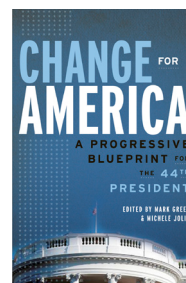




# Gay, Lesbian, Bisexual, and Transgender Americans

## The Road Ahead

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This chapter is part of an online effort by the Center for American Progress Action Fund and New Democracy Project to offer expert advice to the new administration as part of its *Change for America* book project.

### Introduction

Americans' progress toward understanding and addressing the challenges faced by gay, lesbian, bisexual, and transgender people has moved at near light speed in recent years. Yet legal protections and even basic solutions from lawmakers have often not kept pace. For the past eight years, the White House has often been openly hostile toward GLBT Americans, using its voice to advocate legislation that would amend the Constitution to pointedly deny GLBT Americans legal rights and protections.

The new administration should immediately begin efforts to eliminate inequality toward GLBT Americans in work and family life through measures such as expanding the definition of hate crimes to include crimes based on sexual orientation, prohibiting the federal government and other workplaces from discriminating against GLBT employees, and expanding benefits to include domestic partners and same-sex spouses. There is great work to be done, and the new administration can provide a roadmap for the path ahead.

### Restoring a relationship with the GLBT community

One of the 44<sup>th</sup> president's first actions in the first 100 days should be to appoint a GLBT liaison to work in the West Wing of the White House. This would serve as an immediate demonstration of the new administration's commitment to including GLBT Americans fully in every part of American life. There is currently no GLBT community liaison within the White House, though that was not always the case. The GLBT community had a voice in the Clinton administration through a White House liaison who represented the community in policy and political discussions.

Once a liaison is in place, the new administration should make a renewed U.S. commitment to fighting HIV and AIDS. The incidence of HIV infection in the United States is alarmingly high, particularly among gay men of color. During the Bush administration, much of the progress that had been made in terms of educating and arming members of the public with the information they need on how best to protect themselves was systematically undermined. Science-based education programs have been routinely replaced with ideological programs that teach abstinence until marriage as the only means of preventing pregnancy and stopping the spread of sexually transmitted diseases. The new administration should therefore call for robust support for HIV research, prevention, and treatment, and specifically commit to only supporting science-based education and prevention programs that include safe-sex education.

The liaison should also lead a White House effort to work with Congress and other federal agencies on hate crimes against the GLBT community. According to 2004 FBI statistics, hate crimes based on sexual orientation constituted the third-highest category reported and made up 15.5 percent of all reported hate crimes. Only race-based and religion-based prejudice crimes were more prevalent than hate crimes based on sexual orientation.

A violent hate crime is intended to “send a message” that an individual and “their kind” will not be tolerated, which often leaves the victim and others in their group feeling isolated, vulnerable, and unprotected. The Matthew Shepard Act, or the Local Law Enforcement Enhancement Act, would add discrimination based on sexual orientation, gender identity, disability, ethnicity, or religion to the definition of a hate crime. The bill has strong bipartisan support and in 2007 passed both the House and the Senate in historic votes.

The new administration should make the Matthew Shepard Act an early priority. It could also make a significant difference by strengthening FBI statistical fact finding into GLBT hate crimes; for instance, there are currently no reporting mechanisms for hate crimes against transgender Americans.

The new administration can also begin shifting the federal government’s stance toward the GLBT community by revisiting the issue of sexual orientation and the military. American taxpayers have already paid between \$250 million and \$1.2 billion to investigate, eliminate, and replace qualified, patriotic service members who want to serve their country but can’t because expressing their sexual orientation violates the military’s “don’t ask, don’t tell” policy.<sup>1</sup> And despite the incredible need for their talents, nearly 800 specialists with critical skills have been fired from the U.S. military under the “don’t ask, don’t tell” policy, including 323 linguists, more than 55 of whom specialized in Arabic.<sup>2</sup> What’s more, 79 percent of Americans consistently support allowing gays to serve openly.<sup>3</sup>

The new administration can jump-start discussion on this issue by establishing a commission to issue a new report evaluating the current policy and its effect on military readiness. The findings of that report will provide an outline for the new administration to work with

congressional leaders to pass The Military Readiness Enhancement Act or similar legislation that would remedy the discriminatory and unworkable system and replace “don’t ask, don’t tell” with a policy of nondiscrimination.

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## Guaranteeing equal rights in the workplace

Workplace equality will be a major issue for the GLBT community during the next four years, and the new administration’s first actions will have to come from within. Despite the fact that 49 of the Fortune 50 companies currently have corporate nondiscrimination policies including both sexual orientation and gender identity, the federal government, one of the nation’s largest employers, still does not.

President Bill Clinton issued an executive order in 1998 prohibiting discrimination in federal employment because of “race, color, religion, sex, national origin, handicap, age, or sexual orientation.” That order was actually an addition to policy that President Ronald Reagan had established in the 1980s. Yet when President George W. Bush appointed Scott Bloch in 2004 to head the Office of Special Counsel—the agency charged with prosecuting claims under the civil service statute described above—he removed all references to the OSC’s jurisdiction over sexual orientation discrimination complaints.

While federal service offices appear to have continued operating under the Reagan and Clinton policies, the new administration should take action to restore the full language of the nondiscrimination policy to all federal employee handbooks and personnel documents. The new administration has an opportunity to expand the existing policy to finally include gender identity and expression, thereby offering transgender employees the same protection that most other federal servants already enjoy.

The executive branch can expand the reach of the nondiscrimination policy by requiring all federal contractors to maintain nondiscrimination policies for their employees as well. It can also follow the example of some of the country’s most successful businesses, such as Ernst & Young, Google, Nike, and Eastman Kodak, by ensuring that all facilities and benefits programs are inclusive of all members of the GLBT community.

The new administration should not stop by ensuring equality and nondiscrimination within the federal government. Employees can still be fired from their jobs in more than 30 states simply because they are gay or transgender. Federal law provides basic legal protection against employment discrimination on the basis of race, gender, religion, national origin, or disability, but not sexual orientation or gender identity and expression. The new administration should therefore work with Congress to pass the Employment Non-Discrimination Act, which would add sexual orientation and gender identity to federal nondiscrimination laws. The legislation enjoys strong bipartisan support in Congress and from a broad coalition of businesses and corporate leaders.

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## Supporting GLBT families

When addressing GLBT family issues, the new administration should, like with work issues, begin with its own federal government. It is long past time for the federal government to join the healthy majority of Fortune 500 companies and other business leaders in offering employees domestic partner benefits.

A 2005 Hewitt Associates study found that 64 percent of employers experience a total financial impact of less than 1 percent of total benefits cost when adding domestic partner benefits to their compensation packages, and 88 percent experience a growth of less than 2 percent.<sup>4</sup> The same survey demonstrated that coverage for domestic partners is no more expensive than coverage for spouses or other dependents.<sup>5</sup>

The new administration has an important opportunity to offer equal compensation and protection to all federal employees by implementing domestic partner benefits. This would also send a symbolic message to the nation that the government shares the common-sense notion that all employees should receive equal compensation and benefits for their work.

The new administration should then turn its attention to helping GLBT Americans gain equal benefits in other sectors. The majority of Fortune 500 businesses have, since 2006, offered domestic partner benefits, and the rate at which the protections are offered grows significantly each year. Yet unlike married couples, same-sex couples face an additional tax burden for accepting health care benefits for their partners. According to a December 2007 report by the Center for American Progress and the Williams Institute, employees with partner health benefits now pay on average \$1,069 more per year in taxes than would a married employee with the same coverage.<sup>6</sup>

Federal tax law allows the value of the health insurance coverage of a married spouse to be excluded from the employee's gross income. For domestic partners, it adds fair market value of that coverage, including the employee's pre-tax contributions, as "imputed income" to the employee's tax burden. Employees are also not allowed to use pre-tax dollars to pay for a domestic partner's coverage, which means that there is no relief through Flexible Spending Accounts, Health Reimbursement Accounts, or Health Savings Accounts.

The new administration should work with Congress to pass legislation like the Tax Equity for Domestic Partner and Health Plan Beneficiaries Act, which seeks to equalize tax treatment for employer-provided health coverage for domestic partners and other non-spouse, non-dependent beneficiaries. Sen. Gordon Smith (R-OR) and Rep. Jim McDermott (D-WA) have introduced the legislation, which would help same-sex couples across the nation better afford health care for their partners and families. This common-sense legislation is an important step in offering very basic protections to same-sex couples.

Another important step forward would be for the new administration to expand the Family Medical Leave Act to include domestic partners and same-sex spouses. The Family and Medical Leave Act of 1993 grants legally married spouses up to 12 weeks of unpaid leave from work to care for a seriously ill spouse, parent, or child. The law does not cover same-sex partners or spouses, however, making it impossible for some employees to be with their partners during times of medical crisis.

There is already proposed legislation that would rectify this; the Family and Medical Leave Inclusion Act would expand the Family and Medical Leave Act to permit an employee to take up to 12 weeks of unpaid leave from work if his or her domestic partner or same-sex spouse has a serious health condition. It would also permit employees to take unpaid leave to care for a “parent-in-law, adult child, sibling, or grandparent.” The new administration should support this legislation, or legislation like it, and work with Congress to ensure that it passes.

The new administration will ultimately have to yield to states on many important family issues. Family law—specifically legal issues of marriage and adoption—fall under the purview of the states. What the new president can do is set the tone for the nation’s agenda, as well as individual party priorities. The new president should exercise his megaphone to heal the divisiveness of the last eight years over GLBT issues by making strong statements in support of equal rights and protections for all families, and stating opposition to any law that would single out gay Americans or any other person deemed a suitable parent by a local or state adoption agency. This will be key to setting a new tone for all Americans.

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## Endnotes

1 Servicemembers Legal Defense Network, “Conduct Unbecoming: The 10th Annual Report on ‘Don’t Ask, Don’t Tell’” (Washington, D.C.: March 24, 2004), available at <http://www.sldn.org/templates/dadt/record.html?section=22&record=1411> (last accessed August 2008).

2 Ibid.

3 CNN/Opinion Research Corporation, Poll conducted May 4-6, 2007, available at <http://i.a.cnn.net/cnn/2007/images/06/15/may.poll.pdf> (last accessed August 2008).

4 Hewitt Associates LLC, “Benefit Programs for Domestic Partners & Same-Sex Spouses on the Rise” (2005), available at <http://www.hewittassociates.com/Intl/NA/en-US/KnowledgeCenter/ArticlesReports/ArticleDetail.aspx?cid=2040&tid=0> (last accessed August 2008).

5 Ibid.

6 M.V. Lee Badget, “Unequal Taxes on Equal Benefits: The Taxation of Domestic Partner Benefits” (Washington D.C.: Center for American Progress & The Williams Institute, December 3, 2007), available at [http://www.americanprogress.org/issues/2007/12/domestic\\_partners.html](http://www.americanprogress.org/issues/2007/12/domestic_partners.html) (last accessed August 2008).