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Employment Non-Discrimination Act (ENDA)

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October 1, 1995

MEMORANDUM FOR ALEXIS HERMAN

FROM: Debbie

SUBJECT: Employment Non-Discrimination Act (ENDA)

As per our quick discussion on ENDA on Friday, I wanted to give you some background information in case you are interested. I do not know what the status of internal discussions are on this issue -- and whether POTUS will make a clear statement on his position soon. I know that Marsha Scott was planning to speak to George and Doug about it. It would probably be worth following up on this.

Let me know if you need my help.

Thanks.

cc: Lee Satterfield
(without attachments)

THE HUMAN RIGHTS CAMPAIGN FUND

The Human Rights Campaign Fund (HRCF), the largest national lesbian and gay political organization, works to end discrimination, secure equal rights, and protect the health and safety of all Americans. With a national staff, and volunteers and members throughout the country, HRCF lobbies the federal government on lesbian, gay, and AIDS issues; educates the general public; participates in election campaigns; organizes volunteers; and provides expertise and training at the state and local level.

This publication is dedicated to the courageous people who have shared their personal, often painful, experiences of discrimination in order to educate the public about this pervasive but little understood problem. Our hope is that, upon hearing these stories of injustice and hardship, fair-minded people will be moved to ensure that people are judged in the workplace solely on their performance and abilities.

Elizabeth Birch, Executive Director
Daniel Zingale, Public Policy Director

For more information, contact:
The Human Rights Campaign Fund
P.O. Box 1396
Washington DC 20013
202.628.4160

For membership information, call:
1.800.777.HRCF

THE PROBLEM DISCRIMINATION

Anti-Gay Job Discrimination is Widespread — and Legal

A fundamental American value holds that people who do their jobs, pay their taxes and contribute to their communities should not be singled out for unfair discrimination. Unfortunately, federal law does not extend this basic fairness to the untold millions of Americans who happen to be lesbian or gay. Lesbian and gay people are fired from their jobs, refused work, paid less and otherwise discriminated against in the workplace — with no basic protection under federal law.

A federal court ruled in the case of a Detroit postal worker who was harassed and beaten at work that, although he had clearly suffered discrimination because he was gay, "homosexuality is not an impermissible criteria on which to discriminate" under Title VII of the 1964 Civil Rights Act. "These actions, although cruel, are not made illegal by Title VII," the judge wrote. [Dillon v. Frank, 1992 U.S. App. LEXIS 766 (6th Cir. 1992).] Since federal civil rights laws do not cover this kind of discrimination, gay and lesbian people lack the most basic rights that should belong to all Americans.

Discrimination Happens Everywhere

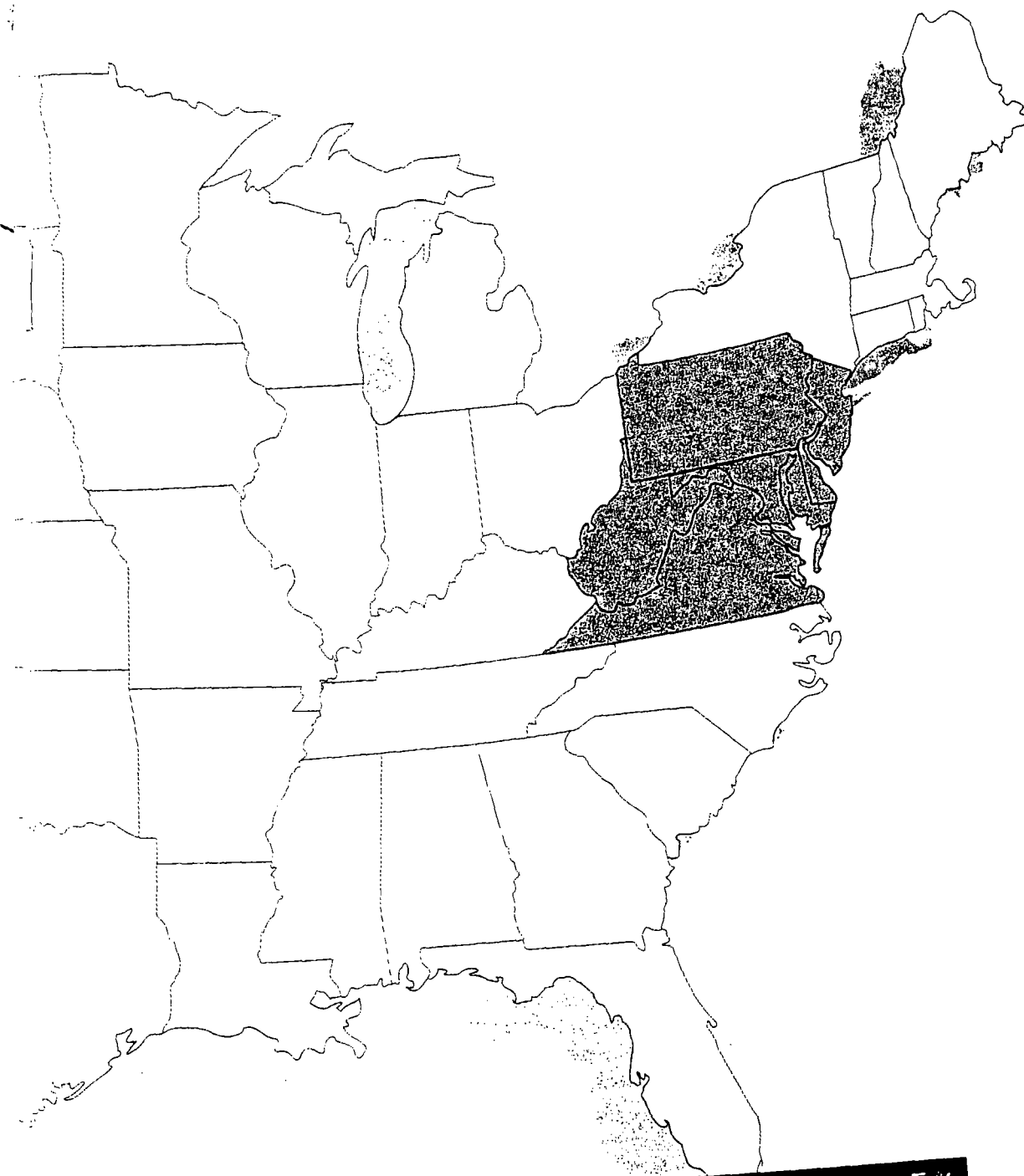
The lack of basic protections leaves millions of hardworking, taxpaying people vulnerable to unfair treatment. This report documents just a few examples of the discrimination faced by lesbian and gay — and heterosexual — people in every region of the country.

Most Americans Support Fairness

Most Americans believe this type of discrimination is wrong. National polls have consistently found that more than three-fourths of voters oppose anti-gay job discrimination and support equal rights in the workplace for lesbian and gay Americans. Unfortunately, seven out of 10 people polled do not know that their gay and lesbian family, friends, neighbors and coworkers lack the most basic rights under the law.

By publishing stories of hardworking men and women who have been treated unfairly in the workplace, we hope to create a broader understanding of the impact that discrimination has on the lives of real people. The cases documented here represent only a fraction of the uncounted people whose stories may never be told. Because of widespread discrimination and the lack of legal protections, many people find it impossible to discuss their experiences openly.

MID-ATLANTIC



SUPPORT

80.5%

OPPOSE

14.8%

More than eight of 10 Mid-Atlantic voters support equal rights in the workplace for lesbian and gay Americans.

From a poll conducted Nov. 8 and 9, 1994, by the independent firm of Mellman Lazarus Lake, Inc., of voters in Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia and West Virginia.

SALESMAN FIRED FROM D.C. FURNITURE COMPANY

SUMMARY

Tim Bryson worked as a sales representative for a large home furnishings company, starting in 1993. After he compiled a stellar sales record in his first nine months, the company's CEO gave Bryson a \$15,000 raise and paid for him to move to Washington to help improve business in the metro D.C. market. Soon afterward, a former coworker threatened to tell Bryson's supervisor that he was gay. Two weeks later, Bryson was fired.

FACTS

Tim Bryson began working in January, 1993 as a sales representative in the regional office of a large home furnishings company. In nine months his sales had exceeded the company's target by 24 percent. When the company offered him a \$15,000 raise and asked him to move to Washington, D.C., to help improve sales in the D.C. area, he accepted. The company paid for his moving expenses.

Upon relocating to D.C., Bryson rented his previous home to a coworker who suspected that Bryson was gay. One day, the coworker spilled copier ink on Bryson's brand-new carpet. When Bryson asked him to pay for cleaning the carpet, the former coworker called Bryson "the biggest fag I've ever known" and threatened to tell Bryson's supervisor he was gay. Two weeks later, Bryson's supervisor told him "things are not working out" and that the company was "liquidating" Bryson's territory. But two weeks after that, the company hired someone else to take over Bryson's responsibilities. The supervisor explained to Bryson's replacement that he had learned that Bryson was gay from Bryson's former coworker.

PENNSYLVANIA MANAGER FIRED UNDER ANTI-GAY CONTRACT

SUMMARY

Dan Miller was an outstanding employee on his way to being made a partner in a management consulting company. Then his boss saw Miller on TV discussing hate crimes against lesbians and gay men. Miller's boss then used the contract Miller had been required to sign, which explicitly stated that "homosexuality" was just cause for dismissal, to fire Miller. When a number of the company's clients followed Miller, Miller's former boss first mailed a letter to these clients revealing Miller's sexual orientation and advising them to ask Miller for results of an AIDS test. The company then successfully sued Miller for \$130,000 for alleged violation of a non-competitive clause of the contract.

FACTS

In 1986, Dan Miller was hired by a management consulting company. Miller's employment contract provided that cause for termination included "not working, intentionally working slowly, intentionally losing clients,... and homosexuality."

The company clearly found Miller's performance exemplary, as evidenced by the fact that Miller's boss was planning to make him a partner in the firm. Then, in October of 1990, Miller appeared on television to represent a coalition of citizens in its efforts to address violent crimes directed at lesbians and gay men. Shortly thereafter, the company fired Miller without granting severance pay, and even refused to reimburse Miller for \$1500 of agreed upon business expenses. Citing the provisions of the employment contract, Miller's boss has since testified under oath that the termination was based solely on the fact that Miller was gay.

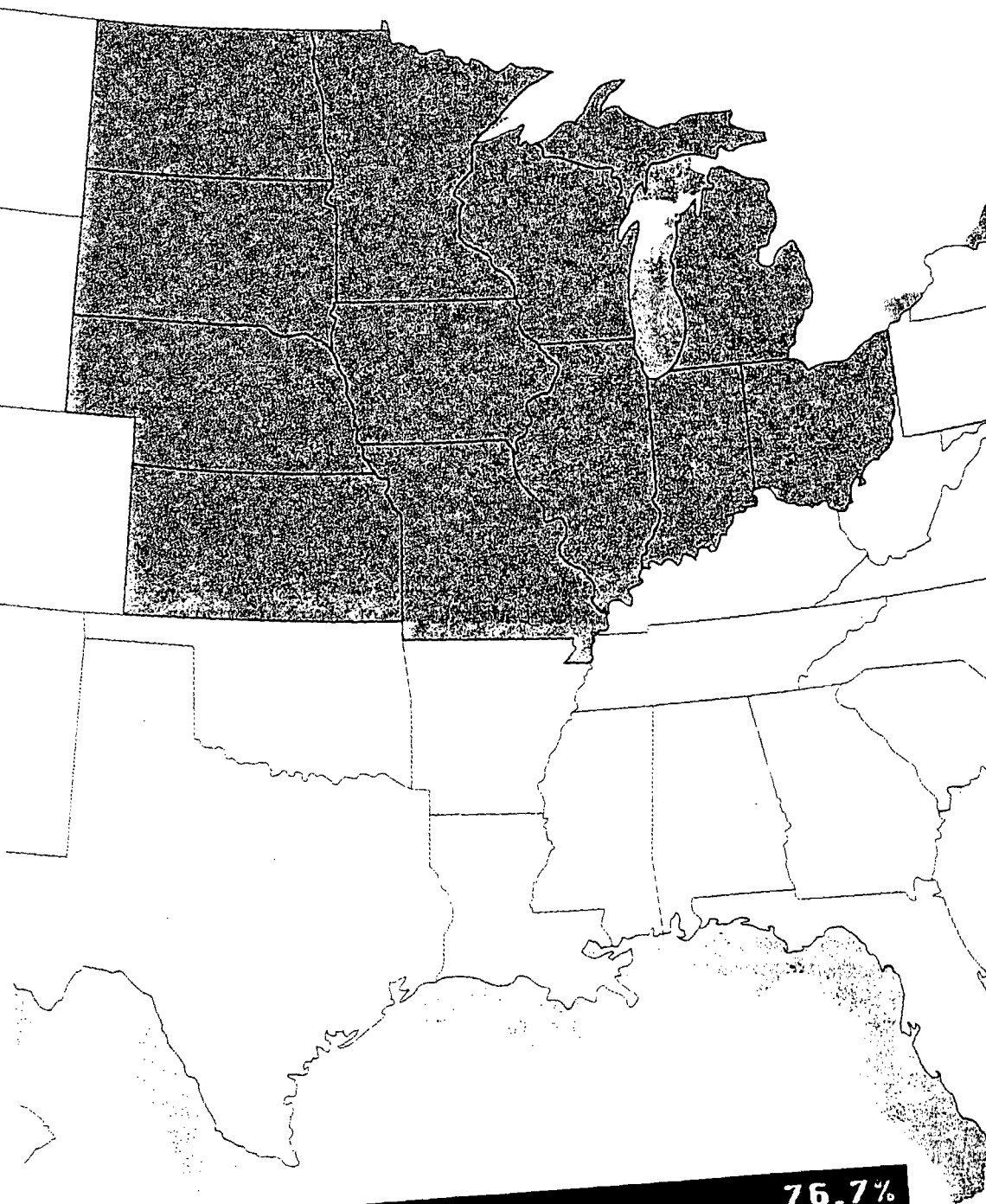
Thereafter, Miller's boss challenged, albeit unsuccessfully, Miller's unemployment benefits and even challenged Miller's membership in a leading professional organization for management consultants. Most significantly, Miller's boss attempted to undermine Miller's efforts to establish his own business. He not only informed Miller's clients that Miller was gay, but also stated to them, "It's well known that homosexuals are significantly at risk for AIDS. . . . [C]onsider getting the results of a blood test from him, if you are considering using his services on a long-term basis."

Ironically, Miller's boss not only fired him, but successfully sued Miller for violating a non-competition clause in the employment contract because a number of the firm's clients followed Miller to a new company. Miller was forced to pay his former employer a \$130,000 judgment. At the conclusion of the case, one of the jurors came forward and stated, "It was outrageous to hear intolerance like that in a court of law, where people come to seek protection from intolerance. But the law was silent."

"It was outrageous to hear intolerance like that in a court of law, where people come to seek protection from intolerance. But the law was silent."

Juror in Miller Case

THE MIDWEST



76.7%

SUPPORT

OPPOSE

17.1%

More than three of four Midwestern voters support equal rights in the workplace for lesbian and gay Americans.

From a poll conducted in February, 1994 by the independent firm of Mellman Lazarus Lake, Inc., of voters in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin.

DETROIT POSTAL WORKERS HARASSED AND BEATEN AT WORK

SUMMARY

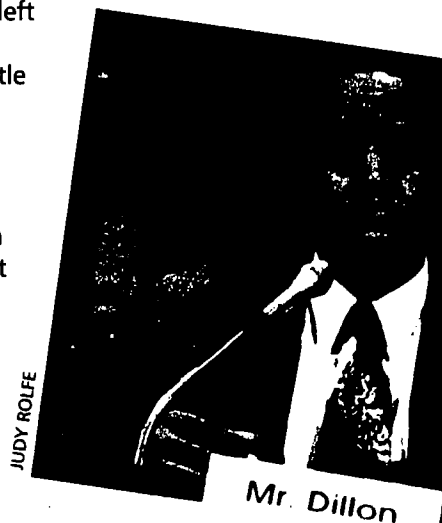
Ernest Dillon of Detroit worked for the U.S. Postal Service. He suffered severe verbal and written harassment on the job, but his supervisors refused to intervene. Eventually, his harasser beat Dillon unconscious, causing injuries from which Dillon needed weeks to recover. When he returned to work, his attacker had been fired, but other coworkers kept up the harassment. This lasted for several years, until, in 1988, under a therapist's instructions, Dillon left work. Eventually, Dillon filed a federal court action under Title VII of the 1964 Civil Rights Act. Although sympathetic, the federal court of appeals in 1992 rejected Dillon's claim, ruling that "homosexuality is not an impermissible criteria on which to discriminate."

FACTS

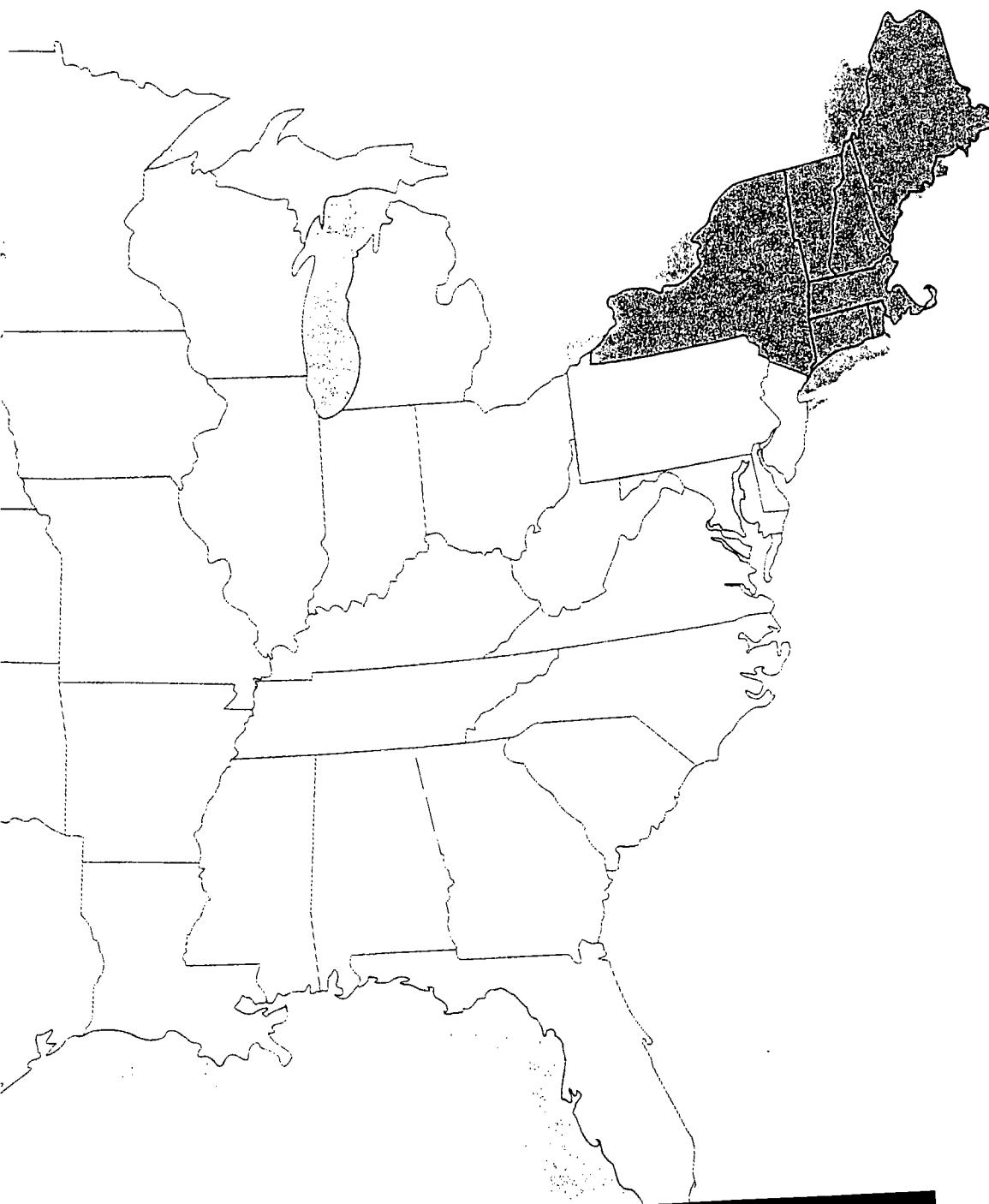
Ernest Dillon worked for the postal service as a mail handler at the Allen Park Bulk Mail Center. From 1980 to 1984, Dillon worked quietly and reliably, without incident. Then, in 1984, a fellow employee began to harass Dillon, both verbally and in writing, shouting out "fag" and obscene statements when Dillon passed by. Dillon reported the incidents to his supervisor, who refused to intervene.

One day his harasser cornered Dillon and beat him unconscious, leaving bruises and wounds that required several stitches to close and caused Dillon to miss three weeks of work. Dillon's attacker was fired, but two other employees kept up the harassment. Management still refused to intervene. After enduring this harassment for three more years, Dillon was emotionally crushed and unable to work. Under instructions from a therapist, in 1988 Dillon left work.

Dillon filed a federal court action under Title VII of the 1964 Civil Rights Act. Although sympathetic, in 1992 the federal court of appeals rejected Dillon's claim. Had the harassment occurred on the basis of race or gender, the court noted, Dillon would have a clear case. But because "homosexuality is not an impermissible criteria on which to discriminate," the court dismissed Dillon's case (952 F.2d 403 (6th Cir. 1992)).



NEW ENGLAND



SUPPORT

79.5%

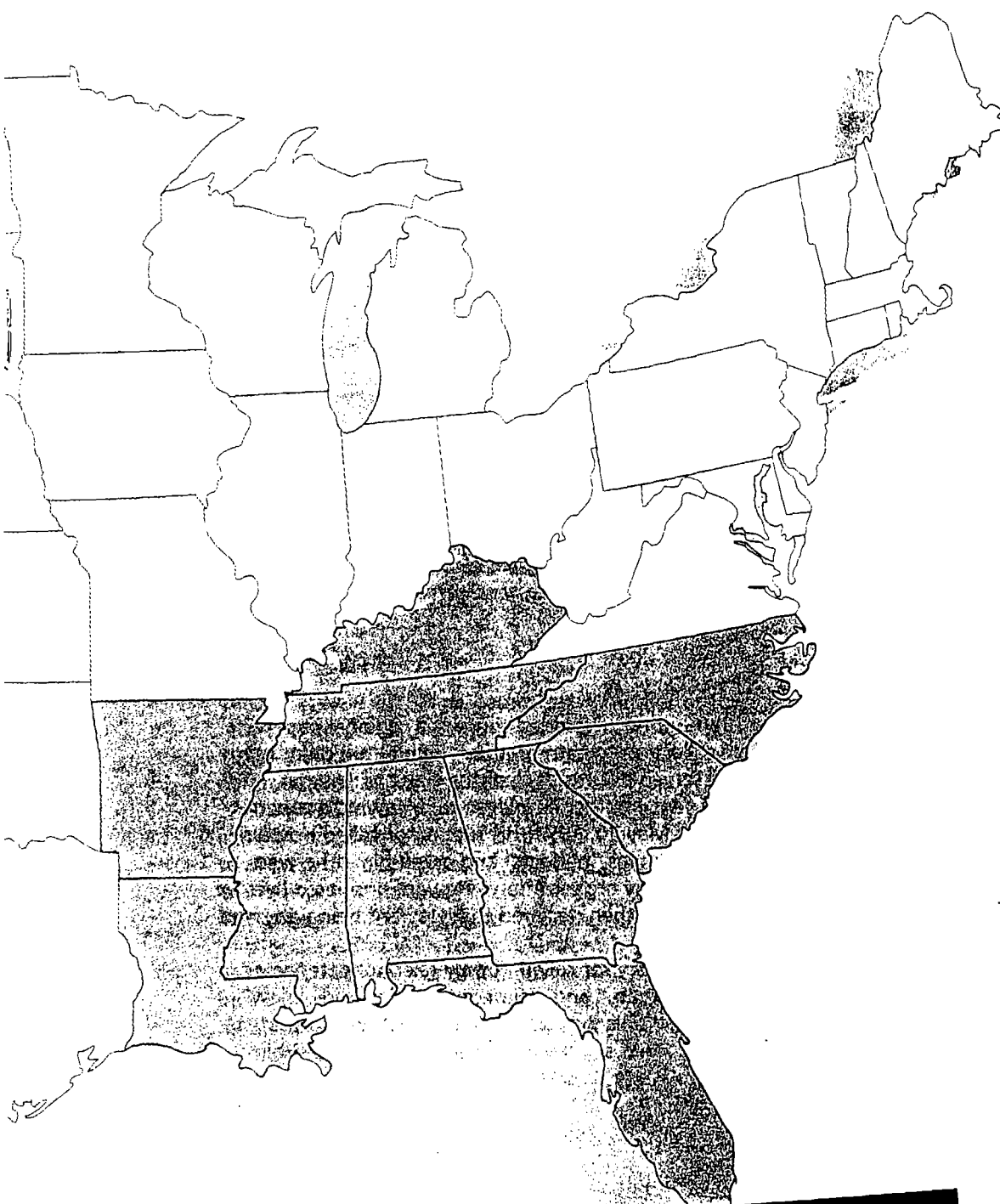
OPPOSE

11.2%

Nearly eight of 10 New England voters support equal rights in the workplace for lesbian and gay Americans.

From a poll conducted Nov. 8 and 9, 1994, by the independent firm of Mellman Lazarus Lake, Inc., of voters in Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont.

THE SOUTH



SUPPORT

63.2%

OPPOSE

22.4%

A strong majority of Southern voters support equal rights in the workplace for lesbian and gay Americans.

From a poll conducted Nov. 8 and 9, 1994, by the independent firm of Mellman Lazarus Lake, Inc., of voters in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

TAMPA BARTENDER REPLACED BECAUSE SHE IS NOT GAY

SUMMARY

Carolyn O'Neill is heterosexual. When, in late 1993, the Tampa, Florida, bar where she worked as a waitress decided to market primarily to lesbian and gay customers, the bar fired all of the heterosexual staff, including O'Neill. The Tampa lesbian and gay community learned about the bar owner's discrimination and staged a boycott; the bar subsequently went out of business.

FACTS

Carolyn O'Neill is a single heterosexual mother of three young children. She relied on her job at a Tampa bar to support herself and three sons. In late 1993, the bar's owners decided to target a gay clientele and fired their heterosexual employees, including O'Neill.

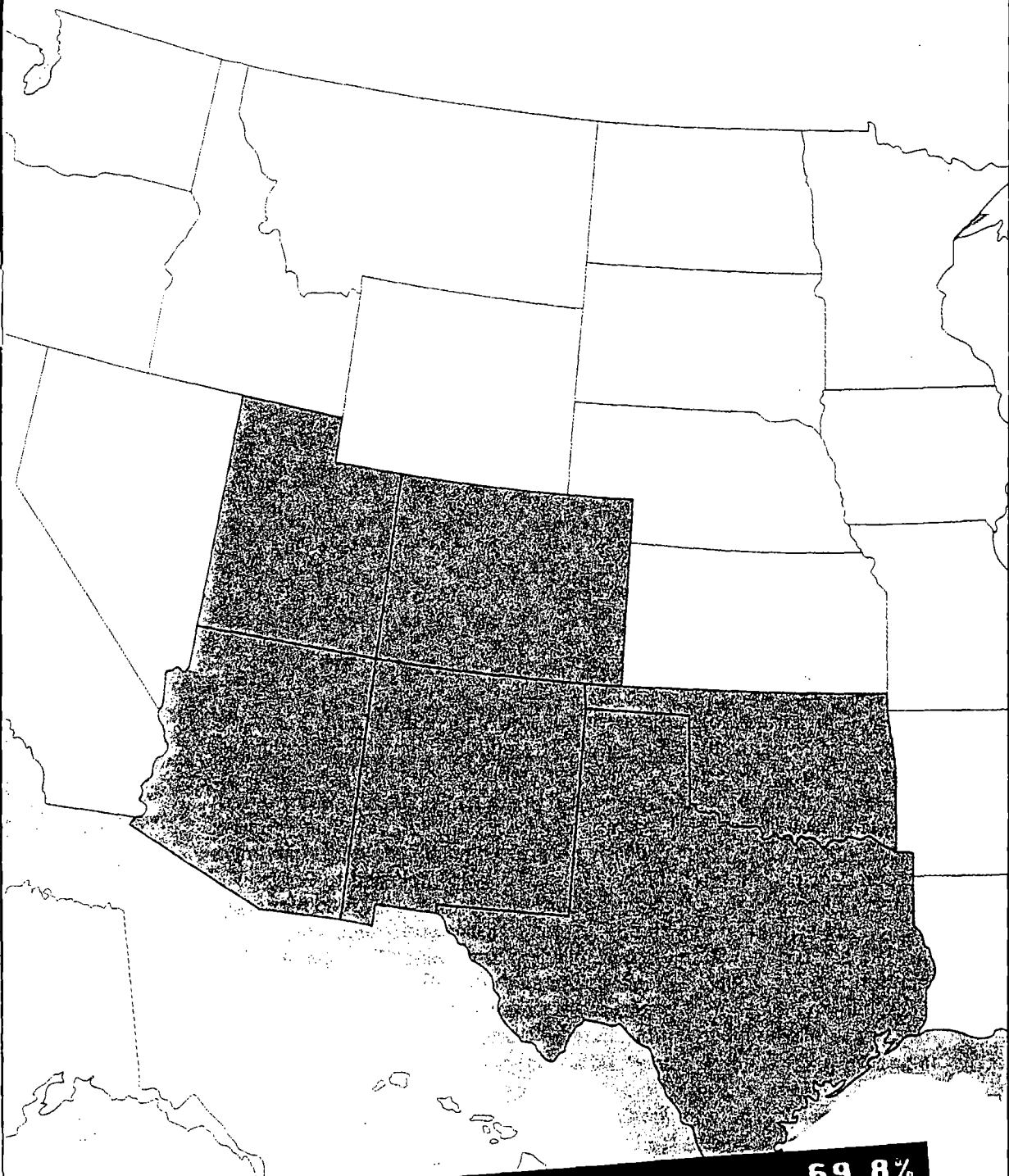
After these firings gained publicity, many of Tampa's gay and lesbian citizens mounted a boycott of the bar to protest the discrimination O'Neill and others had suffered. The bar, with its business undermined, shut down shortly thereafter. As a boycott leader observed, "Sexual orientation has no bearing on your capacity to mix drinks. Discrimination is wrong whether it's directed against gays and lesbians or straights."

U.S. Attorney General Janet Reno recognizes the problem of anti-gay job discrimination.



MARVIN T. JONES & ASSOCIATES

THE SOUTHWEST



A map of the Southwestern United States, including Arizona, Colorado, New Mexico, Oklahoma, Texas, and Utah. The states of Arizona, Colorado, New Mexico, Oklahoma, Texas, and Utah are shaded with a dark, stippled pattern, indicating support for equal rights in the workplace. The surrounding states are unshaded.

SUPPORT

OPPOSE

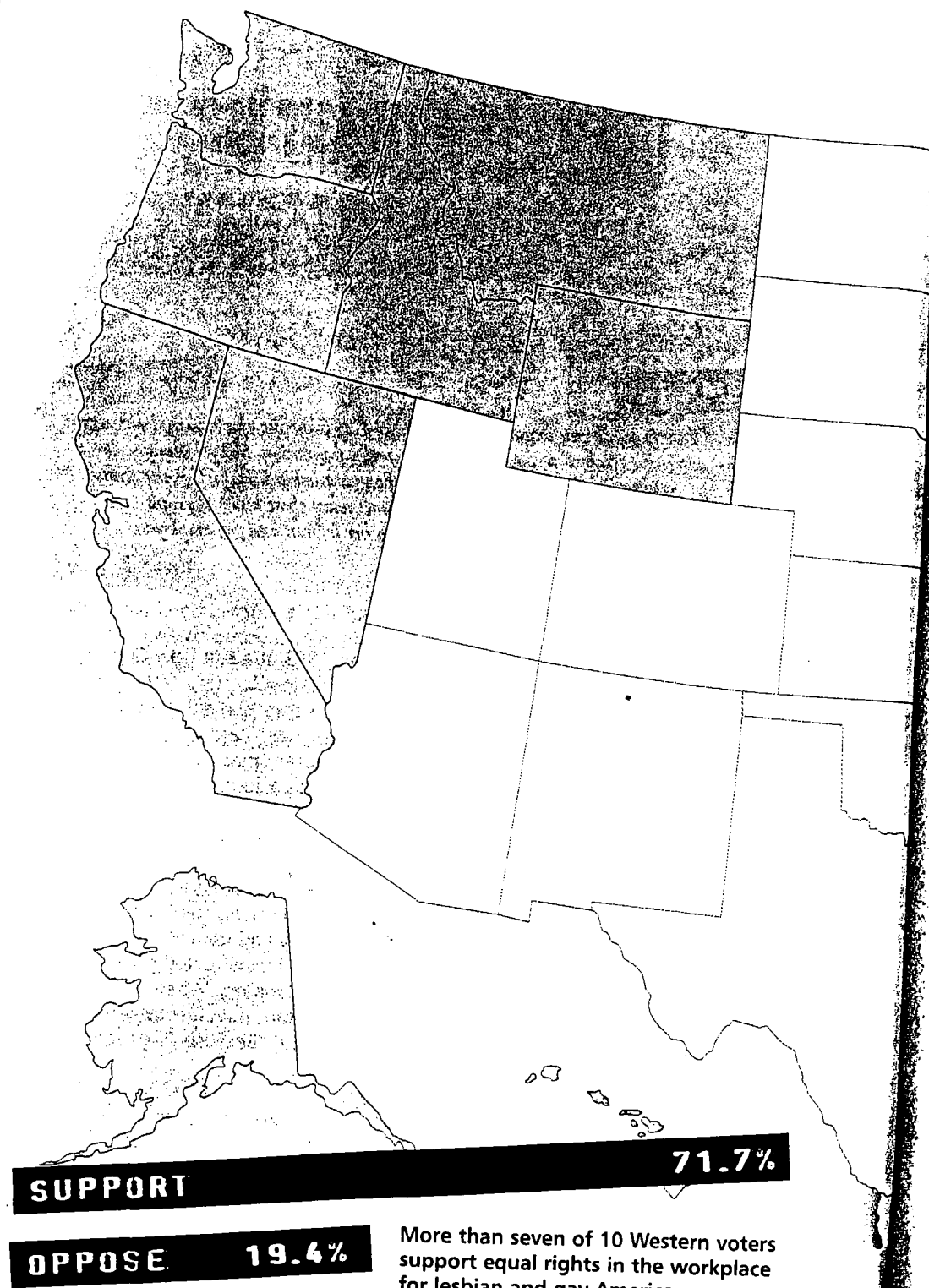
17.8%

69.8%

Nearly seven of 10 Southwestern voters support equal rights in the workplace for lesbian and gay Americans.

From a poll conducted Nov. 8 and 9, 1994, by the independent firm of Mellman Lazarus Lake, Inc., of voters in Arizona, Colorado, New Mexico, Oklahoma, Texas and Utah.

THE WEST



More than seven of 10 Western voters support equal rights in the workplace for lesbian and gay Americans.

From a poll conducted Nov. 8 and 9, 1994, by the independent firm of Mellman Lazarus Lake, Inc., of voters in Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington and Wyoming.

CALIFORNIA NEWSPAPER EMPLOYEE VICIOUSLY HARASSED AT WORK

SUMMARY

Peter Eliason, an employee of the circulation department at a California newspaper, has suffered ongoing and severe harassment, including anti-gay jokes, threats and acts of vandalism. Eliason has found sexually explicit cartoons slipped under his office door, a condom placed in his in-box, and the epithet "FAGGOT" etched on his name plate. Despite his request for assistance, management has refused to address the problem.

FACTS

Peter Eliason, an employee in the circulation department of a daily California newspaper, has suffered continuous on-the-job harassment because he is gay.

Beginning in 1989, Eliason's coworkers instigated rumors that Eliason was gay. On separate occasions, Eliason discovered an AIDS pamphlet slipped under his office door, a condom placed in his in-box, and a sexually explicit cartoon slipped under his door.

Eliason was subjected to his coworkers' anti-gay remarks, including his supervisor's anti-gay jokes insinuating that two gay men with whom the newspaper conducted business — to whom his supervisor referred as "faggots" — were engaged in sexual relations. Eliason's name plate was etched with the epithet "FAGGOT." A district manager threatened to vandalize Eliason's automobile in a similar manner.

Although management had remedied racial harassment of a similar nature, Eliason's situation was not addressed. Faced with management's inadequate response, Eliason contacted the parent company of the newspaper. The assistant circulation director stated that Eliason was angering "some very important people," and asked Eliason to repudiate his communications with the newspaper's parent company, which is a very well-known communications conglomerate. When Eliason refused, he was denied two promotions, in spite of his exemplary record. Eliason inexplicably received less-than-satisfactory performance evaluations which were inconsistent with his history of achievement awards.



Eliason's vandalized
name plate.

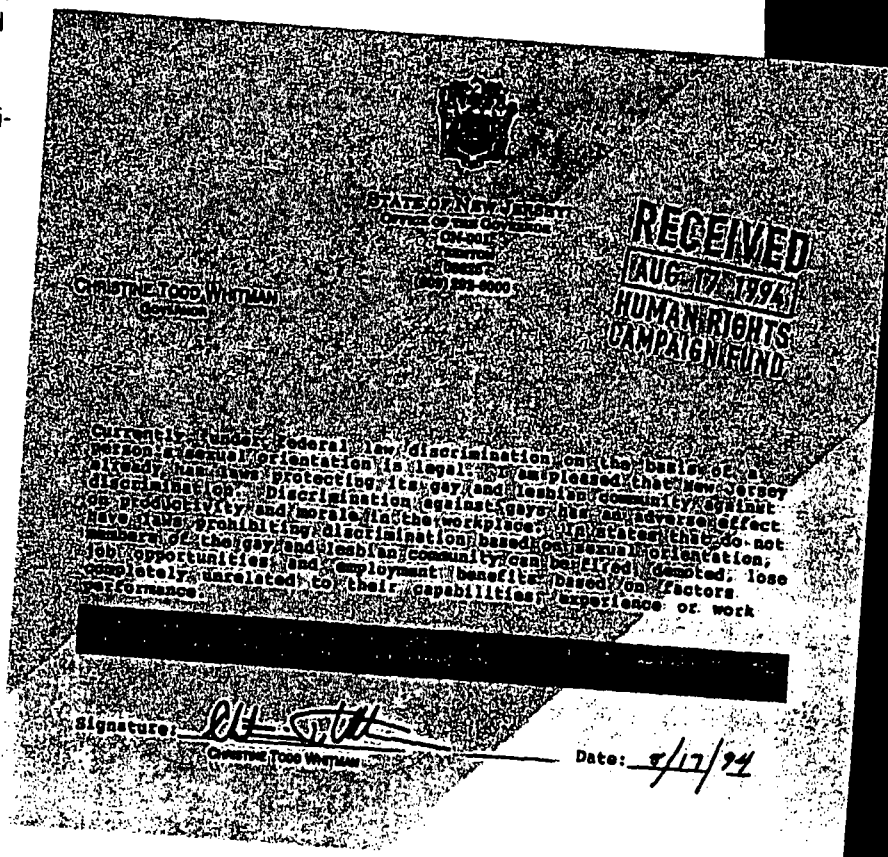
THE SOLUTION FAIRN

The Employment Non-Discrimination Act (ENDA) and Workplace Non-Discrimination Policies

Currently, there is no federal law against the kind of discrimination detailed in the cases published here. Qualified, hardworking people who are denied work, fired or otherwise treated unfairly merely for being lesbian or gay have no basic protection under the civil rights laws of the United States. A patchwork of protection exists in several states, and an estimated 130 municipalities have laws and policies against anti-gay discrimination.

More than half of the Fortune 1000 companies protect their lesbian and gay employees in written policies that prohibit discrimination in employment practices. The White House, federal agencies and a majority of Senate and House offices have voluntarily instituted similar policies. A rapidly growing number of businesses and public employers have found that fairness and equality in the workplace enhance productivity and increase profitability.

Only a federal law would create a level playing field. The Leadership Conference on Civil Rights has proposed the Employment Non-Discrimination Act (ENDA) to ensure that all Americans have equal rights in the job market and workplace. To find out more about ENDA and workplace non-discrimination policies contact the Human Rights Campaign Fund.





Employment Non-Discrimination Act

JOB DISCRIMINATION: A THREAT TO WORKING AMERICANS

Throughout the country, qualified, hardworking Americans are denied job opportunities, fired or otherwise discriminated against for reasons that have nothing to do with their performance and abilities. Employment discrimination based on sexual orientation, whether such orientation is real or perceived, effectively denies qualified individuals equality and opportunity in the workplace. Those who experience this form of discrimination have no recourse under current federal law or under the constitution as it has been interpreted by the courts. Among the cases documented by the Human Rights Campaign Fund:

- a Georgia woman who was fired from her job as an award winning cook when her company adopted a written policy against employing gay people;
- a married, heterosexual Kansas man who was refused a teaching job because a school employee suggested that he might be gay;
- a Detroit postal worker who was harassed and beaten at work because of his perceived sexual orientation and was told by a federal court that, although he had clearly suffered discrimination, "homosexuality is not an impermissible criteria on which to discriminate" under Title VII of the 1964 Civil Rights Act. *Dillon v. Frank*, 959 F2d 403 (6th Cir. 1992).

ENDA: PROVIDING BASIC PROTECTION

Employment discrimination strikes at a fundamental American value – the right of each individual to do his or her job and contribute to society – without facing unfair discrimination. Fairness in the workplace has been recognized as a fundamental right protected under federal law. Title VII of the Civil Rights Act provides basic legal protection against employment discrimination on the basis of race, gender, religion, national origin, age or disability, but not sexual orientation.

The Employment Non-Discrimination Act (ENDA) would prohibit discrimination on the basis of sexual orientation, providing basic protection to ensure fairness in the workplace for a group of Americans who have historically been denied equal protection under the law. ENDA does not create any "special rights" for lesbians and gay men. It simply affords to all Americans basic employment protection from discrimination based on irrational prejudice. The bill explicitly prohibits preferential treatment and quotas. In addition, it exempts small businesses, religious organizations and the military, and does not require benefits to the same sex partners of employees.

THE NEED IS GREAT ...

Leaders in both the private and public sectors have recognized that employment discrimination is not only un-American, it is counterproductive. Such discrimination excludes qualified individuals, lowers workforce productivity, and eventually hurts us all. In the absence of a federal legal remedy, nine states, the District of Columbia, and approximately 130 local jurisdictions have passed laws to protect lesbians and gay men from discrimination in the workplace. In addition, a growing number of Fortune 1000 companies already have employment policies consistent with ENDA. These companies understand that ending discrimination based on sexual orientation is good for business and good for the country.

The American public believes that discrimination is wrong, regardless of how they feel about lesbian and gay people. In a poll released in February, 1994, Newsweek reported that "74 percent of all Americans favor protecting gays from job discrimination." A Mellman, Lazarus, Lake poll taken of November, 1994 voters showed strong support for the principal of equal rights in hiring and firing, including 64 percent of the Republicans polled. Support for ENDA specifically, among November voters, was an impressive 57 percent.

... THE SUPPORT IS BROAD

Business Leaders - Paul Allaire, Chair and CEO of Xerox Corporation; Anthony Carnevale, Chair of the National Commission on Employment Policy; Jerre Stead, CEO of AT&T Global Information Solutions; Philippe Kahn, CEO and Chair of Borland International; Warren Phillips, former Chair of Dow Jones & Company, Inc.

Labor Organizations - AFL-CIO, Actor's Equity Association, Amalgamated Clothing & Textiles Workers' Union, American Nurses Association, American Federation of Teachers, American Federation of State, County & Municipal Employees, Association of Flight Attendants, Communication Workers of America, International Association of Fire Fighters, Service Employees International Union, United Steel Workers of America.

Religious Leaders Representing - National Council of Churches, Interfaith IMPACT, American Jewish Committee, Anti-Defamation League, Christian Church (Disciples of Christ), Church of Brethren, Church Women United, Episcopal Church, Evangelical Lutheran Church in America, Friends Committee on National Legislation, Union of American Hebrew Congregations, Unitarian Universalist Association, United Church of Christ, United Methodist Church.

Civil Rights Organizations and Leaders - Leadership Conference on Civil Rights; Coretta Scott King; Mary Francis Berry, US Civil Rights Commission; Women's Legal Defense Fund; National Women's Law Center, NOW Legal Defense and Education Fund; People For the American Way; National Council of La Raza; Japanese American Citizens League.

Major US Daily Newspapers - *Arizona Daily Star*, *Arizona Republic*, *Atlanta Constitution*, *Austin American-Statesman*, *Harrisburg Patriot-News*, *Los Angeles Times*, *Minneapolis Star-Tribune*, *New York Times*, *Philadelphia Inquirer*, *San Antonio Express News*.

FAIRNESS IS NON-PARTISAN

ENDA enjoyed strong bipartisan support in the 103rd Congress, with 32 Senate and 138 House cosponsors. Hearings were held on July 29, 1994, in the Senate Labor and Human Resources Committee. In addition, a majority of House Members and over two thirds of the Senate specifically indicated that sexual orientation was not a consideration in their own employment practices. The bill has been endorsed by Governors Christine Todd Whitman (R) of New Jersey, William Weld (R) of Massachusetts, and former Governor Lowell Weicker (D) of Connecticut.

Americans agree -- skills and job performance, not sexual orientation, should be the sole criteria in employment. ENDA addresses a documented problem of discrimination and supports a fundamental American value. It is time for Congress to pass the Employment Non-Discrimination Act.

6/7/95

Employment Non-Discrimination Act

The Employment Non-Discrimination Act (ENDA) extends federal employment discrimination protections currently provided based on race, religion, gender, national origin, age and disability to sexual orientation. Thus, ENDA extends fair employment practices -- not special rights -- to lesbians, gay men, bisexuals and heterosexuals.

ENDA prohibits employers, employment agencies, and labor unions from using an individual's sexual orientation as the basis for employment decisions, such as hiring, firing, promotion, or compensation.

Under ENDA, covered entities cannot subject an individual to different standards or treatment based on that individual's sexual orientation (real or perceived) or discriminate against an individual based on the sexual orientation of those with whom the individual associates.

The "disparate impact" claim available under Title VII of the Civil Rights Act of 1964 (Title VII) is not available under ENDA. Therefore, an employer is not required to justify a neutral practice that may have a statistically disparate impact based on sexual orientation.

ENDA exempts small businesses, as do existing civil rights statutes, and does not apply to employers with fewer than fifteen employees.

ENDA exempts religious organizations, including educational institutions substantially controlled or supported by religious organizations.

ENDA prohibits preferential treatment, including quotas, based on sexual orientation.

ENDA does not require an employer to provide benefits for the same-sex partner of an employee.

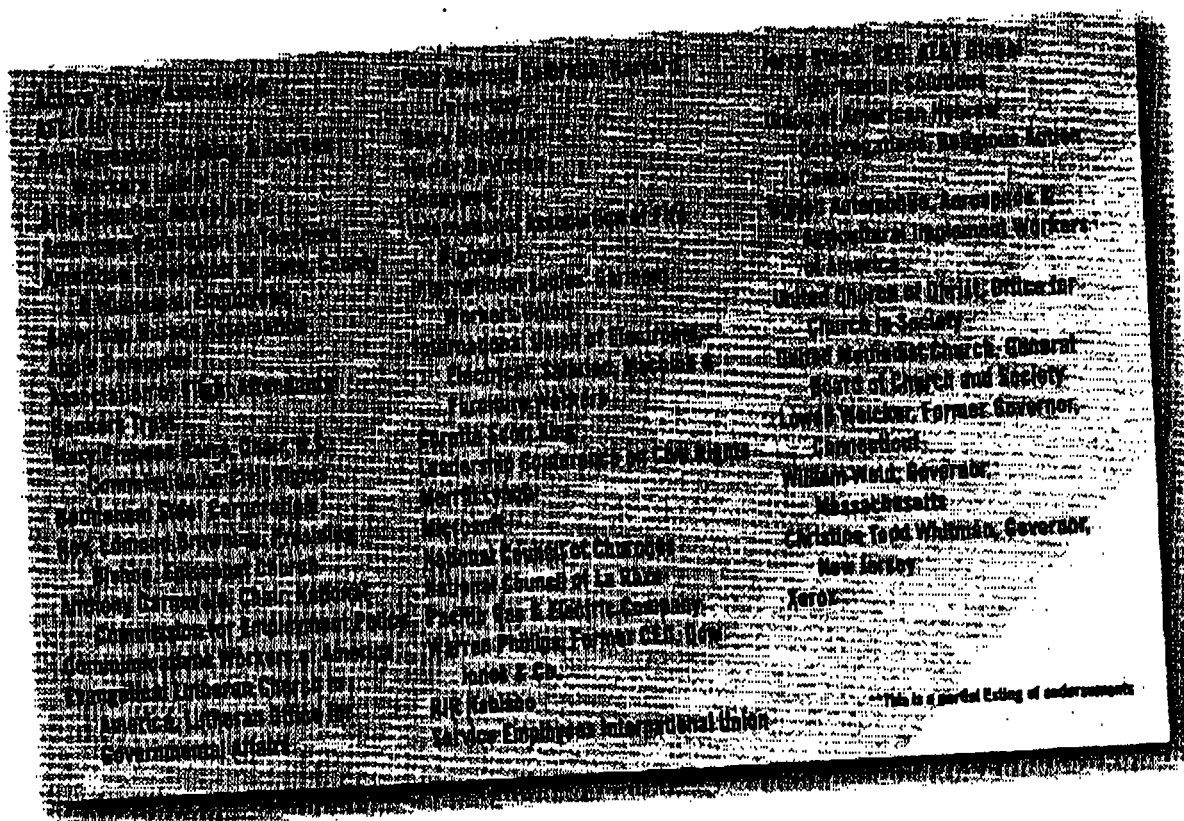
ENDA does not apply to the uniformed members of the armed forces and thus does not affect the current law on lesbians and gay men in the military.

ENDA provides for the same remedies (injunctive relief and damages) as are permitted under Title VII and the Americans with Disabilities Act (ADA).

ENDA applies to Congress, with the same remedies as provided by the Congressional Accountability Act of 1995.

ENDA is not retroactive.

What do 74 percent of
American voters*
have in common with these
political, business, religious
and labor leaders?



They want to end job discrimination against gay people.

These are only a few of the endorsements supporting the Employment Non-Discrimination Act (ENDA). Currently, no federal law protects lesbian and gay people from losing their jobs to discrimination. ENDA would provide basic rights for all Americans by prohibiting job discrimination on the basis of sexual orientation.

Cosponsor ENDA Today. Call 628-4160 for more information.



Leading the Fight at the National Level for Lesbian and Gay Equality.

1101 14th Street, NW Suite 200 Washington, DC 20005 202.628.4160

*Based on a national poll of 1000 women conducted May 16-21, 1995, by Lake Research, Inc. Margin of error +/- 3.5 percent.

Employment Non-Discrimination Act

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ENDA is not retroactive.



Department of Justice

STATEMENT OF

DEVAL PATRICK

ASSISTANT ATTORNEY GENERAL

CIVIL RIGHTS DIVISION

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES

UNITED STATES SENATE

CONCERNING

THE EMPLOYMENT NON-DISCRIMINATION ACT

S. 2238

PRESENTED ON

JULY 29, 1994

Mr. Chairman and Members of the Committee, I am pleased to provide this testimony today on the problems addressed by S. 2238, the Employment Non-Discrimination Act of 1994.

On behalf of the President, I want to commend you, Mr. Chairman, your colleagues in the House, Mr. Frank and Mr. Studds, and your more than 130 cosponsors in both chambers, for introducing this bill. It is a serious and thoughtful approach to address the problem of discrimination against gay men and lesbians. Because the President strongly supports the principle of non-discrimination based on sexual orientation, he will sign into law legislation passed by Congress that prohibits discrimination in employment based on sexual orientation.

The President and his Administration have consistently supported the principle of non-discrimination in employment. All Americans should be able to find jobs, keep jobs and earn promotions based on their qualifications and the quality of their work, not on irrelevant characteristics. This has been a core value in this country for many years.

As you know, thirty years ago, Congress enacted the Civil Rights Act of 1964, including Title VII which prohibits discrimination in employment based on race, color, religion, sex

and national origin. In 1967, the Age Discrimination in Employment Act was enacted to protect older Americans. Most recently, in 1990, Congress enacted the Americans with Disabilities Act to extend full civil rights protections to persons with disabilities. All of these are legislative markers on the road to full and productive participation in our free society.

These laws reflect Congress' deepening understanding of the notion that characteristics such as race, religion, sex, age and disability have no relevance to the ability of an individual to perform required functions of a job. Quite often, unfortunately, prejudice and stereotypes held by some employers still limit a gay or lesbian person's ability to obtain and keep a job. But as the President said in Riga, Latvia, recently, "Freedom without tolerance is freedom unfulfilled." In that spirit, this Administration believes the principle of non-discrimination in employment should be extended to include sexual orientation. The Administration wants to work with Congress to enact such a bill to make this principle a reality.

Our Nation prides itself on embracing the principle that persons should be judged based on merit and ability, not on class, culture or other extraneous factors. Our civil rights laws reflect this principle. By allowing employment discrimination on the basis of sexual orientation, our society

cheats itself out of the contributions of very able and talented individuals throughout the Nation. As the international market place becomes increasingly competitive, America does not have the luxury of wasting talent.

The Administration supports using the framework of Title VII to provide protections against discrimination based on sexual orientation. These well known standards -- covering the same employers, using the same standards, and providing the same enforcement mechanisms -- provide employers and employees with solid guidance on the law. S. 2238 takes this sound approach, building on 30 years of Title VII jurisprudence.

S. 2238 makes a number of exceptions to the basic Title VII provisions. The first is for instances of disparate impact. Disparate impact was first recognized as a basis for establishing a violation of Title VII by the U.S. Supreme Court in *Griggs v. Duke Power*, 401 U.S. 424 (1971). In *Griggs*, the Court recognized that a facially neutral practice that appears fair in form but discriminatory in operation, and if not justified by business necessity, is prohibited by Title VII. The Civil Rights Act of 1991 amended Title VII to codify the disparate impact standard. S. 2238, however, explicitly excludes disparate impact as a method of proof in cases of discrimination on the basis of sexual orientation.

The President has always supported, and strongly respects, freedom of religion. The administration supports carefully crafted provisions to insure that civil rights laws do not unduly interfere with that freedom. Title VII excludes religious organizations from the prohibition from discrimination based upon religion. The Employment Non-Discrimination Act respects freedom of religion by providing a broad exemption for religious organizations, an exemption broader than in other employment discrimination laws.

The third distinction from Title VII pertains to benefits. Under Title VII, discrimination in the provision of employee benefits is prohibited. The Employment Non-Discrimination Act, by contrast, would not apply to the provision of employee benefits to an individual for the benefit of his or her partner.

The fourth exception is for members of the armed forces. Title VII does not apply to members of the armed forces. S. 2238 would not apply and would have absolutely no impact on uniformed military employment practices. The Administration agrees with this approach.

The President has consistently opposed the use of quotas in employment discrimination law and his position is no different here. In addition to the exceptions outlined above, S. 2238

explicitly prohibits the use of quotas. The Administration agrees that any bill addressing this issue should rule out the use of quotas.

The notion of providing antidiscrimination protection is not so novel as to be untested in the public and private sectors. Longstanding Federal employment policy prohibits discrimination based on non-job-related conduct, including discrimination based on sexual orientation. We know of nothing in that experience to suggest a loss or reduction in productive capacity or workplace goodwill. Eight states and over 80 local governments provide some form of protection. Indeed, 308 of your colleagues in the House and Senate have pledged not to discriminate in employment based on sexual orientation.

In the private sector, numerous companies such as General Motors, Miller Brewing Company, Citicorp, IBM, and AT&T have policies of non-discrimination based on sexual orientation. A number of these employers also provide the same degree of employee benefits to a person's partner, without regard to sexual orientation.

Until this year, Congress had not heard testimony on the issue of employment discrimination based on sexual orientation in nearly 15 years. I trust that over the course of these hearings you will hear from many witnesses who will document the problems

faced by lesbians and gay men in employment, and that their testimony will build a useful and solid record on the problem of employment discrimination based on sexual orientation. Hearing that testimony should lead you to the same conclusion we have reached: that Congress should pass a bill to embody the principle against discrimination in employment based on sexual orientation.

Mr. Chairman, thank you for the opportunity to testify today. We expect to have some technical comments on the bill, which we would like to supply for the hearing record. Beyond that, we look forward to working with you and the Committee to eliminate employment discrimination based upon sexual orientation.