



Ensuring Civil Rights for Lesbian, Gay, Bisexual, Transgender, and Questioning Americans

For far too long, the civil rights protections guaranteed to millions of Americans have been denied to members of the Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) communities. The American Association of University Women's (AAUW) 2011-2013 Public Policy Program thus reaffirms our commitment to "vigorous protection of and full access to civil and constitutional rights," and further includes a new plank advocating "freedom in definition of family and guarantee of civil rights in all family structures."¹

No American should be denied the full range of civil rights and civil liberties due to their sexual orientation or gender identity. Such rights and liberties include freedom from discrimination in the workplace, the right to marry, the guarantee of spousal/partner benefits—including the ability to care for dependent children—and the ability to serve one's country in uniform. Unless and until LGBTQ persons are able to enjoy the same rights and freedoms as their heterosexual counterparts, America's promise of equal justice under law will remain unfulfilled.

The Right to Safe Workplaces: The Employment Nondiscrimination Act

Current federal employment laws—including the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990—prohibit discrimination on the basis of race, religion, gender, national origin, age, and disability.² Unfortunately, sexual orientation and gender identity are not currently among the protected classes as defined by such statutes. AAUW believes that the time has come for the modernization of our nation's civil rights laws to ensure they reflect the full range of persons who have suffered discrimination.

The Employment Non-Discrimination Act would mandate that civil rights protections in both the public and private sector workplaces are extended to cover actual or perceived sexual orientation and gender identity.³ This legislation was introduced in the House and Senate during the 111th and 112th Congress, and a version of this bill passed the House of Representatives during the 110th Congress. The bill would provide workplace security and a level economic playing field for all LGBTQ Americans, the same protections which have covered other classes of persons for decades. A recent report found that, for example, transgender Americans experience unemployment at twice the rate of the general population, with rates for people of color up to four times the national unemployment rate. Additionally, ninety percent of those surveyed reported experiencing harassment, mistreatment or discrimination on the job or took actions like hiding who they are to avoid it.⁴ In short, this bill can help to create a climate where discrimination against LGBTQ Americans is no longer tolerated.

The Right to Marry: Repealing the Defense of Marriage Act

In 1996, President Bill Clinton signed the Defense of Marriage Act (DOMA) into law. Under the terms of the legislation, marriage was defined (for the federal government's purposes) as "only a legal union between one man and one woman as husband and wife."⁵ The law went on to

specify that the word spouse “refers only to a person of the opposite sex who is a husband or a wife.”⁶ In addition to the creation of these definitions, each U.S. state or territory was exempt from having to recognize any same-sex marriage that may have been legalized or officially recognized by another state or territory.

AAUW believes that the Defense of Marriage Act should be repealed, and was pleased when the Obama administration announced its support for the repeal of DOMA.⁷ AAUW opposes any attempts to use the Constitution or federal law as vehicles for enshrining discrimination against LGBTQ persons. In particular, using the Constitution to deny rather than confer rights upon an identifiable group of people runs contrary to both the history and spirit of this great document, and should be strongly opposed by all members of Congress. DOMA represents a stark illustration of congressional intrusion into fundamentally private and personal areas of individuals’ lives.

Federal law should no longer discriminate against same-sex couples who are lawfully married. AAUW supports the Respect for Marriage Act,⁸ which would repeal DOMA and return the federal government to its traditional role of respecting and recognizing lawfully-valid marriages. The bill would also ensure that individual states—as is their customary role—would continue to have the power to set rules regarding marriage within their respective jurisdictions.

By passing the Respect for Marriage Act, Congress would be following the lead of several states that have pioneered the legalization and/or recognition of same-sex marriage, civil unions, and domestic partnerships. The Respect for Marriage Act would ensure that all valid marriages are respected under federal law, providing same-sex couples with certainty that their rights will be protected. According to the National Conference of State Legislatures:⁹

- California, Connecticut, Iowa, Massachusetts, New Hampshire, New York, and Vermont, along with the District of Columbia, issue or have issued marriage licenses to same-sex couples.
- One state (New Jersey) allows civil unions that provide state-level spousal rights to same-sex couples.
- Four states (California, Nevada, Oregon, and Washington) provide nearly all state-level spousal rights to same-sex domestic partners.
- Three states (Hawaii, Maine, and Wisconsin), along with the District of Columbia, provide some state-level spousal rights to same-sex domestic partners.
- Five states (Delaware, Hawaii, Illinois, New Jersey, and Rhode Island) allow civil unions that provide state-level spousal rights to same-sex couples.

In addition to potential legislative repeal, challenges to DOMA are also being pursued in the federal courts. In July 2010, a federal district court judge in Massachusetts ruled that DOMA was unconstitutional,¹⁰ as it violates the Constitution’s guarantee of equal protection under the law as well as the 10th Amendment’s reservation of rights to the states.

AAUW is proud to have stood against other recent efforts to write discrimination into the

Constitution with respect to the definition of marriage. In July 2006, both the House of Representatives and Senate considered the “Federal Marriage Amendment,” a proposed constitutional amendment which sought to define and protect marriage as a union of man and woman as husband and wife, effectively banning same-sex marriage.¹¹ This amendment would have also taken away the ability of states to amend their own constitutions to provide for same-sex marriage. Fortunately, the amendment did not achieve the necessary vote threshold in either body.¹²

AAUW opposes any attempts to use the Constitution or federal law as vehicles for enshrining discrimination against LGBT persons. In particular, using the Constitution to deny rather than confer rights upon an identifiable group of people runs contrary to both the history and spirit of this great document, and should be strongly opposed by all members of Congress. The Federal Marriage Amendment and DOMA represent two stark illustrations of congressional intrusion into fundamentally private and personal areas of individuals’ lives.

The Right to Benefits: Recognizing Domestic Partnerships

For millions of hard-working Americans, the benefits received through employment are just as important as the paycheck they take home. Paid leave, health and retirement benefits, time off to care for one’s family, and various insurance programs are among the many benefits that are essential to well-being of workers and their families. Such benefits, whether offered by the public or private sector, should no longer be denied to members of the LGBTQ community.

AAUW applauds steps taken by the Obama administration that have leveled the playing field with respect to domestic partnership benefits for same-sex couples. In June 2009, President Barack Obama issued a memorandum¹³ for executive branch agency heads directing them to offer a series of benefits to qualified same-sex partners of federal employees, asserting that such an action “paves the way for long-overdue progress in our nation’s pursuit of equality.”¹⁴ Under the memorandum, domestic partners of civil services employees may be added to long-term care insurance programs, while employees themselves are now permitted to use sick leave to care for domestic partners and non-biological, non-adopted children. Furthermore, domestic partners of Foreign Service employees may utilize medical facilities on posts abroad and may be counted in family size for housing allocations. Many such benefits are already offered by the private sector, including 60 percent of Fortune 500 companies.¹⁵

The administration also took an active role in expanding LGBTQ rights through non-legislative means. New regulations were issued that required hospitals receiving Medicare and Medicaid funds to allow patients to designate their visitors, including same-sex partners and noncustodial children,¹⁶ and allowed federal employees to take sick or bereavement leave for same-sex domestic partners or children of a domestic partner.¹⁷ In June 2010, President Obama ordered all executive branch agencies to extend the same benefits to employees’ same-sex partners that employees’ opposite-sex partners receive. Under this change, federal employees’ partners will have access to programs such as federal pensions, health insurance, and the FMLA.¹⁸ AAUW was pleased by the administration’s commitment to guaranteeing civil rights for all federal employees.

President Obama followed up with yet another presidential memorandum in June 2010 that takes additional steps with respect to extending benefits to same-sex partners of federal employees. Under this latest directive,¹⁹ children of same-sex partners of federal employees now fall under the definition of “child” for purposes of federal child care subsidies and services; further, such children also qualify as “family members for purposes of employee assistance programs. Moreover, federal employees can now utilize their unpaid annual and medical leave to meet the needs of a same-sex partner or their partner’s children, and are able to access the Family Medical Leave Act to care for their partner or their partner’s children. In the words of Secretary of Labor Hilda Solis, “No one who loves and nurtures a child day-in and day-out should be unable to care for that child when he or she falls ill.”²⁰ Same-sex partners of federal employees will also be granted membership in and access to credit unions, counseling services, and fitness facilities, among other extended benefits.

AAUW was also pleased by the Obama administration’s support for the Domestic Partners Benefits and Obligations Act²¹, legislation that would give federal employees and their domestic partners *all* the same benefits accorded to a married federal employee and his/her spouse. The bill includes such benefits as health insurance coverage, retirement and disability plans, family and medical leave, and workplace compensation benefits. Although multiple congressional committees approved this legislation in the 111th Congress, it was not voted on by the House or Senate, and has not yet been introduced in the 112th Congress.

The Right to Serve: Repealing ‘Don’t Ask, Don’t Tell’

Nearly two decades ago, a contentious debate developed over the U.S. military’s ban on homosexuals serving in the armed forces. In 1993, in an attempt at compromise, President Clinton instituted the ‘Don’t Ask, Don’t Tell’ (DADT) policy,²² under which members of the military could not be asked about their sexual orientation and were not expected to volunteer such information; however, were such information to become public, homosexual soldiers would face immediate discharge. While well-intentioned at the time, the DADT policy unjustifiably banned LGBTQ Americans from serving their nation in uniform. Under DADT, more than 13,500 servicemembers were discharged, including nearly 800 servicemembers providing skills considered “mission critical” by the military.²³

Women and minorities were disproportionately affected by DADT. In 2008, women accounted for more than one-third of all DADT discharges—even though they comprise less than 15 percent of the entire military—while minorities (30 percent of the entire military) accounted for nearly half percent of all DADT discharges in the same year.²⁴ Behind each one of those servicemembers is a name and a story. Sara Isaacson, a 21-year old student at the University of North Carolina-Chapel Hill, was forced to repay the \$80,000 Reserve Officer Training Corps (ROTC) scholarship she received from the U.S. Army simply because she informed her commanding officer that she is a lesbian.²⁵

AAUW was very pleased with the repeal of DADT in December 2010. The House and Senate,

with the support of the Obama administration, passed the repeal by a bipartisan majority. The legislation passed after the release of a study produced by the Department of Defense's DADT working group, which found that repeal would pose little risk to the military.²⁶ AAUW will work with the administration during the implementation of the repeal to ensure that no Americans are denied the patriotic opportunity to defend their country simply because of their sexual orientation. As President Obama said, "By ending 'don't ask, don't tell,' no longer will our nation be denied the service of thousands of patriotic Americans forced to leave the military, despite years of exemplary performance, because they happen to be gay. And no longer will many thousands more be asked to live a lie in order to serve the country they love."²⁷

Protecting Students

Every student, no matter what type of school they attend, deserves a safe campus and learning space. Every year, more than half a million students endure bias-motivated slurs, vandalism, threats, and physical assaults on college campuses.²⁸ In the 110th Congress, AAUW successfully led the effort to pass a provision that aligns the Higher Education Act's hate crimes reporting categories with the categories used by the FBI. This improved data will give parents and students a more accurate sense of campus safety and provide colleges with a better picture of their campus climate. AAUW will continue to work with Congress and the administration to fund and implement the necessary education, training and outreach necessary to fully implement this new hate crime reporting standard.

AAUW strongly supported the Obama administration's outreach on the issue of bullying and harassment, particularly of LGBTQ students. In October 2010, the Department of Education clarified that bullying and harassment can violate civil rights laws, and schools have a responsibility to stop, fix and prevent bullying and harassment.²⁹ Additionally, President Obama, Vice President Biden, and White House staff released videos for the "It Gets Better" campaign, speaking to young people who are being bullied or harassed because of their actual or perceived sexual orientation or gender identity.³⁰ As President Obama said in his video for the campaign, "We have an obligation to ensure that our schools are safe for all of our kids."³¹ The White House held a summit on the issue of school bullying and harassment in 2011.

Resources for Advocates

It is AAUW advocates across the country who speak their minds on issues important to them that truly advance AAUW's mission. Stay informed with updates on LGBTQ rights and other issues by subscribing to AAUW's Action Network. Make your voice heard in Washington and at home by using AAUW's Two-Minute Activist to urge your members of Congress to support civil rights for lesbian, gay, bisexual, and transgender Americans. Write a letter to the editor of your local paper to educate and motivate other members of your community. Attend town hall meetings for [your members of Congress](#), or set up a meeting with your elected official's district office near you to discuss these issues. AAUW members can also subscribe to *Washington Update*, our free, weekly e-bulletin that offers an insider's view on the latest policy news, resources for advocates, and programming ideas. For details on these and other actions you can take, visit www.aauw.org/takeaction. You can find additional resources on our website at www.aauw.org.

Conclusion

For 130 years, AAUW has worked to break down barriers for working women and their families. The member-adopted Public Policy Program reflects our commitment to ensuring that ALL Americans are treated equally in the letter and spirit of our laws. More than a decade into the 21st century, LGBTQ Americans continue to be denied fundamental rights and liberties simply on the basis of sexual orientation or gender identity. Such denials of freedom are an affront to liberty and have no place in our nation.

For more information, call 202/785-7793 or e-mail VoterEd@aauw.org.

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² U.S. Equal Employment Opportunity Commission. (2010). *Laws Enforced by EEOC*. Retrieved February 4, 2011, from www.eeoc.gov/laws/statutes/index.cfm.

³ U.S. Government Printing Office. (2009). *111th Congress, First Session: H.R.2981*. Retrieved February 22, 2011, from www.thomas.loc.gov/cgi-bin/bdquery/z?d111:HR02981.

⁴ National Center for Transgender Equality and National Gay and Lesbian Task Force. (April 2011). *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Retrieved April 18, 2011, from http://endtransdiscrimination.org/PDFs/NTDS_Exec_Summary.pdf.

⁵ U.S. Government Printing Office. (1996). *104th Congress – Public Law 104-199*. Retrieved February 4, 2011, from frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=104_cong_public_laws&docid=f:publ199.104.

⁶ Ibid.

⁷ *The Washington Post*. (July 19, 2011). *Obama Backs Bill to Repeal Defense of Marriage Act*. Retrieved July 19, 2011, from www.washingtonpost.com/politics/obama-backs-bill-to-repeal-defense-of-marriage-act/2011/07/19/gIQA03eQOI_story.html.

⁸ U.S. Government Printing Office. (2011). *112th Congress – First Session – S. 598*. Retrieved July 18, 2011, from www.gpo.gov/fdsys/pkg/BILLS-112s598is/pdf/BILLS-112s598is.pdf.

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¹³ The White House. (June 17, 2009). *Memorandum for the Heads of Executive Departments and Agencies*. Retrieved February 7, 2011, from www.whitehouse.gov/the-press-office/memorandum-heads-executive-departments-and-agencies-federal-benefits-and-non-discrimi.

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