

MR. TSONGAS

" A BILL TO PROHIBIT EMPLOYMENT DISCRIMINATION ON THE
BASIS OF SEXUAL ORIENTATION."

MR. PRESIDENT, I RISE TODAY ON BEHALF OF MYSELF, SENATOR WEICKER
AND SENATOR MOYNIHAN TO INTRODUCE LEGISLATION THAT WILL AMEND TITLE VII
OF THE CIVIL RIGHTS ACT OF 1964 TO PROHIBIT EMPLOYMENT DISCRIMINATION
ON THE BASIS OF SEXUAL ORIENTATION.

THE INTENT OF THIS BILL IS TO PROVIDE LEGAL RECOURSE FOR THOSE PERSONS
DENIED EMPLOYMENT SOLELY ON THE GROUNDS OF THEIR SEXUAL ORIENTATION.
GENDER IDENTITY AND PREFERENCE BEAR NO RELATION TO JOB COMPETENCE AND
PERFORMANCE. TO BE DENIED EMPLOYMENT BECAUSE OF ONE'S HOMOSEXUAL ORIENTATION
IS AS WASTEFUL, UNJUST AND ARBITRARY AS DENIAL ON THE BASIS OF GENDER
RACE, RELIGION, OR OTHER CATEGORIES CURRENTLY PROTECTED BY THE CIVIL RIGHTS
ACT TO PROTECT A SEGMENT OF OUR POPULATION STILL VULNERABLE TO THE VIOLATION
OF THEIR CIVIL RIGHTS.

WHILE MY BILL PROHIBITS EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL
ORIENTATION, IT DOES NOT REQUIRE NOR SUGGEST THAT EMPLOYEES SHOULD INSTITUTE
AFFIRMATIVE ACTION PROGRAMS TO EMPLOY HOMOSEXUALS. ALL THAT MY BILL DOES IS
PROVIDE A LEGAL RECOURSE FOR THOSE PERSONS WHO ARE FIRED OR DENIED JOBS
PURELY BECAUSE THEY ARE HOMOSEXUAL, HETEROSEXUAL OR BISEXUAL IN THEIR PRIVATE
LIVES.

MR. PRESIDENT, THE NEED FOR SUCH LEGISLATION SHOULD BE READILY APPARENT.
THE PUBLIC ATTENTION GIVEN TO HOMOSEXUALITY OVER THE LAST FIVE YEARS HAS
EXACERBATED THE CONFUSION AND PANIC ASSOCIATED WITH HOMOSEXUALITY. THERE
ARE MANY MYTHS ABOUT HOMOSEXUALITY THAT CAUSE GAY PERSONS TO BE CONSISTENTLY

DISCRIMINATED AGAINST. CONFUSION OVER THE CAUSE OF HOMOSEXUALITY, THE MANIFESTATIONS OF HOMOSEXUALITY AND RESULTANT BEHAVIOR, THE IMPACT OF THE HOMOSEXUAL ON HIS OR HER FAMILY, PEERS, CHANGES AND COLLEAGUES (AND VICE VERSA) SERVES ONLY TO PERPETUATE THE MYSTERY AND FEAR OF HOMOSEXUALITY. UNFORTUNATELY, THIS FEAR CAUSES UNJUST DENIAL OF FUNDAMENTAL RIGHTS AND LIBERTIES.

EMPLOYMENT DISCRIMINATION AGAINST HOMOSEXUAL PERSONS GENERALLY OCCURS AFTER THE INDIVIDUAL HAS BEEN HIRED. TYPICALLY, THE SUPERVISOR WILL BE MADE AWARE THAT AN INDIVIDUAL DEMONSTRATES EITHER HOMOSEXUAL ORIENTATION OR BEHAVIOR IN HIS/HER PRIVATE LIFE, AND WILL HAVE THE EMPLOYEE DISMISSED ON THOSE GROUNDS ALONE. IN THE ABSENCE OF LEGAL PROTECTION, THE ACCUSED PERSON'S LIVELIHOOD IS JEOPARDIZED FOR A LIFETIME, CAUSING UNDUE MENTAL ANXIETY, AND ROBBING THE COMMUNITY OF THAT INDIVIDUAL'S TALENTS AND PRODUCTIVITY. SOME EXAMPLES OF THIS WILL FOLLOW LATER.

IN OCTOBER OF 1969 THE NATIONAL INSTITUTE OF MENTAL HEALTH RELEASED THE FINAL REPORT OF ITS TASK FORCE ON HOMOSEXUALITY. THIS TASK FORCE WAS APPOINTED IN SEPTEMBER OF 1967 BY DR. STANLEY F. YOLLES, THEN DIRECTOR OF THE NATIONAL INSTITUTE OF MENTAL HEALTH. THE 15 MEMBERS OF THE TASK FORCE WERE OUTSTANDING BEHAVIORAL, MEDICAL, SOCIAL AND LEGAL SCIENTISTS. THE MANDATE OF THE TASK FORCE WAS TO REVIEW CAREFULLY THE CURRENT STATE OF KNOWLEDGE REGARDING HOMOSEXUALITY IN ITS MENTAL HEALTH ASPECTS, AND TO MAKE RECOMMENDATIONS FOR INSTITUTE PROGRAMMING IN THIS AREA.

THE PRIMARY RECOMMENDATION OF THIS TASK FORCE WAS THE ESTABLISHMENT OF AN NIMH CENTER FOR THE STUDY OF SEXUAL BEHAVIOR. WITHIN THIS CENTER IT

WAS RECOMMENDED THAT FIVE AREAS OF PROGRAMS AND RESEARCH BE PURSUED.

THE FIFTH AREA WAS THAT OF SOCIAL POLICY.

ALTHOUGH SOCIAL POLICY DETERMINATIONS ARE NOT THE PRIMARY FOCUS OF NIMH, THE RESEARCH FUNDED BY THE INSTITUTE HAS A PROFOUND IMPACT ON SOCIAL POLICY, AS THE TASK FORCE REPORT STATES:

"CHANGES IN SOCIAL POLICY CAN BE DISCUSSED UNDER TWO HEADINGS, NAMELY LEGAL CHANGES AND CHANGES IN EMPLOYMENT POLICIES AND PRACTICES.

"LEGAL CHANGES. ALTHOUGH MANY PEOPLE CONTINUE TO REGARD HOMOSEXUAL ACTIVITIES WITH REPUGNANCE, THERE IS EVIDENCE THAT PUBLIC ATTITUDES ARE CHANGING. DISCRETE HOMOSEXUALITY, TOGETHER WITH MANY OTHER ASPECTS OF HUMAN SEXUAL BEHAVIOR, IS BEING RECOGNIZED MORE AND MORE AS THE PRIVATE BUSINESS OF THE INDIVIDUAL RATHER THAN A SUBJECT FOR PUBLIC REGULATION THROUGH STATUTE. MANY HOMOSEXUALS ARE GOOD CITIZENS, HOLDING REGULAR JOBS AND LEADING PRODUCTIVE LIVES. THE EXISTENCE OF LEGAL PENALTIES RELATING TO HOMOSEXUAL ACTS MEANS THAT THE MENTAL HEALTH PROBLEMS OF HOMOSEXUALS ARE EXACERBATED BY THE NEED FOR CONCEALMENT AND THE EMOTIONAL STRESSES ARISING FROM THIS NEED AND FROM THE OPPROBRIUM OF BEING IN VIOLATION OF THE LAW. ON THE OTHER HAND, THERE IS NO EVIDENCE SUGGESTING THAT LEGAL PENALTIES ARE EFFECTIVE IN PREVENTING OR REDUCING THE INCIDENCE OF HOMOSEXUALS ACTS IN PRIVATE BETWEEN CONSENTING ADULTS. IN THE UNITED STATES SUCH PERSONS ARE SO SELDOM BROUGHT TO TRIAL THAT TO ALL INTENTS AND PURPOSES SUCH LAWS ARE DEAD LETTERS AND THEIR REPEAL WOULD MERELY OFFICIALLY CONFIRM A SITUATION THAT ALREADY EXISTS. IT SHOULD BE EMPHASIZED THAT THE REPEAL OF SUCH LAWS WOULD IN NO WAY AFFECT EXISTING LEGAL SANCTIONS AGAINST SEXUAL BEHAVIOR WHICH VIOLATES PUBLIC DECENCY

of minors, whether such behavior be homosexual or heterosexual. A number of eminent bodies - the British Wolfenden Commission, the Ninth International Congress on Criminal Law, and the American Law Institute in its Model Penal Code have all recommended, after extensive studies, that statutes covering sexual acts recast in such a way as to remove legal penalties against acts in private among consenting adults. A majority of this Task Force accepts and concurs with this recommendation and urges that the NIMH support ongoing studies of the legal and societal implications of such a change with respect to both homosexual and heterosexual behavior.

We believe that such a change would reduce the emotional stresses upon the parties involved and thereby contribute to an improvement in their mental health. Furthermore, such a change in the law would also encourage revisions in certain governmental regulations which now make homosexual acts a bar to employment or a cause for dismissal. By helping thereby to remove a source of anxiety over being discovered, this would make an indirect contribution to the mental health of the homosexual population. It would also serve to reduce the possibilities for blackmail, which are a constant hazard to the homosexual under present condition (X). To be sure, full equality in employment, full security, and full acceptance by the society for homosexuals will not be achieved by changes in the law alone, but such changes may help to facilitate the recasting of public attitudes that are ultimately needed.

~~15~~ Employment Policies and Practices. It is recommended that there be a reassessment of current employment practices and policy relating to the employ-

ment of homosexual individuals with a view toward making needed changes. Discrimination in employment can lead to economic disenfranchisement, thus engendering anxiety and frustrating legitimate achievement motivation (X).

Present employment policies generally deal with the homosexual individual as if homosexuality were a specific and homogeneous category of behavior, and tends to ignore the wide range of variation that exists (X). We recognize that some homosexuals, like some heterosexuals, may be unsuitable employees in some situations because they do not exercise reasonable control over their sexual tendencies or activities. //

~~Second, in highly sensitive positions, the possibility that a homosexual may be subject to blackmail or undue influence may affect the suitability of a homosexual individual for such employment, although changes in our present laws concerning homosexuality may ultimately eliminate this.~~

Mr. President, it is clear to me that the need for this legislation is critical. I understand that the issue this legislation raises is very sensitive, and that the success of my efforts will depend upon an increased ^{a clear} public understanding of ~~gender identity, sexual behavior, and public~~ ^{the civil rights issues involved.} tolerance of ~~varying~~ lifestyles. I maintain that this effort is consistent with current disapproval of government intrusion in private lives.

~~I ask to be included in the Record following my statement letters of support for non-discrimination on the basis of sexual orientation.~~

Mr. President, over the next year I will request the privilege of the floor to discuss further issues raised by this legislation. I invite my