

FOIA MARKER

**This is not a textual record. This is used as an
administrative marker by the William J. Clinton
Presidential Library Staff.**

Collection/Record Group: Clinton Presidential Records
Subgroup/Office of Origin: Records Management - SUBJECT FILE
Series/Staff Member: Subject Files
Subseries:

OA/ID Number: 12138
Scan ID: 068531SS
Document Number:

Folder Title:
HU010

Stack:	Row:	Section:	Shelf:	Position:
S	85	1	4	3

WHITE HOUSE STAFFING MEMORANDUM

HU010DATE: 6-22ACTION/CONCURRENCE/COMMENT DUE BY: —SUBJECT: Gay Rights anti-discrimination bill

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☒	☐	MYERS	☐	☐
McLARTY	☒	☐	QUINN	☒	☐
LADER	☐	☐	RASCO	☒	☐
ICKES	☐	☐	RUBIN	☐	☐
PANETTA	☐	☐	SEGAL	☐	☐
BAGGETT	☐	☐	SEIDMAN	☐	☐
CUTLER	☐	☐	STEPHANOPOULOS	☒	☐
EMANUEL	☒	☐	TYSON	☐	☐
GEARAN	☒	☐	VARNEY	☐	☐
GERGEN	☒	☐	WATKINS	☐	☐
GIBBONS	☐	☐	WILLIAMS	☒	☐
GRIFFIN	☒	☐	_____	☐	☐
HALE	☐	☐	_____	☐	☐
HERMAN	☐	☐	_____	☐	☐
LAKE	☐	☐	_____	☐	☐
LINDSEY	☒	☐	_____	☐	☐
McGINTY	☐	☐	_____	☐	☐

REMARKS:

This memo is being sent to the President tonight. If you have

RESPONSE:

any comment, contact our office tonight.

JOHN D. PODESTA
 Assistant to the President
 and Staff Secretary
 Ext. 2702

6.23

T.S

OK TO Send to

RM ?
Yes

✓ *SAT*

WHITE HOUSE STAFFING MEMORANDUM

DATE: 6-22 ACTION/CONCURRENCE/COMMENT DUE BY: —SUBJECT: Gay Rights anti-discrimination bill

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☒	☐	MYERS	☐	☐
McLARTY	☒	☐	QUINN	☒	☐
LADER	☐	☐	RASCO	☒	☐
ICKES	☐	☐	RUBIN	☐	☐
PANETTA	☐	☐	SEGAL	☐	☐
BAGGETT	☐	☐	SEIDMAN	☐	☐
CUTLER	☐	☐	STEPHANOPOULOS	☒	☐
EMANUEL	☒	☐	TYSON	☐	☐
GEARAN	☒	☐	VARNEY	☐	☐
GERGEN	☒	☐	WATKINS	☐	☐
GIBBONS	☐	☐	WILLIAMS	☒	☐
GRIFFIN	☒	☐	_____	☐	☐
HALE	☐	☐	_____	☐	☐
HERMAN	☐	☐	_____	☐	☐
LAKE	☐	☐	_____	☐	☐
LINDSEY	☒	☐	_____	☐	☐
McGINTY	☐	☐	_____	☐	☐

REMARKS:

This memo is being sent to the President tonight. If you have

RESPONSE:

any comment, contact our office tonight.

JOHN D. PODESTA
 Assistant to the President
 and Staff Secretary
 Ext. 2702

THE WHITE HOUSE

WASHINGTON

June 22, 1994

94 JUN 22 P7:10

MEMORANDUM FOR THE PRESIDENT

FROM: LLOYD N. CUTLER *LNC*
SPECIAL COUNSEL TO THE PRESIDENT

JOEL I. KLEIN *JEK*
DEPUTY COUNSEL TO THE PRESIDENT

CLIFFORD M. SLOAN *CMS*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Gay rights anti-discrimination bill

Senator Kennedy plans to introduce legislation tomorrow that would prohibit employment discrimination on the basis of sexual orientation ("the Employment Non-Discrimination Act"). According to the Leadership Conference on Civil Rights, the bill will be endorsed by a bipartisan group of legislators (Feinstein, Murray, Chafee, and Jeffords in the Senate; Frank, Studds, Edwards, Schroeder, Morella, Shays, and Huffington in the House) and by a range of civil rights leaders and groups (including Coretta Scott King, Justin Dart, the Leadership Conference On Civil Rights, and many other representatives of minority, women, disability, and labor groups). Senator Kennedy has requested that the Administration endorse the bill and that Assistant Attorney General Deval Patrick be present to express support for it.

In many respects, the bill is narrowly crafted. The Act prohibits employment discrimination on the basis of sexual orientation. (A copy of the bill is attached.) It precludes the use of quotas or discrimination claims based solely on statistics (so-called "disparate impact" claims). It does not apply to religious organizations, but it does apply to their "for-profit activities subject to taxation." The bill also does not apply to the armed forces.

At the same time, certain provisions of the bill may raise significant issues. The congressional findings seem to include a finding that would lead to "strict scrutiny" for sexual orientation claims in court. (The finding refers to exclusion of gay men, lesbians, and bisexuals from "full participation in the political process" and to their status as a "discrete and insular minority," p. 2, lines 17-20 -- traditional formulations for strict scrutiny). In the gays-in-the-military litigation, DOJ and DOD have been arguing against strict scrutiny in the military context.

In addition, the bill defines "sexual orientation" as "lesbian, gay, bisexual, or heterosexual orientation, real or perceived, as manifested by identity, acts, statements, or associations" (p. 11, lines 13-16) and prohibits employment discrimination on the basis of sexual orientation (p. 3, lines 21-22). Opponents may claim that the bill thus protects even on-the-job sexual acts and on-the-job sexual statements of any kind, regardless of propriety. It is, however, possible that clarifying language could promptly resolve this problem and make clear that the point of the legislation is merely that gay men, lesbians, and bisexuals should not be treated differently from similarly situated heterosexuals.

OPTIONS

Four options are possible:

- (1) _____ Endorse the legislation.
- (2) _____ State that we support the principle of combatting sexual orientation employment discrimination and that we will review the legislation with care.
- (3) _____ State that we will review the legislation and express no further position at this time.
- (4) _____ Oppose the legislation.

We recommend in favor of option 2. The principle of non-discrimination in employment is clearly laudable and appropriate, and is consistent with your public statements during the campaign and subsequently. At the same time, we may wish to preserve some flexibility to offer suggestions on the bill and to respond to criticisms of it.

068531 SS.

HW010

JP. FYI

THE PRESIDENT HAS SEEN

THE WHITE HOUSE

6.22.94

WASHINGTON

June 22, 1994

MR. PRESIDENT:

Attached is a decision memo from Counsel's office on a bill that **Senator Kennedy plans to introduce tomorrow** prohibiting employment discrimination on the basis of sexual orientation. Senator Kennedy is hoping for an Administration endorsement.

Counsel's office lists four options, recommending **option 2** -- that you express support for the principle of combatting employment discrimination on the basis of sexual orientation, but refrain from explicitly endorsing the Kennedy bill so as to preserve some flexibility. Counsel's office informs us that George and Gergen also support this approach. (The other options are (1) endorse the bill; (3) state that we will review it, while expressing no further position; and (4) oppose the bill.)

In view of the shortness of time, I am forwarding the memo to you immediately. At the same time, I am circulating it to the Vice President and relevant staff.

Option 1___ Option 2 (Counsel's choice) ☒

Option 3___ Option 4___ Discuss___

Todd Stern

Big P
How does
Relig. Freedom Act
can affect
decision on relig.
discrimination

6.22.94

THE WHITE HOUSE

WASHINGTON

June 22, 1994

94 JUN 22 P7:10

MEMORANDUM FOR THE PRESIDENT

FROM: LLOYD N. CUTLER *LNC*
SPECIAL COUNSEL TO THE PRESIDENT

JOEL I. KLEIN *JEK*
DEPUTY COUNSEL TO THE PRESIDENT

CLIFFORD M. SLOAN *CMS*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Gay rights anti-discrimination bill

Senator Kennedy plans to introduce legislation tomorrow that would prohibit employment discrimination on the basis of sexual orientation ("the Employment Non-Discrimination Act"). According to the Leadership Conference on Civil Rights, the bill will be endorsed by a bipartisan group of legislators (Feinstein, Murray, Chafee, and Jeffords in the Senate; Frank, Studds, Edwards, Schroeder, Morella, Shays, and Huffington in the House) and by a range of civil rights leaders and groups (including Coretta Scott King, Justin Dart, the Leadership Conference On Civil Rights, and many other representatives of minority, women, disability, and labor groups). Senator Kennedy has requested that the Administration endorse the bill and that Assistant Attorney General Deval Patrick be present to express support for it.

In many respects, the bill is narrowly crafted. The Act prohibits employment discrimination on the basis of sexual orientation. (A copy of the bill is attached.) It precludes the use of quotas or discrimination claims based solely on statistics (so-called "disparate impact" claims). It does not apply to religious organizations, but it does apply to their "for-profit activities subject to taxation." The bill also does not apply to the armed forces.

At the same time, certain provisions of the bill may raise significant issues. The congressional findings seem to include a finding that would lead to "strict scrutiny" for sexual orientation claims in court. (The finding refers to exclusion of gay men, lesbians, and bisexuals from "full participation in the political process" and to their status as a "discrete and insular minority," p. 2, lines 17-20 -- traditional formulations for strict scrutiny). In the gays-in-the-military litigation, DOJ and DOD have been arguing against strict scrutiny in the military context.

In addition, the bill defines "sexual orientation" as "lesbian, gay, bisexual, or heterosexual orientation, real or perceived, as manifested by identity, acts, statements, or associations" (p. 11, lines 13-16) and prohibits employment discrimination on the basis of sexual orientation (p. 3, lines 21-22). Opponents may claim that the bill thus protects even on-the-job sexual acts and on-the-job sexual statements of any kind, regardless of propriety. It is, however, possible that clarifying language could promptly resolve this problem and make clear that the point of the legislation is merely that gay men, lesbians, and bisexuals should not be treated differently from similarly situated heterosexuals.

OPTIONS

Four options are possible:

- (1) _____ Endorse the legislation.
- (2) _____ State that we support the principle of combatting sexual orientation employment discrimination and that we will review the legislation with care.
- (3) _____ State that we will review the legislation and express no further position at this time.
- (4) _____ Oppose the legislation.

We recommend in favor of option 2. The principle of non-discrimination in employment is clearly laudable and appropriate, and is consistent with your public statements during the campaign and subsequently. At the same time, we may wish to preserve some flexibility to offer suggestions on the bill and to respond to criticisms of it.

THE WHITE HOUSE

WASHINGTON

June 22, 1994

94 JUN 22 P7:10

MEMORANDUM FOR THE PRESIDENT

FROM: LLOYD N. CUTLER *LNC*
SPECIAL COUNSEL TO THE PRESIDENT

JOEL I. KLEIN *JEK*
DEPUTY COUNSEL TO THE PRESIDENT

CLIFFORD M. SLOAN *CMS*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Gay rights anti-discrimination bill

GS

Senator Kennedy plans to introduce legislation tomorrow that would prohibit employment discrimination on the basis of sexual orientation ("the Employment Non-Discrimination Act"). According to the Leadership Conference on Civil Rights, the bill will be endorsed by a bipartisan group of legislators (Feinstein, Murray, Chafee, and Jeffords in the Senate; Frank, Studds, Edwards, Schroeder, Morella, Shays, and Huffington in the House) and by a range of civil rights leaders and groups (including Coretta Scott King, Justin Dart, the Leadership Conference On Civil Rights, and many other representatives of minority, women, disability, and labor groups). Senator Kennedy has requested that the Administration endorse the bill and that Assistant Attorney General Deval Patrick be present to express support for it.

In many respects, the bill is narrowly crafted. The Act prohibits employment discrimination on the basis of sexual orientation. (A copy of the bill is attached.) It precludes the use of quotas or discrimination claims based solely on statistics (so-called "disparate impact" claims). It does not apply to religious organizations, but it does apply to their "for-profit activities subject to taxation." The bill also does not apply to the armed forces.

At the same time, certain provisions of the bill may raise significant issues. The congressional findings seem to include a finding that would lead to "strict scrutiny" for sexual orientation claims in court. (The finding refers to exclusion of gay men, lesbians, and bisexuals from "full participation in the political process" and to their status as a "discrete and insular minority," p. 2, lines 17-20 -- traditional formulations for strict scrutiny). In the gays-in-the-military litigation, DOJ and DOD have been arguing against strict scrutiny in the military context.

In addition, the bill defines "sexual orientation" as "lesbian, gay, bisexual, or heterosexual orientation, real or perceived, as manifested by identity, acts, statements, or associations" (p. 11, lines 13-16) and prohibits employment discrimination on the basis of sexual orientation (p. 3, lines 21-22). Opponents may claim that the bill thus protects even on-the-job sexual acts and on-the-job sexual statements of any kind, regardless of propriety. It is, however, possible that clarifying language could promptly resolve this problem and make clear that the point of the legislation is merely that gay men, lesbians, and bisexuals should not be treated differently from similarly situated heterosexuals.

OPTIONS

Four options are possible:

- (1) ___ Endorse the legislation.
- (2) ___ State that we support the principle of
 combatting sexual orientation employment
 discrimination and that we will review the
 legislation with care.
- (3) ___ State that we will review the legislation and
 express no further position at this time.
- (4) ___ Oppose the legislation.

We recommend in favor of option 2. The principle of non-discrimination in employment is clearly laudable and appropriate, and is consistent with your public statements during the campaign and subsequently. At the same time, we may wish to preserve some flexibility to offer suggestions on the bill and to respond to criticisms of it.

THE PRESIDENT HAS SEEN

6.22.94

THE WHITE HOUSE

WASHINGTON

June 22, 1994

MR. PRESIDENT:

Attached is a decision memo from Counsel's office on a bill that **Senator Kennedy plans to introduce tomorrow** prohibiting employment discrimination on the basis of sexual orientation. Senator Kennedy is hoping for an Administration endorsement.

Counsel's office lists four options, recommending **option 2** -- that you express support for the principle of combatting employment discrimination on the basis of sexual orientation, but refrain from explicitly endorsing the Kennedy bill so as to preserve some flexibility. Counsel's office informs us that George and Gergen also support this approach. (The other options are (1) endorse the bill; (3) state that we will review it, while expressing no further position; and (4) oppose the bill.)

In view of the shortness of time, I am forwarding the memo to you immediately. At the same time, I am circulating it to the Vice President and relevant staff.

Option 1___ Option 2 (Counsel's choice) ☒

Option 3___ Option 4___ Discuss___

Todd Stern

*Religious Freedom Act
can affect
discrimination
Relig.*

PHOTOCOPY
WJC HANDWRITING