years.”<sup>37</sup> In 2002, in his capacity as Attorney General, Pryor filed an anti-gay brief in *Lawrence v. Texas* on behalf of Alabama urging the Supreme Court to uphold Texas’ law banning same-sex sodomy. Pryor argued that a “constitutional right that protects ‘the choice of one’s partner’ and ‘whether and how to connect sexually’ must logically extend to activities like prostitution, adultery, necrophilia, bestiality, possession of child pornography, and even incest and pedophilia.”<sup>38</sup> On February 20, 2004, Bush took advantage of a congressional recess to bypass Senate democrats and install Pryor on the federal appeals court.<sup>39</sup>

- Another anti-gay nominee has not yet been confirmed:
  - Claude Allen was nominated for the U.S. Court of Appeals for the 4<sup>th</sup> Circuit in 2003. As Deputy Secretary for Health and Human Services, Mr. Allen was the primary architect of Bush’s federal abstinence-only-until marriage campaign. Alan led up audits of AIDS advocacy groups that protested Secretary Tommy Thompson at the Barcelona International AIDS conference in July 2002. Allen also allegedly made anti-gay comments while working for Senator Jesse Helms. During the 1984 Senate race, he called Governor James Hunt, Helms’ Democratic opponent, vulnerable for links “with the queers.”<sup>40</sup>

## **Sexual Orientation Nondiscrimination Laws: **Opposes****

- During the second presidential debate in October 2000, when asked if “gays and lesbians should have the same rights as other Americans,” Bush responded, “Yes. I don’t think they ought to have special rights. But I think they ought to have the same rights.” When asked to elaborate on what he meant by “special rights,” Bush responded, “Well, it’d be if they’re given special protective status.”<sup>41</sup>
- When Vice President Gore noted his own support for the Employment Non-Discrimination Act (ENDA), which would ban sexual orientation discrimination in the workplace, Bush said, “Well, I have no idea. I mean, he can throw out all kinds . . . I don’t know the particulars of this law. I will tell you . . . I don’t hire or fire someone based on their sexual orientation.”<sup>42</sup>
- During a press conference on April 25, 2003, when asked about the President’s beliefs about homosexuality in the wake of Senator Santorum’s comments comparing homosexuality to

<sup>37</sup> McKee, M. (1995, May 23). AG joins amicus supporting Colorado anti-gay initiative. *The Recorder*.

<sup>38</sup> Ringel, J. (2003, May 19). Incendiary high court brief began in Georgia. *Fulton County Daily Report*. Retrieved January 8, 2004, from <http://www.law.com/jsp/article.jsp?id=1052440742547>

<sup>39</sup> Stout, D. (2004, February 20). Bush seats judicial nominee that Senate democrats blocked. *New York Times*. Retrieved May 3, 2004, from <http://www.nytimes.com/2004/02/20/politics/20CND-JUDG.html?ex=1083729600&en=6b93bd4e8f860486&ei=5070>

<sup>40</sup> Martz, M., & Hardin, P. (2003, May 12). Judging politics and his principle: Court nominee’s fitness debated. *Richmond-Times Dispatch*.

<sup>41</sup> The 2000 Campaign; 2nd presidential debate between Gov. Bush and Vice President Gore. (2000, October 12). *The New York Times*, p. A22.

<sup>42</sup> *Ibid*.

pedophilia and bestiality, Press Secretary Ari Fleischer responded, “The President has always said that when it comes to legal matters, that it’s a question of different groups, homosexual groups, gay groups should not have special rights or special privileges.”<sup>43</sup>

- Despite his lack of support for sexual orientation nondiscrimination laws, upon taking office President Bush did not rescind President Clinton’s executive order prohibiting discrimination against civilian federal workers on the basis of sexual orientation.<sup>44</sup>
- In June 2003, the President and the White House Faith-Based and Community Initiative released a position paper urging Congress to allow federally funded religious groups to hire and fire workers according to their faith or sexual orientation. The paper, *Protecting the Civil Rights and Religious Liberty of Faith-Based Organizations: Why Religious Hiring Rights Must Be Preserved*, portrays anti-gay discrimination in hiring for positions paid for with public funds as religious liberty.

The position paper argues that faith-based service providers receiving public money should be able to discriminate in hiring for jobs funded by federal and state funds. It explicitly says that these providers should be able to discriminate on the basis of sexual orientation, and portrays state and local gay rights laws as a hindrance to serving the needs of African American and Latino urban poor.

The June 2003 Bush Administration memo to Congress argues that Title VII of the Civil Rights Act allows religious entities to discriminate in hiring. While such discrimination is allowed with private funds, whether or not it is legal for faith-based groups to discriminate in employment funded by state or federal dollars has not been established. Civil rights and civil liberties groups ranging from the NAACP to Americans United for Separation of Church and State, the American Civil Liberties Union, and People for the American Way believe that the Title VII exemption cannot constitutionally apply to jobs that are funded by the federal government.

According to these groups, the Title VII exemption is constitutionally limited to privately funded positions. Indeed, although the Supreme Court has not definitively ruled on this issue, at least one federal court has held that it would be unconstitutional for a religious institution to invoke the Title VII exemption for a federally funded job. See *Dodge v. Salvation Army*, 1989 WL 53857 (S.D. Miss. Jan. 9, 1989).

The Bush memo justifies its encouragement of discrimination by characterizing this policy as “safeguard[ing] the religious liberty of faith-based organizations that partner with the Federal government, so that they may respond with compassion to those in need in our country.” It portrays state and local nondiscrimination laws as “uncertain regulatory waters” that are “simply too difficult and costly for many faith-based organizations to navigate...” It ignores the cost of discrimination to those who are not even considered for employment, or who are fired, because they are the “wrong” sexual orientation or religion. It says that forcing religious groups to hire gay people would be like forcing Planned Parenthood to hire people who are anti-choice and anti-birth control. In fact, being gay is not a matter of ideology or belief; it is a matter of who people are.

---

<sup>43</sup> Press briefing by Ari Fleischer. (2003, April 25). Retrieved July 9, 2003, from <http://www.whitehouse.gov/news/releases/2003/04/20030425-4.html>

<sup>44</sup> Executive Order No. 13,087 (1998).

The Bush Administration memo also portrays gay rights laws as a hindrance to meeting the service needs of low-income people: “This hodgepodge of conflicting approaches has led to confusion... and a consequent reluctance by many faith-based groups to seek support from Federally funded programs... The real losers are the homeless, the addicted, and others who are denied access to a range of effective social service providers, including faith-based providers.”

Rev. Eugene Rivers of Boston, an African American minister and community activist, is quoted in the memo making a similar claim: “Faith-based organizations must be protected from the kind of discrimination that would prevent us from hiring the people who are best equipped to fulfill our mission and do the work... This discrimination is a violation of the civil rights of religious groups and would effectively prevent the delivery of services to this country’s black and brown urban poor.”

Faith-based service providers have long played a critical role in providing services, particularly to African Americans and immigrants, who were often not able to access other service providers due to discrimination. But until charitable choice and the faith-based initiative, religious providers had to set up separate, secular 501c3 organizations to administer public funds, and could not discriminate in hiring or the delivery of services funded by public monies.

President Bush is seeking to transfer up to \$8 billion a year in federal funds to religious service providers. Allowing religious groups to discriminate in hiring for jobs funded by federal monies could open the door to widespread discrimination on the basis of race, religion, national origin, sexual orientation, gender, marital status, and other characteristics. Regulatory oversight and professional training standards are also greatly diminished.<sup>45</sup>

- In March 2004, US special counsel Scott Bloch questioned whether federal law protects gay and lesbian federal employees from discrimination based on sexual orientation and removed references to sexual orientation discrimination from his agency’s website. The White House distanced itself from its US special counsel, with White House spokesperson Trent Duffy saying the president “believes that no federal employee should be subject to unlawful discrimination, and federal agencies will fully enforce the law against discrimination, including discrimination based on sexual orientation.”<sup>46</sup>

## **Gender Identity Nondiscrimination Laws:**

***Unclear***

- The Bush Administration has not made any direct statements regarding gender identity nondiscrimination laws, which would prohibit discrimination on the basis of gender identity or gender variance, thereby prohibiting discrimination against transgender people.<sup>47</sup> However, Bush’s characterization of sexual orientation nondiscrimination laws as

---

<sup>45</sup> Towery, J. *Protecting the civil rights and religious liberty of faith-based organizations: Why religious hiring rights must be preserved*. White House Office of Faith-Based and Community Initiatives. Retrieved January 6, 2004, from <http://www.whitehouse.gov/government/fbci/booklet.pdf>

<sup>46</sup> Washington, W. (2004, April 1). White House, counsel split on gay rights. *Boston Globe*. Retrieved May 3, 2004, from [http://www.boston.com/news/nation/articles/2004/04/01/white\\_house\\_counsel\\_split\\_on\\_gay\\_rights/](http://www.boston.com/news/nation/articles/2004/04/01/white_house_counsel_split_on_gay_rights/)

<sup>47</sup> For more on transgender nondiscrimination, see: Currah, P. & Minter, S. (2001). *Transgender equality: A handbook for activists and policymakers*. New York: National Gay and Lesbian Task Force & National Center for Lesbian Rights. Available at: <http://www.nglftf.org/downloads/transeq.pdf>

constituting “special rights” in a 2000 presidential debate, cited above, makes us skeptical that he would support gender identity nondiscrimination laws.

- Prior to leaving office, the Clinton administration proposed adding gender discrimination to the list of guidelines governing immigrants seeking asylum in the U.S. The Bush Administration has not taken up the proposal, leaving in limbo foreigners seeking asylum because of domestic violence or persecution based on their gender identity.<sup>48</sup>
- At the Yale University Class of 1968 reunion held at the White House on May 29, 2003, a former classmate who had a sex-change operation introduced herself to Bush as Louise Casselman, stating, “You might remember me as Peter when we left Yale.” According to Casselman, without pausing Bush took her hand and replied, “Now you’ve come back as yourself.” Afterwards, Bush paused for a picture with Casselman’s husband.<sup>49</sup>

### **HIV/AIDS, Education, Prevention, & Treatment:**

### **Opposes**

- When asked on a presidential candidate survey, “Do you support sex education programs that stress safe sexual practices?” Bush responded, “No” and has told young people that they should avoid sex until they are in “a biblical marriage relationship.”<sup>50,51</sup>
- In April 2001, when Ari Fleischer announced that Scott Evertz would be appointed as the first openly gay director of the Office of National AIDS Policy, a reporter asked how the President would respond to conservatives who had spoken out against the appointment. Fleischer responded, “The President picks the best people for the job...and [Evertz] will be welcome at this White House.”<sup>52</sup> Three months later Evertz was removed from his position and given a job as Senior Advisor to the Department of Health and Human Services (HHS) Secretary Tommy Thompson. Though the Bush administration would not give an official reason for the change, it was reported that Evertz was forced out for advocating the use of condoms to prevent the spread of AIDS and for criticizing Bush’s abstinence-only-until-marriage AIDS prevention strategy.<sup>53</sup>
- After awarding \$20 million in 2001 and \$40 million in 2002 for abstinence-only-until-marriage education programs, Health and Human Services Secretary Tommy Thompson gave out \$55 million in 2003 and is proposing \$73 million in 2004. When combined with other federally funded abstinence-only-until-marriage programs, the Bush Administration’s commitment to abstinence-only totaled \$117 million in 2001, \$140 million in 2002, \$160 million in 2003, and a proposed \$176 million for 2004. To be eligible, groups must agree to teach that “a mutually faithful, monogamous relationship in the context of marriage is the expected standard of human sexual activity” and that sex outside of marriage “is likely to

---

<sup>48</sup> Chardy, A. (2003, March 6). Broader asylum rules reviewed. *The Miami Herald*. Retrieved July 9, 2003, from <http://www.miami.com/mld/miamiherald/news/local/5326031.htm>

<sup>49</sup> Garchik, L. (2003, June 6). George Bush gets it right. *San Francisco Chronicle*, p. D24.

<sup>50</sup> Project Vote Smart Questionnaire. (1998). Retrieved July 9, 2003, from [http://www.vote-smart.org/program\\_npat.php](http://www.vote-smart.org/program_npat.php)

<sup>51</sup> Broder D. (1999, June 22). Bush defends gun record, pushes teen abstinence. *Washington Post*. p. A4.

<sup>52</sup> Press briefing by Ari Fleischer. (2001, April 9). Retrieved July 9, 2003, from <http://www.whitehouse.gov/news/briefings/20010409.html>

<sup>53</sup> Gay Stolberg, S. (2002, July 19). Bush replacing AIDS adviser who drew fire. *New York Times*. p. A13.

have harmful psychological and physical effects.”<sup>54</sup> In 2003, the Bush administration’s HIV/AIDS budget included \$120 million for federally funded abstinence-only programs, and it opposed HIV/AIDS prevention efforts that involve safe sex education or the distribution of contraception.<sup>55</sup>

- During a press conference in January 2003, White House Press Secretary Ari Fleischer was asked if the President condoned statements by James Thacker, a nominee to the administration’s AIDS Advisory Council, who had called AIDS “a gay plague” and homosexuality a “death-style.” Fleischer responded, “No, the President does not share that view; the President has a totally opposite view...people with AIDS need to be treated with care, compassion, and that’s why his budget has provided so much money to help in the fight against AIDS.”<sup>56</sup>
- On January 28, 2003, President Bush announced that he would dramatically increase U.S. funding for HIV/AIDS prevention, treatment, and care in Africa and the Caribbean.<sup>57</sup> Just weeks later, however, the administration made public its intent to expand the application of the global gag rule to all U.S. global health assistance, including funding for HIV/AIDS prevention and treatment services in developing countries.<sup>58</sup> One-third of the new AIDS prevention money for Africa will be reserved for groups that promote abstinence-only-until-marriage and don’t promote the use of condoms or other contraceptives.<sup>59</sup> Planned Parenthood warns that the administration’s attempts to expand the global gag rule, promoting abstinence-only-until marriage as the primary component of an HIV/AIDS prevention strategy, may ultimately eliminate access to family planning and reproductive health services around the world.<sup>60</sup>
- The Bush administration’s 2004 federal budget was both praised and criticized by AIDS treatment and prevention organizations, with some, like Housing Works and Gay Men’s Health Crisis (GMHC), called it a “status quo budget” and not “really serious about fighting AIDS.”<sup>61</sup> The budget increased funding for the Ryan White Act by \$96 million, bringing total funding for the act to \$2 billion.<sup>62</sup> Other increases included \$34.7 million for the tuberculosis and sexually transmitted disease program at the Centers for Disease Control (CDC).<sup>63</sup> However, the budget did not increase funding for the Minority AIDS Initiative, even though, according to the Gay Men’s Health Crisis (GMHC), HIV/AIDS has become the

---

<sup>54</sup> Wahlberg, David. (2003, August 3). Public health tailored to Bush administration’s agenda, Atlanta critics say. *Atlanta Journal and Constitution*. p. B1.

<sup>55</sup> Daily HIV/AIDS report. (2003, March 24). Retrieved July 9, 2003, from [http://www.kaisernetwork.org/daily\\_reports/rep\\_index.cfm?hint=1&DR\\_ID=16743](http://www.kaisernetwork.org/daily_reports/rep_index.cfm?hint=1&DR_ID=16743)

<sup>56</sup> Press briefing by Ari Fleischer. (2003, January 23). Retrieved July 9, 2003, from <http://www.whitehouse.gov/news/releases/2003/01/20030123-3.html#6>

<sup>57</sup> Bush, G.W. (2003, January 28). State of the Union, January 28, 2003. Retrieved December 26, 2003, from <http://www.whitehouse.gov/news/releases/2003/01/20030128-19.html>

<sup>58</sup> Loven, J. (2003, February 16). May deny some overseas AIDS money. *Associated Press Online*.

<sup>59</sup> Planned Parenthood Federation of America. (2003, June). *A planned parenthood report on the administration and congress: The Bush administration, the global gag rule, and HIV/AIDS funding*. Retrieved December 26, 2003, from [http://www.plannedparenthood.org/gag/http://www.plannedparenthood.org/library/AIDS/030702\\_bush\\_report.html](http://www.plannedparenthood.org/gag/http://www.plannedparenthood.org/library/AIDS/030702_bush_report.html)

<sup>60</sup> Ibid.

<sup>61</sup> Osborne, D. (2003, February 21-27). Government finally has budget. *Gay City News* 2(8). Retrieved July 30, from <http://www.gaycitynews.com/gcn208/governmentfinally.html>.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

leading cause of death for African Americans between the ages of 25-44.<sup>64</sup> The budget also capped the amount of money the federal budget will contribute to HIV/AIDS care provided by Medicaid, which covers 40% of people with HIV and 55% of people with AIDS.<sup>65</sup> The cap will force states, which are already facing large budget deficits, to pay for increased demand out of state funds or else cut services.<sup>66</sup> To date, Bush has ignored a request for increased funding for domestic HIV/AIDS programs in a letter signed by 151 national, regional and local AIDS service organizations.<sup>67</sup>

- Under pressure from conservative Christian groups who are calling for the withdrawal of funds to any AIDS group that “promotes unsafe sex or workshops that encourage dangerous sexual practices,” the CDC has been dispatching teams of investigators “to examine the scientific basis for HIV prevention workshops” and ensure that they meet CDC guidelines on content. Under this policy, Stop AIDS San Francisco was threatened with the loss of all federal funding because of a safe-sex program that cost only \$1,500 and attracted only a few dozen participants. In February 2003, after a two-day site visit and countless hours of preparation by Stop AIDS, the CDC investigators concluded that the organization’s program was in accordance with CDC guidelines and ended its investigation.<sup>68</sup>
- In order to support its abstinence-only HIV prevention/treatment policies, the Bush administration is attempting to influence the peer-review and grant-making process that forms the foundation of federally funded scientific research in the U.S:
  - Program staff at the National Institutes of Health (NIH) have warned applicants not to include terms such as “condom effectiveness,” “transgender,” and “men who have sex with men” in their grant proposals in order to avoid extra scrutiny.<sup>69</sup>
  - A professor at the University of New Mexico who had been asked to join an advisory panel for the National Institute on Drug Abuse (NIDA) reported receiving a phone call from an HHS staff member who asked a number of inappropriate questions, including if he had voted for President Bush, which he had not done. The professor did not get the appointment.<sup>70</sup>
  - Researchers are concerned that the Bush administration is attempting to “stack” confidential peer review boards that rate federal grant applications for scientific merit with appointees who agree with the administration’s politics and ideology.<sup>71</sup>
- Most recently, the Traditional Values Coalition (TVC) prompted the U.S. Department of Health and Human Services (HHS) to develop a list of some 250 research projects funded by the NIH. HHS staffers have called many of the 150 senior researchers involved, asking

---

<sup>64</sup> GMHC exposes Bush AIDS funding shell game. (2003, February 5). Gay Men’s Health Crisis. Retrieved July 30, 2003, from [http://www.gmhc.org/aboutus/press/release\\_030205.html](http://www.gmhc.org/aboutus/press/release_030205.html)

<sup>65</sup> Ibid.

<sup>66</sup> Osborne, D. (2003, February 21-27).

<sup>67</sup> Human Rights Campaign. (2003, June 30). Letter to President Bush. Retrieved July 30, 2003, from <http://www.hrc.org/publications/eu/letters/030620presAIDS.asp>

<sup>68</sup> Russell, S. (2003, June 14). Funds for S.F. AIDS program in peril; CDC threatens to pull money for “obscene” campaign. *San Francisco Chronicle*. p. A1.

<sup>69</sup> Kaiser, J. (2003). Politics and biomedicine: studies of gay men, prostitutes come under scrutiny. *Science*. pp. 300-403.

<sup>70</sup> Politicizing Science. (2003, June 9). *Bangor Daily News*. p. A8.

<sup>71</sup> Ibid.

questions prompted by TVC's opposition to sexuality-related research. Representative Henry Waxman (D-CA) denounced this as "scientific McCarthyism" and an effort to "undermine peer-reviewed research at NIH."<sup>72</sup> *New York Times* columnist Bob Herbert called the Traditional Values Coalition and their Bush Administration allies "know-nothings... traipsing through the laboratories, infecting the research with their religious beliefs and political ideologies."<sup>73</sup>

## Lifting The Military Ban:

## Opposes

- During his presidential campaign in 1999, Bush said, "I support 'Don't Ask, Don't Tell,' and I think it ought to be made to work... we're not going to tolerate abuse. We expect people to be treated with respect."<sup>74</sup> Bush also said in the January 6, 2000 New Hampshire debate that he would not appoint someone to the Joint Chiefs of Staff who openly advocated lifting the ban.<sup>75</sup> Bush's support for this policy is contrary to the 79% of Americans who favor the right of openly lesbian, gay and bisexual people to serve in the United States Armed Forces, according to a 2003 CNN/USA Today/Gallup poll.<sup>76</sup> Since the ban was implemented in 1994, 8,895 gay and lesbian soldiers have been discharged, at the rate of almost three per day.<sup>77</sup>
- Vice President and former Defense Secretary Dick Cheney opposed President Clinton's effort to lift the military ban on openly gay, lesbian and bisexual service members. At the height of that debate, Cheney warned that defense cuts and the proposal to lift the ban "have led to a decline in the quality of military recruits." Cheney said in a speech to a New Hampshire Republican group May 28, 1993 that "the whole reduction in defense spending, the controversy over gays in the military, has led to an unwillingness to serve and low morale."<sup>78</sup> After his press secretary, Pete Williams, was outed in *The Advocate*, a national gay and lesbian magazine, Cheney denied that Williams' homosexuality made him a security risk, saying that the claim that gay or lesbian people represented a higher security risk than heterosexuals was "a bit of an old chestnut."<sup>79</sup> Williams was a civilian employee of the Pentagon, and not a member of the armed services.
- In October 2002, Bush nominated Major General Robert T. Clark for promotion to Lieutenant General, the Army's second-highest rank. Civil rights groups around the country called on the Senate Armed Services Committee to reject Clark's nomination in light of the anti-gay climate that festered at Fort Campbell during his command, which may have contributed to the murder of PFC Barry Winchell. Winchell was beaten to death with a

---

<sup>72</sup> Radow, J. (2003, October 28). Researcher "hit list" undermines NIH peer-review process, charges Rep. *Waxman*. *Washington Fax*.

<sup>73</sup> Herbert, B. (2003, November 3). The big chill at the lab. *The New York Times*. p. A19.

<sup>74</sup> Connolly C. (1999, December 15). Gore's views on gays in military get public voice. *Washington Post*. p. A6.

<sup>75</sup> Excerpts from debate among G.O.P. candidates. (2000, January 7). *New York Times*. p. A15.

<sup>76</sup> Center for the Study of Sexual Minorities in the Military (CSSMM). (2003, December 23). Seventy-Nine Percent of Public Now Favors Allowing Gays To Serve Openly. Author. Retrieved January 8, 2004, from [http://www.gaymilitary.ucsb.edu/PressCenter/press\\_rel\\_2003\\_1223.htm#](http://www.gaymilitary.ucsb.edu/PressCenter/press_rel_2003_1223.htm#)

<sup>77</sup> Service Members Legal Defense Network. (2003). Conduct unbecoming: the ninth annual report on 'don't ask, don't tell, don't pursue, don't harass.' Author. Retrieved July 10, 2003, from [http://www.sldn.org/binary-data/SLDN\\_ARTICLES/pdf\\_file/837.pdf](http://www.sldn.org/binary-data/SLDN_ARTICLES/pdf_file/837.pdf)

<sup>78</sup> Milne, J.(1993, May 29). Cheney, in N.H., cites decline in quality of military recruits. *Boston Globe*. p. 7.

<sup>79</sup> Cheney, D. (1992, December 6). Interview. *Meet the Press*.

baseball bat because of his perceived sexual orientation.<sup>80</sup> Because of the controversy, the committee did not act on the nomination. However, Bush re-nominated Clark for promotion again in March 2003, and the Senate Armed Services Committee approved his nomination on October 23, 2003.<sup>81</sup>

- In the wake of the 9/11 terrorist attacks, President Bush issued Executive Order 13223 authorizing the Secretary of Defense to consider issuing a “stop-loss order,” which would temporarily end all discharges from the military.<sup>82</sup> By January 2003, the Army, Navy, Air Force and Marines had all issued orders to halt the discharging of military personnel *except* for those being discharged because of their sexual orientation.<sup>83</sup>
- Despite a National Commission on Terrorism report that warned of a “very severe” shortage of Arabic translators, seven Arabic linguists were fired from the Army’s Defense Language Institute (DLI) because of their sexual orientation in 2002.<sup>84</sup> This was followed by a report from the Servicemember’s Legal Defense Network (SLDN) in April 2003 noting that the organization had provided assistance to 24 linguists targeted under “Don’t Ask, Don’t Tell,” including 9 Arabic language specialists, 8 Korean language specialists, and 3 trained to speak Farsi, the primary language of Iran.<sup>85</sup> Iraq, Iran and North Korea were identified as part of the “Axis of Evil” in President Bush’s 2002 State of the Union address.

## **Sexual Orientation-Inclusive Hate Crimes Laws:                      *Opposes***

- Bush opposes hate crimes laws that prescribe harsher penalties for anti-gay bias-motivated violence. In 1999 he stated, “I always said that all crime is a hate crime. People, when they

---

<sup>80</sup> Service Members Legal Defense Network. (2002, October 9). Bush nominates controversial general for third star. Author. Retrieved July 9, 2003, from <http://www.sldn.org/templates/press/record.html?section=2&record=601>

<sup>81</sup> Service Members Legal Defense Network. (2002, June 18). Sen. Susan Collins cites ‘compelling evidence’ of problems during Bush nominee’s command of Kentucky army base. Author. Retrieved July 9, 2003, from <http://www.sldn.org/templates/press/record.html?section=2&record=975>; Files, J. (2003, October 24). Committee approves promoting general in gay-bashing case. *The New York Times*. p. A16.

<sup>82</sup> Service Members Legal Defense Network. (2001, September 20). Contrary to press reports, pentagon has not repealed or suspended ‘don’t ask, don’t tell.’ Author. Retrieved July 9, 2003, from <http://www.sldn.org/templates/press/record.html?section=2&record=401>

<sup>83</sup> Service Members Legal Defense Network. (2001, September 26). Air force implements ‘stop-loss’ order. Author. Retrieved July 9, 2003, from <http://www.sldn.org/templates/press/record.html?section=2&record=406>; Service Members Legal Defense Network. (2001, October 2). Navy issues limited stop-loss order, but ‘don’t ask, don’t tell’ discharges continue. Author. Retrieved July 9, 2003, from <http://www.sldn.org/templates/press/record.html?section=2&record=420>; Service Members Legal Defense Network. (2001, December 13). Army Issues ‘stop-loss’ order instructing leaders to continue processing gay discharges. Author. Retrieved July 9, 2003, from <http://www.sldn.org/templates/press/record.html?section=2&record=447> ; Servicemember’s Legal Defense Network. (2002, January 15). Marine corps issues ‘stop-loss’ order instructing leaders to continue gay discharges. Author. Retrieved July 9, 2003, from <http://www.sldn.org/templates/press/record.html?section=2&record=452>; Servicemember’s Legal Defense Network. (2003, January 9). Marine corps issues service-wide ‘stop-loss’ order suspending many discharges, but continues to exclude gays from service. Author. Retrieved July 9, 2003, from <http://www.sldn.org/templates/press/record.html?section=2&record=703>

<sup>84</sup> Servicemember’s Legal Defense Network. (2002, November 18). Army & defense language institute under fire for discharging seven gay Arabic linguists. Author. Retrieved July 9, 2003, from <http://www.sldn.org/templates/press/record.html?section=2&record=678>

<sup>85</sup> Servicemember’s Legal Defense Network. (2003, April 23). Media reports indicate linguist shortfall impacting Iraqi operations. Author. Retrieved July 9, 2003, from <http://www.sldn.org/templates/press/record.html?section=2&record=892>

commit a crime, have hate in their heart. And it's hard to distinguish between one degree and another."<sup>86</sup>

- As Governor, Mr. Bush was largely responsible for the demise of the James Byrd Jr. Hate Crimes Bill in the Texas Senate in the spring of 1999. Bush specifically objected to the inclusion of sexual orientation in the bill.<sup>87</sup> In a closed-door session he personally appealed to Republican legislators to defeat the act because it included sexual orientation.<sup>88</sup> It is one of the few anti-crime measures that then-Governor Bush ever opposed.<sup>89</sup>

## International Human Rights:

## Opposes

- During the 59<sup>th</sup> session of the United Nations Human Rights Commission in April 2003, an historic resolution on human rights and sexual orientation was introduced by Brazil and co-sponsored by 20 countries. The resolution expressed "deep concern at the occurrence of violations of human rights of all persons regardless of sexual orientation" and called for the UN human rights bodies to "give due attention" to these violations.<sup>90</sup> The resolution was opposed by the Vatican and the Organization of the Islamic Conference (OIC), and was eventually postponed until the 2004 session of the Human Rights Commission. Prior to postponement, the United States decided it would abstain from voting on resolution. This abstention and inaction on the resolution put the United States at odds with most of the world, including traditional allies like Brazil, Canada, Australia, and the United Kingdom, who supported the resolution. It placed the U.S. in alliance with anti-gay states like the Vatican and many majority Muslim countries, where anti-gay persecution is severe.<sup>91</sup>
- The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has been called an international bill of rights, setting basic standards for women's rights such as the right to an education, the right to equal employment opportunity, and the right to equality under the law in marriage.<sup>92</sup> Nearly all of the 189 UN member states have ratified CEDAW. The United States is the only industrialized nation that has not ratified the treaty, putting the US in the company of Iran, North Korean, and Sudan.<sup>93</sup> CEDAW has languished in the U.S. Senate due to the opposition of right-wing groups and politicians, led until recently by former Senator Jesse Helms (R-NC). Although CEDAW merely mandates basic equality such as the right to own property, get an education, and enter into marriage on an equal basis, U.S.-based conservative groups have resisted its ratification by the Senate. The Family Research Council alleges that CEDAW "takes aim at family structure and

---

<sup>86</sup> Slater, W. (1999, March 23). Bush opposes adoption by gays. *Dallas Morning News*.

<sup>87</sup> Burka, P. (1999, September). James Byrd, Jr: law's latest symbol. *Texas Monthly*. Retrieved July 9, 2003, from [www.texasmonthly.com/mag/1999/sep/byrd.php](http://www.texasmonthly.com/mag/1999/sep/byrd.php)

<sup>88</sup> Bull, C. (2000, July 4). Who is George W. Bush? The Republican presidential candidate's Texas past offers a glimpse into our future if he wins the White House. *The Advocate*.

<sup>89</sup> Ibid.

<sup>90</sup> Mustikhan, A. (2003, April 23). U.S. may abstain from historic U.N. vote. *PlanetOut News*. Retrieved December 22, 2003, from [www.planetout.com/news/article-print.html?2003/04/23/2](http://www.planetout.com/news/article-print.html?2003/04/23/2)

<sup>91</sup> Capdevila, C. (2003, April 25). U.N. rights: Vatican, Muslim states oppose rights for gays. *Inter Press Service*.

<sup>92</sup> Cahill, B. (2003, May 8). The United States, in bed with the "Axis of Evil?" National Gay and Lesbian Task Force Policy Institute. Retrieved January 7, 2004, from <http://www.nglftf.org/downloads/cedaw.pdf>.

<sup>93</sup> US Newswire. (2003, May 8). Over 130 organizations write to President Bush: Mother's day call for US support treaty for the rights of women. Author. Retrieved January 7, 2004, from <http://releases.usnewswire.com/GetRelease.asp?id=157-05082003>

morality,” while Concerned Women for America calls CEDAW “the Equal Rights Amendment on steroids,” and warns that it promotes “lesbianism” and “homosexual rights.” To date, the President has not publicly expressed support for this Convention, nor has he called on the Republican-led Senate to ratify it.

- In May 2002, the UN General Assembly met as a follow-up to the 1990 World Summit for Children (WSC). The purpose of the meeting was to examine the progress of goals adopted at the 1990 WSC, and to adopt a new plan of action to address the health (including high rates of HIV/AIDS infection), education, safety, exploitation and abuse of children. A centerpiece of the WSC was the Convention on the Rights of the Child (CRC), a treaty drafted over the course of 10 years with the input of representatives from a broad range of the world’s societies, religions and cultures. To date, 191 nations have ratified the CRC, making it the most widely accepted human rights treaty in history. Only two UN member states have not ratified the CRC: the United States and Somalia—a nation that does not currently have a recognized government. Although President Clinton signed the CRC in 1995, the Senate would not ratify it because conservatives feared that it would give children too many rights and undermine parental authority. The right wing objects to the CRC because of its sex education requirements, its definitions of “reproductive health services” and “family,” and its ban on the death penalty for minors. The Bush administration, in order to satisfy its conservative constituency, advocated on behalf of the right wing at the UN General Assembly’s Special Session by:
  - Calling for “abstinence-only-until-marriage” sex education;
  - Working to explicitly exclude abortion from the definition of “reproductive health services,” even in countries where abortion is legal; and
  - Attempting to define “family” as formed by a marriage between a man and a woman.

Unfortunately, many adolescent girls around the world do not enjoy the options of abstinence or just saying “no.” In some societies, young girls are powerless in the face of demands for sexual or marriage partnership. This is also true, to a lesser extent, for young boys who are coerced into sex by adults. By arguing for an abstinence-only policy, the Bush Administration is exchanging the future of the world’s teenage girls and boys for the political support of the “family-friendly” right wing. To date, the President has not publicly expressed support for this Convention.<sup>94</sup>

### **Social Security Survivor And Spousal Benefits: *Unclear***

- The Bush Administration has not taken a clear stance on the provision of Social Security survivor and spousal benefits for same-sex couples. However, Bush and Cheney’s support for the Federal Marriage Amendment would preempt any court ruling in favor of equal treatment of same-sex couples under Social Security policy.
- On June 24, 2002, President Bush signed the Mychal Judge Act, named after the New York City Fire Department chaplain who was killed during the 9/11 terrorist attacks.<sup>95</sup> The bill

---

<sup>94</sup> Cahill, B. (2003, May 8).

<sup>95</sup> Mychal Judge Police and Fire Chaplains Public Safety Officers’ Benefit Act of 2002, Pub. L. No. 107-196, 116 Stat. 719. Codified at 42 U.S.C. § 3796 (2002).

allows same-sex partners of public safety officers killed in the line of duty to receive federally guaranteed life insurance benefits as long as the same-sex partners were designated as beneficiaries by their partners. The bill, however, is only retroactive to September 11, 2001.<sup>96</sup>

### **Adoption:**

### **Opposes**

- In 1997, under the direction of then-Governor Bush, Texas Child Protective Services (CPS), the state's foster care system, removed a child from the foster home of a lesbian couple because "homosexual conduct is against the law in Texas," according to CPS Supervisor Rebecca Bledsoe. Until May 2000, when a Texas court struck down the law, the state's "homosexual conduct" statute criminalized homosexual sex as a Class C misdemeanor punishable by a \$500 fine. Bledsoe's lawyer explained, "Just as you wouldn't put a child into a family where there were known shoplifters or worse, you shouldn't put them into a place where they are expressly violating the law... The idea of having homosexual conduct modeled for a boy as he grows up, she didn't think was the best thing." Eventually CPS returned the boy to his foster home, and demoted Bledsoe.<sup>97</sup>
- In 1999, Bush said, "I'm against gay adoptions. I believe children ought to be adopted in families with a woman and a man who are married."<sup>98</sup> When asked whether children who are already being raised by gay parents should be removed from those homes, Bush said, "I have no idea whether the children ought to be removed or not removed... the question is whether I'm for gay adoption. And the answer is, I'm not."<sup>99</sup>

### **Gay-Supportive Education Policies:**

### **Opposes**

On January 8, 2002, President Bush signed the "No Child Left Behind Act," providing more than \$26 billion to public schools to implement a set of education policies. The NCLB Act fails to address the needs of all students—especially lesbian, gay, bisexual, and transgender (LGBT) students. And some of its provisions are having a negative impact on LGBT youth nationwide. Through its support for private and charter schools, for example, the NCLB Act grants federal dollars to schools and religious organizations which are often exempt from state or local nondiscrimination or anti-harassment laws aimed at protecting LGBT students. It also mandates Internet filtering for schools that use federal funding to purchase computer-related Internet technology, preventing LGBT youth from accessing educationally appropriate and potentially lifesaving information about gay and lesbian social services.

The NCLB Act does not preclude schools from using other federal funds (or state and local funds) to combat homophobia in schools. But if a school decides to address the ongoing bullying of gay, lesbian, or bisexual students by using federal Safe and Drug-Free Schools funding to conduct an assembly designed to address such harassment, it requires the school to notify every parent first. And the parents of the bully could actually excuse their child from attending that

---

<sup>96</sup> Becker, Susan J. (2003). Tumbling towers as turning points: Will 9/11 usher in a new civil rights era for gay men and lesbians in the United States? *William & Mary Journal of Women and Law*, 9, 207-253.

<sup>97</sup> Associated Press. (1997, November 13). Texans riled over lesbian foster parents. *Bay Windows*. p. 9.

<sup>98</sup> Slater, W. (1999, March 23).

<sup>99</sup> Estrich, S. (1999, April 5). Bush's slogan just a fig leaf for intolerance? *The Houston Chronicle*. p. 18.

assembly. The bill contains a number of other provisions that affect lesbian, gay, bisexual, and transgender (GLBT) youth:

- The Boy Scouts Equal Access Act removes all federal funding from public schools that refuse to allow the Boy Scouts of America to conduct meetings in school facilities before or after official school hours. The act was inserted into the bill in response to a number of school districts that refused to allow the Boy Scouts to meet on school grounds because the group's policy of discrimination against gay youth and adults runs contrary to school district nondiscrimination policies.<sup>100</sup>
- The Vitter Amendment requires all public schools that receive federal funds to permit regular U.S. Armed Services recruitment activities on school grounds. The amendment was proposed in response to schools that have nondiscrimination policies prohibiting any company or organization that discriminates on the basis of sexual orientation from recruiting on campus. These schools restricted the military from recruiting on campus because of its "Don't Ask, Don't Tell" policy.<sup>101</sup>
- Bush's advocacy of parental choice and school choice allows federal dollars to support private schools that may not be mandated to follow state or local education policies, including those that protect youth from harassment or discrimination based on sexual orientation and gender identity. Many of these private schools are religiously affiliated and have policies based on religious principles that are often discriminatory towards GLBT teachers, parents, and youth.<sup>102</sup>
- Bush's Federal Safe Schools Initiative allegedly empowers states to provide a safe and high quality education. However, despite the fact that 69% of LGBT students reported experiencing verbal, physical or sexual harassment or physical abuse in school, Bush's initiative does not specifically protect them through enumerating sexual orientation and gender identity as protected categories.<sup>103</sup> Without explicit protection, LGBT youth continue to be at risk for harassment at school.<sup>104</sup>
- The NCLB Act requires school districts to administer annual exams in reading and math to students in the third through eighth grades. Data from those exams become part of annual report cards on school performance, which give parents information about the quality of their children's schools. Statewide reports also include performance data specific to the race and gender of students "to demonstrate progress in closing the achievement gap between disadvantaged students and other groups of students" largely along economic, racial, and ethnic lines. Some educators argue, however, that relying almost exclusively on standardized testing to measure school performance undermines efforts to close that gap. Standardized testing operates on the assumption that all students have an equal opportunity to learn. Given

---

<sup>100</sup> Gay, Lesbian and Straight Education Network. (2002, January 8). Questions and answers about the education bill. Author. Retrieved July 9, 2003, from <http://www.glsen.org/templates/resources/record.html?section=14&record=1117>

<sup>101</sup> Gay, Lesbian and Straight Education Network. (2002). Laws and policies impacting LGBT youth in schools. Author. Retrieved July 9, 2003, from [http://www.glsen.org/binary-data/GLSEN\\_ARTICLES/pdf\\_file/1518.pdf](http://www.glsen.org/binary-data/GLSEN_ARTICLES/pdf_file/1518.pdf)

<sup>102</sup> Gay, Lesbian and Straight Education Network. (n.d.). Parental 'choice,' school 'choice,' and school vouchers. Author. Retrieved July 8, 2003, from [http://www.glsen.org/binary-data/GLSEN\\_ARTICLES/pdf\\_file/695.pdf](http://www.glsen.org/binary-data/GLSEN_ARTICLES/pdf_file/695.pdf)

<sup>103</sup> Gay, Lesbian and Straight Education Network. (n.d.). Federal safe schools initiatives. Author. Retrieved July 8, 2003, from [http://www.glsen.org/binary-data/GLSEN\\_ARTICLES/pdf\\_file/693.pdf](http://www.glsen.org/binary-data/GLSEN_ARTICLES/pdf_file/693.pdf)

<sup>104</sup> Ibid.

that 85% or more of the variation in student performance on these tests is attributable to factors outside of the classroom—factors like school funding levels, class size, and other socioeconomic issues—the playing field is anything but level. Standardized tests that are culturally biased can adversely affect students from many cultural groups and contribute to lower expectations of student performance, negative attitudes toward low-performing students, and decreased self-esteem. This is especially true for LGBT students, who are more likely than heterosexual students to miss school because of harassment and violence, and who score lower on other indicators of school performance, including grade point average.<sup>105</sup>

- On February 7, 2002, 77 organizations, including the American Psychiatric Association and the American Society of Reproductive Medicine, sent a letter to President Bush urging him to support comprehensive, age appropriate, medically accurate sex education in public schools. The letter cited research that shows these programs delay the onset and reduce the frequency of sexual activity engaged in by youth, and also increase condom and contraceptive use.<sup>106</sup> Comprehensive sex education is widely supported, with 76% of parents believing that teens should get more information about abstinence and birth control rather than just one or the other.<sup>107</sup> The letter also quoted Health and Human Services Secretary Tommy Thompson, who expressed concern about the “paucity of evidence” on the effectiveness of abstinence-only-until-marriage promotion.<sup>108</sup> Currently states are only allowed to use federal funding for sexuality education programs that teach that abstinence-only-until-marriage is the only way to avoid pregnancy and sexually transmitted diseases. This policy is particularly problematic for LGBT students because it does not specifically address their health needs or acknowledge that only heterosexual couples can legally marry in the U.S.

## Conclusion

The first three years of George W. Bush’s administration have been packed with anti-gay rhetoric and action. While LGBT people have made invaluable gains at the state and municipal levels, in terms of partner recognition, sexual orientation and gender identity nondiscrimination laws, as well as safe schools initiatives, progress at the federal level has been stymied by the current administration. Of the 13 issues of concern we examined, the Bush Administration’s policies were contrary to the needs of LGBT people in eight issue areas, and, the administration ranks unclear on the remaining five issues. Despite an orchestrated aura of moderation, tolerance, and “compassionate conservatism,” the policy statements, directives and actions of the Bush administration expose an active anti-LGBT agenda.

---

<sup>105</sup> Cianciotto, J., & Cahill, S. (2003). Education policy: Issues affecting lesbian, gay, bisexual, and transgender youth. New York: *The National Gay and Lesbian Task Force Policy Institute*. Available at: <http://www.nglft.org/downloads/EducationPolicy.pdf>

<sup>106</sup> Advocates for Youth. (2002, February 7). Letter to President George W. Bush. Author. Retrieved July 11, 2003, from <http://www.advocatesforyouth.org/news/feature/president.htm>

<sup>107</sup> The National Campaign to Prevent Teen Pregnancy. (2002). With one voice 2002: America’s adults and teens sound off about teen pregnancy. Author. Retrieved January 8, 2004, from <http://www.teenpregnancy.org/resources/data/pdf/wov2003.pdf>

<sup>108</sup> American Foundation for AIDS Research. (13 February 2002). AmFAR joins groups urging Bush to withdraw support for abstinence-only sex education. Author. Retrieved December 17, 2003, from <http://www.amfar.org/cgi-bin/iowa/news/feat/record.html?record=29>

*Jason Cianciotto is a Policy Analyst and Roddrick Colvin is Research Director at the National Gay and Lesbian Task Force Policy Institute.*

**Copyright © the National Gay and Lesbian Task Force, January 2004.**