

**AMERICA'S PROMISE OF RECONCILIATION AND REDEMPTION:
The Need for an Official Acknowledgment and Apology for the
Historic Government Assault on LGBT Federal Employees and Military Personnel**

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“For decades, there was no limit to the animus meted out against LGBT Americans and no end to its reach. It poisoned every institution in the United States and seeped into the lives of all Americans, not merely those of gays and lesbians. So too, the language of animus became commonplace among those in the highest positions of government: ‘homo’, ‘sexual deviant’, ‘pervert’, ‘abomination’, ‘uniquely nasty’ and other derogatory terms and phrases were used with bureaucratic ease as a way to define, cabin, and limit the citizenship of LGBT Americans.”¹

INTRODUCTION

In recent years, LGBT Americans have made significant progress in their fight for equal rights in this country, including through striking down state sodomy laws, repealing “Don’t Ask, Don’t Tell,” passing federal hate crimes legislation, repealing the Defense of Marriage Act, and recognizing the right of LGBT people to marry.

This progress, however, only heightens the need to understand and acknowledge the historical animus that LGBT Americans faced from their own government. For decades, animus against LGBT Americans poisoned every institution of the United States government and destroyed the lives of tens of thousands of federal workers. Starting in earnest in the 1950s, the federal government discriminated against and mistreated the LGBT community in a systematic way. In the decades before World War II, government officials investigated and discharged LGBT federal employees and service members, but did so in ways that were sporadic. That effort intensified at the conclusion of World War II, when President Eisenhower signed Executive Order 10450, an order that unleashed the targeted and relentless purging of all LGBT Americans from federal service.²

Over many decades, the United States government, led by teams within the Federal Bureau of Investigation (“FBI”), the Office of Personnel Management (“OPM”), and nearly every agency and branch of government, began the process of investigating, harassing, interrogating, court-martialing, terminating, hospitalizing, and, in some cases, criminally prosecuting LGBT Americans for no other reason than their sexual orientation or gender expression. This wholesale purging left tens of thousands in financial ruin, without jobs, with personal lives destroyed, and, in many cases, completely estranged from their own families.

Unfortunately, Congress itself led the charge. In February 1950, Senator Joseph McCarthy took to the Senate floor to identify the “known” communists working in the State Department, focusing primarily on several homosexuals, who had what McCarthy called “peculiar mental

¹ Brief for the Mattachine Society of Washington, D.C. as Amicus Curiae In Support of Petitioners at 37, *Obergefell v. Hodges*, Nos. 14-556, 14-562, 14-571, 14-574 (March 6, 2015).

² Judith Adkins, “*These People Are Frightened to Death: Congressional Investigations and the Lavender Scare*” PROLOGUE MAGAZINE (Summer 2016 ed.) <https://www.archives.gov/publications/prologue/2016/summer/lavender.html> (last visited September 4, 2019).

twists.”³ A week later, the Deputy Undersecretary of State, John Peurifoy, testified that the State Department had already fired 91 homosexuals, a revelation that led to calls to purge homosexuals from the federal workforce.⁴ Shortly thereafter, Senators Wherry and Hill spearheaded what would be known as the Wherry-Hill investigation, which revealed that 3,700 homosexuals worked in the federal government. These same Senators worked closely with the Civil Service Commission (“CSC”), the predecessor to the Office of Personnel Management (“OPM”), to set up a “routine procedure to rid the offices of Government of moral perverts and guard against their admission.”⁵ Finally, that same year, the Senate’s Committee on Expenditures in the Executive Department sent out questionnaires to all of the federal agencies to learn the number of terminated homosexuals and to gather “Pervert Records” from local law enforcement.⁶ All of this—the investigations, the hearings, the questionnaires, and the establishment of a “routine procedure”—was done with one goal in mind: to purge the federal workforce of all known homosexuals and to ensure LGBT Americans were not hired in the first place.

The wholesale discrimination against LGBT Americans continued in the years that followed. In 1963, for instance, Senator Strom Thurmond delivered a forty-five minute diatribe on the floor of the Senate attacking Bayard Rustin, the organizer of Dr. Martin Luther King’s historic March on Washington. In an effort to undermine the March, Senator Thurmond focused on “the deplorable and disturbing record of the man tabbed as ‘Mr. March on Washington himself,’” outing Rustin on the Senate floor for “sexual perversion.”⁷ And, even as of 1970, the Chairman of the U.S. CSC claimed, “Persons about whom there is evidence that they have engaged in or solicited others to engage in homosexual or sexually perverted acts with them, without evidence of rehabilitation, are not suitable for Federal employment.”⁸

Not once has Congress acknowledged this misconduct or apologized for it. Indeed, in 2013, when opining on the federal government’s legacy of mistreatment of LGBT Americans, Chief Justice John Roberts expressed a reluctance to “tar the political branches with the brush of bigotry” based on what he called “snippets of legislative history,” absent “a more sinister motive” to discriminate.⁹ Unfortunately, the historic record shows that there *was* a “sinister motive” at work—one driven by animus and aimed at ridding the federal government of all LGBT Americans. For the tens of thousands who were the victims of this targeted purge, this represents a dark and shameful period in the history of our country.

³ See “*These People are Frightened to Death*,” National Archives, available at <https://www.archives.gov/publications/prologue/2016/summer/lavender.html>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ “Congressional Record”, 88th Congress, Vol. 109, pt. 11, pages 14837-14838.

⁸ Correspondence, Robert E. Hampton to the Honorable Edward I. Koch, December 4, 1970, “Homosexual File”, Office of General Counsel, U.S. Civil Service Commission, National Archives.

⁹ *United States v. Windsor*, 570 U.S. 744, 776 (2013) (Roberts, J., dissenting).

The impact on LGBT Americans and their surviving families lingers to this day. To be sure, the federal government’s actions ended people’s careers, stripped them of their hard-earned pensions, and left their permanent record with the stain of being dishonorably discharged or terminated from public service, merely because they were gay. But, there was more. LGBT public servants were also subjected to public disgrace and humiliation. In fact, a *standard* letter to an LGBT federal employee stated that they were being removed from service due to their “immoral, infamous, scandalous, and notoriously disgraceful conduct[.]”¹⁰ Americans subjected to these termination processes have described the scars they carried from being branded by their own government as “immoral, infamous, scandalous, and notoriously disgraceful[.]” This branding outed many LGBT Americans, tore apart families and communities, and created a culture of animus against LGBT Americans that persists in many corners of our country today.

Despite it all, LGBT Americans never stopped loving—and putting themselves on the line—for their country. Even when the discrimination was at its worst, LGBT Americans continued to make significant contributions as surgeons and nurses, Purple Heart recipients and Navy Seals, translators and air traffic controllers, engineers and astronomers, and teachers and clerks. Though they were routinely and systematically terrorized at the hands of their *own government*, these Americans never stopped serving their *country*.

In the past thirty years, Congress has issued six major apologies, establishing a precedent for how our nation should address regrettable past policies, particularly those aimed at marginalized peoples and cultures.¹¹ It has not, however, apologized for the sweeping purge of LGBT Americans from the federal workforce. The time has come for just such an apology.

THE FEDERAL ASSAULT ON LGBT AMERICANS:

“One homosexual can pollute a Government office.”¹²

In 1883, Congress created the Civil Service Commission (“CSC”) and charged it with conducting background checks and determining “suitability for federal employees.”¹³ Under the original Civil Service Act, any individual who engaged in “any criminal, infamous, dishonest, immoral or notoriously disgraceful conduct”¹⁴ could not work for the federal government.

¹⁰ Letter to Clerk-Typist, GS-2, National Bureau of Standards, Charles W. Baker, May 20, 1971, *available at* the Frank Kameny Archive, U.S. Library of Congress.

¹¹ In 1988, Congress enacted Public Law 100-383, addressing Japanese-Americans’ internment during World War II. In 1993, Congress enacted Public Law 103-150, addressing the mistreatment of Native Hawaiians. In 2005, the U.S. Senate enacted Senate Resolution 39 addressing the federal government’s failure to enforce anti-lynching laws, with similar resolutions having passed the House of Representatives on earlier dates. In 2009, Congress apologized for African Americans’ enslavement: H. Res. 194 (110th Congress); S. Con. Res. 26 (111th Congress). In 2009, the Senate apologized for Native Americans’ treatment. (111th Congress) S. J. Res. 14. In 2011, the Senate apologized for Chinese Immigrants’ exclusion from the country. *See* S. Res. 201, 112th Cong. (Oct. 6, 2011), <https://www.congress.gov/bill/112th-congress/senate-resolution/201/text> (passed unanimously).

¹² Adkins, *supra* note 2 (highlighting U.S. Senate Record, RG 46).

¹³ Pendleton Civil Service Reform Act, Ch. 27, 22 Stat. 403.

¹⁴ Congress wrote this into the original Civil Service Act of 1883 (even though Congress hardly meant to include homosexuality since the word—and the historic conceptualizations behind the word’s invention—did not exist

For decades, the CSC said nothing specific about homosexuality. On November 11, 1945, however, the CSC issued a letter, specifically stating that “[h]omosexuals are not considered suitable persons for federal employment and generally debarment is applicable when proof of homosexuality is present.”¹⁵ On September 8, 1950, Civil Service Commissioner Frances Perkins made this point perfectly clear in testimony before the U.S. Senate. “On December 1, 1945,” Perkins explained, “the Commission specifically incorporated into its manual containing instructions to its personnel, the provision that homosexuals are not considered suitable persons for Federal employment. This had always been implied, may I say, in the general prohibition of immoral or notoriously disgraceful conduct, but . . . it was thought best to provide that in the manual so that they would know that homosexual actions were considered as constituting unsuitability for Federal employment along with other forms of immoral conduct.”¹⁶

Under this legal framework, the CSC, in league with the FBI, waged an assault on LGBT federal employees. Over the next decade, thousands of gay employees were fired or forced to resign from the federal workforce. Dubbed the “Lavender Scare,” this wave of repression was bound up with anti-Communism sentiment of the 1950s known as the “Red Scare.” In actuality, the Red Scare was often just pretext for a deeper animosity toward homosexuals.¹⁷

A series of events in the early 1950s, including Congressional investigations, fueled the persecution of LGBT federal employees. In particular, two Congressional investigations conducted in 1950 dramatized and manufactured a threat to the United States government from “perverts.”¹⁸

From March to May 1950, Senators Kenneth Wherry (R-NE) and Lister Hill (D-AL) undertook the first investigation of LGBT individuals through the Subcommittee on Appropriations for the District of Columbia. Senators Wherry and Hill questioned government officials, including representatives from the State Department, the Defense Department, military intelligence, and the CSC.¹⁹ In particular, the Committee took testimony from Lt. Roy Blick, head of the D.C. Metropolitan Police Department’s vice squad and a central figure in the war on LGBT federal employees. The Metropolitan Police Department’s vice squad, sometimes called the “morals squad,” routinely used local statutes purportedly prohibiting “immoral” or “deviate” conduct as a means to target LGBT individuals—as did other state and local law enforcement agencies across

then.) See Rick Valelly, *A Brief Introduction to the Mattachine Society’s Cache of Civil Service Documents*, at 1, available at <https://mattachinesocietywashingtondc.files.wordpress.com/2020/05/31-valellymattachineabstract.pdf>.

¹⁵ Manual Letter 455 of November 11, 1945, at C2.04.03.

¹⁶ Sept. 8, 1950, Testimony of Francis Perkins, Commissioner of the Civil Service Commission, before the Executive Session of the U.S. Senate Investigations Subcommittee, Committee on Expenditures in the Executive Departments, at 2728.

¹⁷ David K. Johnson, *THE LAVENDER SCARE: THE COLD WAR PERSECUTION OF GAYS AND LESBIANS IN THE FEDERAL GOVERNMENT*, 1-4 (U. Chi. Press 2006).

¹⁸ Adkins, *supra* note 2.

¹⁹ Adkins, *supra* note 2.

the country.²⁰ Blick claimed that 5,000 homosexuals lived in D.C. and that 3,700 of them were federal employees. Highly speculative, these figures were intended to arouse public fears and inflame negative emotions toward homosexuals. Widely reported throughout the nation, they had just that effect.

Months later, the Senate Subcommittee on Investigations chaired by Senator Clyde Hoey (D-NC) conducted an investigation into the employment of homosexuals in the federal government. In particular, the Subcommittee heard testimony from Admiral Roscoe Hillenkoetter, the first Director of the CIA. In a closed-door session, Hillenkoetter testified that “perverts” must be rooted out of government service for a host of reasons ranging from national security to inherent character flaws and extreme psychiatric instability.²¹ He explained that homosexuals “have a definite similarity to other illegal groups such as criminals, smugglers, black marketers, dope addicts and so forth.”²²

In December of that same year, the Subcommittee issued a report entitled “Employment of Homosexuals and Other Sex Perverts in Government.” The report concluded that the federal government should not employ homosexuals because they are “generally unsuitable” and constitute “security risks.” As the report explained, homosexuals were vulnerable to blackmail, they lacked emotional stability, had weak “moral fiber,” were a bad influence on the young, and attracted others of their kind to government service. “One homosexual,” the report warned, “can pollute a Government office.”²³

Emboldened by these congressional investigations, the FBI took on the task of identifying these homosexuals in the federal government. On September 7, 1951, in what is now called the “Sex Deviate Memo,” FBI Director J. Edgar Hoover directed that in the course of “Loyalty of Government Employee cases,” [w]hen information is received . . . indicating the person under investigation is a sex deviate, this allegation should be completely and fully developed and the facts reported.”²⁴ Hoover also instructed his agents that “when an allegation is received that a present or former civilian employee of any branch of the United States Government is a sex deviate, such information [must be] furnished to the [CSC].” In addition, Hoover wrote that “[a]ll of the police departments throughout the country were notified . . . to place a notation on the arrest fingerprint card that the subject was an employee of the Federal Government.”²⁵ By 1952, Hoover had already amassed a cache of information to use against homosexual employees of the federal government. And, he used state and local police nationwide as his deputies to gather it.²⁶

²⁰ In *Lawrence v. Texas*, 539 U.S. 558 (2003), the U.S. Supreme Court, in reaffirming Americans’ right to privacy, finally ruled that laws prohibiting private homosexual activity between consenting adults was unconstitutional.

²¹ See Executive Session, July 14, 1950, U.S. Senate, Investigations Subcommittee, Committee on Expenditures in the Executive Departments.

²² *Id.* at 2096.

²³ Adkins, *supra* note 2 (highlighting U.S. Senate Record, RG 46).

²⁴ Memorandum from J. Edgar Hoover to All Investigative Employees (Sept. 7, 1951)

²⁵ *Id.* This mandate was also applicable to government contract employees subject to a security clearance.

²⁶ See Brief for the Mattachine Society of Washington, D.C. as Amicus Curiae In Support of Petitioners at 37, *Obergefell v. Hodges*, Nos. 14-556, 14-562, 14-571, 14-574 (March 6, 2015).

Therefore, when President Dwight D. Eisenhower entered office in early 1953, the assault on LGBT employees was already in motion. Eisenhower legitimized the assault, however, when he issued Executive Order 10450 (“EO 10450”), declaring that the federal government could deny a citizen employment in “each department or agency of the Government” solely because that person was homosexual. Exec. Order No. 10,450 § 2, 18 Fed. Reg. 2,489 (Apr. 29, 1953). This Executive Order launched the “Big Bang” of federal persecution of LGBT Americans because it banned “sexual perverts”—the commonly used euphemism for LGBT individuals—from federal employment. This had the effect of putting a Presidentially-endorsed target on the backs of thousands of LGBT service members and other federal employees in all branches of the government. While EO 10450 was in effect, thousands of Americans were barred from government service.

The wholesale purge and persecution of LGBT Americans spread throughout each branch and agency of the federal government, *e.g.*, Office of the Vice President, the Congress, the Judiciary, Department of State, Department of Justice, the Internal Revenue Service, and the Department of Defense, to name a few.²⁷

With this policy to purge LGBT Americans from the federal workforce came a distinct language. Terms like “deviate,” “pervert,” “revolting,” and “offensive” were used to express bigotry toward this cohort of American citizens in government speeches and memos. Homosexuality was called “uniquely nasty” in official federal government communications.²⁸ Indeed, John Macy, the Chair of the CSC, seemed to perfectly capture the overt animus toward LGBT Americans when he explained the factors that the federal government took into account in deciding to terminate homosexual employees in a letter to Dr. Franklin E. Kameny, founder of the original Mattachine Society of Washington, DC and former federal employee fired as a result of these policies. “Pertinent considerations here,” Macy explained, “are the revulsion of other employees by homosexual conduct and consequent disruption of service efficiency, the apprehension caused other employees by homosexual advances, solicitations or assaults, the unavoidable subjection of the sexual deviate to erotic stimulation through on the job use of common toilet”²⁹

What started as a program to get “security” risks out of the federal government had morphed into one aimed at eliminating all homosexuals from federal service simply due to the alleged “revulsion” that others would no doubt feel having to work alongside them. In November 1956, the CSC issued a “Suitability Handbook,” a how-to-guide for government human relations directors and investigators. The Handbook provided guidance on “acceptable evidence of homosexuality” and “guides for handling cases of persons previously rated ineligible and

²⁷ See Memorandum: *Dissemination of Sex Deviate and Major Arrest Data Received by Identification Division on Government Employees and Applicants*, Jan. 15, 1963 (noting that the program “was expanded to include notifying the employing agency” of “sex deviate and major arrests.”).

²⁸ Memorandum from John W. Steele to O. Glenn Stahl, Nov. 17, 1964, U.S. Civil Service Commission “Suitability Papers”, United States National Archives.

²⁹ Letter from John Macy to the Mattachine Society of Washington, D.C., Feb. 25, 1966, Kameny Papers, United States Library of Congress.

debarred on homosexual grounds.”³⁰ This language of revulsion was so sewn into the fabric of the thinking of high-ranking government officials that Congressman John Dowdy from Texas referred to the activities of one of America’s first gay rights organizations, the Mattachine Society of Washington, D.C., as “activities [that] are revolting to normal society . . . [T]hese people are banned under the laws of God, the laws of nature, and in violation of the laws of man.”³¹

Indeed, well into the late 1960s and early 1970s, the CSC displayed an overt and shocking animus toward LGBT Americans. In 1968, for instance, the CSC even created a Special Task Force on Immoral Conduct. CSC officials were so concerned about the presence of homosexuals in government, the CSC’s Director of Investigations, Kimbell Johnson, warned that “we must not go back to the McCarthy era where the reputation of the Commission had become so low that we were thought to be staffed by crooks, Communists and perverts.”³²

The stories of two men, in particular, seem to demonstrate the lengths to which the CSC would go to rid the federal government of those that it thought of as “perverts.”

William Dew

William Dew, an African American Air Force veteran, was initially employed with the Central Intelligence Agency (“CIA”) as a file clerk.³³ To obtain the necessary security clearance for this position, the CIA required him to submit to a polygraph examination. *Id.* During that examination, Dew admitted to having committed at least four “unnatural sex acts with males” in 1950 when he was approximately 18 or 19 years old and a college student.³⁴ Thereafter, Dew was permitted to resign his position with the CIA.³⁵

A short while later, Dew obtained a job with the Civil Aeronautics Authority (CAA), the predecessor agency of the Federal Aviation Authority (FAA).³⁶ After successfully serving the CAA for nearly two years as an air traffic controller in Denver, the CAA told Dew that it planned to remove him from service. *Id.* On May 14, 1958, Dew received a letter that his employer thought him “unsuitable” for his position “by reason of having engaged in acts of disgraceful personal conduct.”³⁷ The letter detailed the various pre-employment acts of

³⁰ See *The Investigative and Suitability Evaluation Programs of the U.S. Civil Service Commission* (Aug. 1961).

³¹ Congr. Rec. A4211 (July 5, 1963).

³² Special Task Force on Immoral Conduct Minutes 1968.

³³ *Dew v. Halaby*, 317 F.2d 582, 583 (D.C. Cir. 1963).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Letter from W.P. Plett to William L. Dew (May 14, 1958), available at <https://www.mwe.com/media/mcdermott-files-historic-amicus-brief-in-samesex/~media/f7c0402cf01f46a3a6592cd32d511c96.ashx>.

homosexuality which Dew had previously admitted.³⁸ The CAA's position was that "if known, [these acts] would have barred your appointment."³⁹ On May 26, 1958, the CAA advised Dew of its decision to terminate him.⁴⁰

Several things about the Dew case stand out. First, he made no effort to hide his past acts of same-sex conduct and even signed a statement verifying the allegations.⁴¹ Second, Dew was then married to a woman, who was expecting their first child. Even under the CSC's own Handbook, Dew was "rehabilitated."

For the next several years, Dew engaged in a legal battle with the CAA in an effort to get his job back. He appealed the removal decisions to the CAA and the CSC, both of which affirmed.⁴² In 1962, Dew appealed to the U.S. Court of Appeals for the District of Columbia, arguing that his removal was against certain CSC Regulations in place at the time.⁴³ The Court of Appeals ruled against Dew and refused to overturn the CAA's authority to "remove an employee when his 'conduct or capacity' is such that his removal will promote the efficiency of the service" within the meaning of the CSC Regulations.⁴⁴ Mistakenly, the Court noted that "the present case is the unfortunate one of a new employee with something to hide."⁴⁵

Fortunately, Dew refused to give up, arguing that his past conduct had no bearing on his ability to perform his job. Ultimately, he filed a Petition for Certiorari with the United States Supreme Court, which was granted. Concerned about creating bad precedent that could harm its efforts to rid the federal government of employees with a homosexual past, the CAA ultimately settled with Dew.⁴⁶ Even today, Dew's case seems to reveal the extent that the CSC would go to remove employees with a homosexual past from government service.

Clifford Norton

Clifford Norton's case also shows the depths that the CSC would go to keep LGBT Americans from federal service. Like Dew, Norton was a veteran. By 1963, he served as a budget analyst for NASA.⁴⁷ One evening, the Morals Squad in the District of Columbia arrested Norton for a

³⁸ Letter from W.P. Plett to William L. Dew (May 14, 1958)

³⁹ Letter from W.P. Plett to William L. Dew (May 14, 1958)

⁴⁰ Letter from W.P. Plett to William L. Dew (May 14, 1958)

⁴¹ Letter from W.P. Plett to William L. Dew (May 14, 1958)

⁴² *Dew*, 317 F.2d at 583.

⁴³ *Dew*, 317 F.2d at 585.

⁴⁴ *Id.* at 587-88.

⁴⁵ *Id.* at 588.

⁴⁶ *Dew v. Halaby*, 376 U.S. 904 (1964). At the time of Dew's Petition for Certiorari, Archibald Cox, special prosecutor during the Watergate Scandal, was the Solicitor General.

⁴⁷ As a veteran, the government could only dismiss Norton "for such cause as will promote the efficiency of the service." *Norton v. Macy*, 417 F.2d 1161, 1162 (D.C. Cir. 1969) (citing 5 U.S.C. § 7513(a)).

traffic violation. Apparently, Norton picked up another man at Lafayette Square, drove around the square once, and then dropped off the man.⁴⁸ The officers arrested both men and interrogated them for two hours about their activities and sexual histories.⁴⁹ The head of the Morals Squad then telephoned NASA Security Chief Fugler, who arrived to the station at 3:00am.⁵⁰ Fugler and a colleague then continued to interrogate Norton until after 6:00am in the morning.⁵¹

Norton did not confess to any homosexual conduct that night. But, under intense, all-night questioning, he admitted that “he might have engaged in some sort of homosexual activity” after drinking on two prior occasions.⁵² As a result, NASA fired Norton for engaging in “immoral, indecent and disgraceful conduct.”⁵³ The decision did not sit well with those who actually worked with Norton. In fact, his supervisor “was not worried about any possible effect on [Norton’s] performance and went so far as to inquire of personnel officers ‘if there was any way around this kind of problem for the man.’”⁵⁴ While Norton did not pose any security concerns, NASA nonetheless terminated him because “dismissal for any homosexual conduct was a custom within the agency . . . and continued employment of [Norton] might ‘turn out to be embarrassing to the agency’”⁵⁵

Norton sued. And, once again, the courts stepped in to right the CSC’s wrong. Although the district court permitted Norton’s termination, the United States Court of Appeals reversed the decision and allowed Norton to get his job back.

This setback, however, did not stop the CSC’s efforts to rid the federal government of LGBT employees. Even after the Norton decision, the CSC continued to investigate federal employees, and litigate with many of them who were terminated under federal policies. It was not until April 1971, in fact, when the CSC’s General Counsel, Anthony Mondello, determined that the CSC could no longer defend its decisions to terminate workers for private conduct.⁵⁶ Even then, it took four more years for the CSC to formalize this decision. In 1975, it finally announced new rules stating that the government could not terminate homosexuals simply because of their sexual orientation.⁵⁷ Although not a part of an “official” government policy, federal agencies continued

⁴⁸ *Norton*, 417 F.2d at 1162.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 1163.

⁵² *Id.*

⁵³ *Id.* See also Memorandum from Anthony L. Mondello to Chairman Robert Hampton 1 (July 1, 1969) (hereinafter the “Mondello-Hampton Memo”), available at <http://www.mwe.com/info/mattachineamicus/document21.pdf>.

⁵⁴ *Norton*, 417 F.2d at 1166–67.

⁵⁵ *Id.* at 1167.

⁵⁶ Memorandum from Anthony L. Mondello to Chairman Robert Hampton 1 (Apr. 6, 1971), available at <http://www.mwe.com/info/mattachineamicus/document24.pdf>.

⁵⁷ See EO 12968 (Aug. 2, 1995); EO 13087 (May 28, 1998).

to terminate homosexual employees well into the 1990s. The rules may have changed, but the conduct and sentiment did not.⁵⁸

**ST. ELIZABETHS HOSPITAL:
BARBARIC TREATMENTS TO “CURE” HOMOSEXUALS**
“. . . they should be dealt with and not allowed to remain at large.”

Not only did the federal government’s coordinated discriminatory policies rob LGBT Americans of their livelihood and dignity, they resulted in the government forcing LGBT federal employees into psychiatric facilities.⁵⁹ The principal facility where this occurred was St. Elizabeths Hospital for the Insane, a Washington, D.C. hospital owned and operated by the federal government. The psychiatrists at St. Elizabeths (Dr. Benjamin Karpman and Dr. Wilfred Overholser) provided Congress with psychiatric justification—rooted in bad science, exotic psychiatric theory, conversion experimentation, and barbaric surgeries—for the government’s mass investigations, firings, and discharges of employees who were known, or suspected, to be homosexual.⁶⁰ Indeed, Dr. Karpman, the “Senior Psychologist” at St. Elizabeths, and Dr. Overholser, the hospital’s “Superintendent,” were so imbedded in the federal government that they advised the armed forces, the Surgeon General, and even members of Congress.⁶¹ As Dr. Overholser testified before the Senate Committee on the District of Columbia: “[s]ome of these perverts are potentially dangerous. The rest are terrible nuisances. In either event, they should be dealt with and not allowed to remain at large.”⁶²

More than anything else, Drs. Overholser and Karpman provided pretextual medical justifications for the federal government’s overt animus against LGBT Americans. And, these medical justifications led to horrifying practices to “treat” homosexuality at St. Elizabeths, including the administration of lobotomies, electro-shock treatments, and insulin shock therapy.⁶³ St. Elizabeths Hospital worked in close coordination with investigators at the CSC,

⁵⁸ See Gregory B. Lewis, *Lifting the Ban on Gays in the Civil Service: Federal Policy toward Gay and Lesbian Employees since the Cold War*, PUB. ADMIN. REV. <https://www.questia.com/library/journal/1G1-19868732/lifting-the-ban-on-gays-in-the-civil-service-federal>

⁵⁹ Andrew Giambrone, *LGBT People Suffered Traumatic Treatments at St. Elizabeths Hospital for the Mentally Ill*, THE WASHINGTON CITY PAPER (May 31, 2018), <https://www.washingtoncitypaper.com/news/article/21007233/independent-scholars-uncover-the-traumatic-treatments-lgbtq-people-suffered-at-st-elizabeths> (last visited Oct. 25, 2019).

⁶⁰ *The Pernicious Myth of Conversion Therapy: How Love in Action Perpetuated a Fraud on America*, McDermott Will & Emery LLP on behalf of the Mattachine Society of Washington, DC (Oct. 12, 2018), available at <https://d1198w4twoqz7i.cloudfront.net/wp-content/uploads/2019/06/18201001/White-Paper.pdf>

⁶¹ For example, Dr. Overholser was the Superintendent of St. Elizabeths Hospital from 1937-1962, Head of Psychiatry at The George Washington University Hospital, President of American Psychiatric Association from 1947-1948, and was Chairman of the National Resource Council’s Committee on Neuropsychiatry.

⁶² Overholser, Dr. Winfrid, *Testimony before Senate Committee on the District of Columbia on "Sex Deviants"*, 1947, National Archives, Record Group 418, Papers of Dr. Winfrid Overholser (resulting in the DC Sexual Psychopath Act of 1948).

⁶³ See McDermott Will & Emery LLP, *The Pernicious Myth of Conversion Therapy*, (Oct. 12, 2018), <https://stopconversiontherapy.org/white-paper/> (last visited Oct. 25, 2019); Andrew Giambrone, *LGBT People Suffered Traumatic Treatments at St. Elizabeths Hospital for the Mentally Ill*, THE WASHINGTON CITY PAPER (May

allowing CSC investigators to question homosexual patients who were confined and undergoing “treatments” at St. Elizabeths with a view toward identifying “incriminating” evidence against both the patients and other known or suspected homosexuals in the federal workforce.

No case provides a better snapshot of this barbaric conduct than that of Thomas Tattersall. After being fired by the Department of Commerce in 1953 for “sexual perversion,” Tattersall was committed to St. Elizabeths. While there, Tattersall received insulin shock therapy. CSC investigators also repeatedly interrogated Tattersall. Ultimately, defeated and abused, Tattersall became a federal government informant, helping to identify other homosexuals to the CSC.⁶⁴

31, 2018), <https://www.washingtoncitypaper.com/news/article/21007233/independent-scholars-uncover-the-traumatic-treatments-lgbtq-people-suffered-at-st-elizabeths> (last visited Oct. 25, 2019).

⁶⁴ See McDermott Will & Emery LLP, *The Pernicious Myth of Conversion Therapy*, (Oct. 12, 2018), <https://stopconversiontherapy.org/white-paper/> (last visited Oct. 25, 2019).

MILITARY PERSECUTION OF LGBT SERVICE MEMBERS

“I would not want [acceptance of gay behavior] to be our policy, just like I would not want it to be our policy that if we were to find out that so-and-so was sleeping with somebody else's wife, that we would just look the other way, which we do not. We prosecute that kind of immoral behavior.”⁶⁵

Since our nation’s founding, the U.S. armed services have expressed hostility towards LGBT individuals who wanted to serve their country in uniform. This discrimination, however, was often carried out in arbitrary and inconsistent ways. An example from the American Revolution perfectly demonstrates the inconsistency. On the one hand, on February 23, 1778, the American military welcomed General Frederick von Steuben, a former Prussian officer, to Valley Forge to train and lead the distressed American army, even though it was known that he had had affairs with male soldiers while in Europe. On the other hand, just sixteen days later, on March 10, 1778, Lieutenant Gotthold Frederick Enslin was court-martialed and expelled from Valley Forge for sodomy.⁶⁶ From these early days until the 1940s, the military only occasionally investigated and discharged LGBT service members, and usually only when a public scandal developed, as with the Newport, Rhode Island investigation of 1919 when seventeen sailors were court-martialed for sodomy and immorality.⁶⁷

Everything changed, however, at the close of World War II. With the government needing fewer and fewer service members, the government moved more systematically and aggressively to purge LGBT service members from the armed forces. In 1947, for instance, the newly consolidated Department of Defense standardized anti-homosexual regulations across all branches of the military: “Homosexual personnel, irrespective of sex, should not be permitted to serve in any branch of the Armed Forces in any capacity, and prompt separation of known homosexuals from the Armed Forces is mandatory.”⁶⁸ These regulations targeting LGBT service members were paired with more focused investigations to rid the military of LGBT members. No longer were vague, coded charges of “immorality” the rationale for persecution.⁶⁹ Rather, being homosexual was a fireable offense, and open hostility toward homosexuals ruled the day.

With concern about the threat of communism growing, the armed forces considered LGBT service members as “security risks.”⁷⁰ Despite hundreds of thousands of LGBT Americans having served the nation in uniform, with many fighting and dying in wars around the globe, the federal government undertook efforts to eradicate these Americans from its military ranks. The

⁶⁵ Gen. Peter Pace, “*Don't drop `don't ask, don't tell,' Pace says,*” CHICAGO TRIBUNE (March 13, 2007)

⁶⁶ Randy Shilts, CONDUCT UNBECOMING: GAYS & LESBIAN IN THE U.S. MILITARY, at 7–12 (1993).

⁶⁷ See “Gay history,” THE PROVIDENCE JOURNAL, Front page (July 20, 1921); Mark Arsenault, THE PROVIDENCE JOURNAL, “1919 Newport sting targeted gay sailors, ended in scandal” (April 13, 2009).

⁶⁸ Allan Bérubé, COMING OUT UNDER FIRE: THE HISTORY OF GAY MEN AND WOMEN IN WORLD WAR TWO, at 261 (1990).

⁶⁹ CONDUCT UNBECOMING, AT 7-12.

⁷⁰ CONDUCT UNBECOMING, AT 7-12.

group, OutServe-SLDN, estimates that approximately 100,000 veterans were forced out of military service between the end of WWII and 1993 simply for being gay.⁷¹

In 1992, forty-five years after the Department of Defense began specifically targeting these service members, the prohibition on military service by LGBT Americans emerged as a campaign issue when presidential candidate Bill Clinton advocated lifting the ban. As a presidential candidate, Clinton publicly supported eliminating the Department of Defense's ban on gay troops serving in the military. However, in the early months of Clinton's new presidency, a tumultuous fight erupted in Congress with President Clinton finally accepting a modified ban known as "Don't Ask, Don't Tell" or "DADT." After entering office in 1993, President Clinton encountered strong resistance among military leaders in the Joint Chiefs of Staff and their allies in Congress, particularly Senator Sam Nunn, who was the chair of the Senate Armed Services Committee.⁷² Nunn, a Democratic Senator from Georgia, led a contingent that favored the existing absolute ban on LGBT service members.⁷³

Enacted by Congress in 1993, DADT prohibited lesbian, gay, or bisexual men and women from disclosing their sexual orientation while they served in the US military. So, too, the military was not to ask or pursue LGBT service members.⁷⁴

But DADT did not end the purging of LGBT Americans from the military. Even after DADT's passage, members of the armed services continued to be forced out simply because they were LGBT. While no longer explicitly banned from enlisting, LGBT service members still could not openly serve our country. Indeed, in many cases, government officials continued to investigate the personal—and oftentimes completely private—conduct of certain service members.⁷⁵ At times, the military even initiated investigations against those it thought were LGBT without providing sufficient due process. Throughout it all, the U.S. government often had *no* evidence that an LGBT person's service had *any* impact on unit cohesion or morale.⁷⁶

⁷¹ Anne Gearan, *Clinton Says Those Kicked Out of Military for Being Gay Should Get Honorable Discharges*, CHICAGO TRIBUNE, Oct. 3, 2015 <http://www.chicagotribune.com/news/nationworld/ct-clinton-military-gay-honorable-discharges-20151003-story.html>.

⁷² Alejandro de la Garza, 'Don't Ask, Don't Tell' Was a Complicated Turning Point for Gay Rights. 25 Years Later, Many of the Same Issues Remain, TIME, <https://time.com/5339634/dont-ask-dont-tell-25-year-anniversary/>.

⁷³ See David C. Morrison, THE BALTIMORE SUN, "Integrating Gays into the Military" (Nov. 29, 1992) (last visited June 1, 2021); Barney Frank, *My Life as a Gay Congressman*, POLITICO MAGAZINE, March 12, 2015 https://www.politico.com/magazine/story/2015/03/barney-frank-life-as-gay-congressman-116027_Page6.html#.XaRsZo3ruUk

⁷⁴ Gary Gates, *Discharges Under the Don't Ask/Don't Tell Policy: Women and Racial/Ethnic Minorities*, The Williams Institute (Sept. 2010), <https://williamsinstitute.law.ucla.edu/research/military-related/discharges-under-the-dont-ask-dont-tell-policy-women-and-raciaethnic-minorities-2/> (last visited Sept. 4, 2019).

⁷⁵ *McVeigh v. Cohen*, 983 F. Supp. 215 (D.D.C. 1998).

⁷⁶ See, e.g., *Witt v. Dep't of the Air Force, et al.*, 527 F.3d 806, 1316 (9th Cir. 2008) (finding "[t]he application of 'Don't Ask Don't Tell' to Major Margaret Witt does not significantly further the government's interest in promoting military readiness, unit morale and cohesion. Her discharge from the Air Force Reserves violated her substantive due process rights under the Fifth Amendment to the United States Constitution.")

The stories of three service members embody what thousands of veteran and active service members endured during the U.S. military's prohibition on LGBT service and while Don't Ask Don't Tell was in effect.

Airman Second Class Helen Grace James

Airman Helen Grace James endured it all. In 1955, the U.S. Air Force arrested, investigated, interrogated, and eventually gave her an “Undesirable” discharge for being a homosexual. The “Undesirable” discharge was also known as discharge “by reason of undesirable habits and traits of character.”⁷⁷ The Air Force Office of Special Investigations (OSI) resorted to reading James’s mail, following her into a suspected lesbian night club and even threatened to reveal her sexual orientation to her family back in rural Pennsylvania.⁷⁸ James was stripped of her benefits and any severance payment. For more than half a century, James never told anyone what happened. She felt ashamed.⁷⁹

However, in 2018, as James’s 90th birthday approached, that “shame” well behind her, she applied to the Air Force Board for Correction of Military Records (“AFBCMR”) to correct the injustice of her discharge status. In accordance with the repeal of the Don’t Ask, Don’t Tell Act, the Under Secretary of Defense directed the boards for correction of military records to “normally grant requests” for discharge upgrades.⁸⁰ For James, this directive was an administrative nightmare. The Air Force claimed that all necessary discharge records for 1955 had been lost in a fire in 1973, so James could not prove that she had been discharged solely for being a lesbian. By statute, the AFBCMR was required to reach a decision on James’ application within 18 months of receipt. They could not and did not.⁸¹ But, James did not give up. She sued, and ultimately prevailed in federal court. Her discharge was upgraded to “Honorable” ending a military ordeal that “haunted” her with “fears and anxieties that remained with her since her first interaction” with the Air Force’s investigators more than 60 years earlier, but James’s story is illustrative of how the federal government mistreated its own.⁸²

James was recently honored by the Smithsonian National Air & Space Museum which has placed her Air Force scrapbook, discharge and legal papers in the Smithsonian’s prestigious Air & Space Archive. “Her (James) story is very illustrative of the kind of history that’s often overlooked because of the prejudices of the time,” said Patti Williams, the Air & Space Museum Archivist.⁸³

⁷⁷ Compl. at ¶ 34, *James v. Wilson* (E.D. Cal.) (No. 1:18-cv-00011), The Helen G. James Collection, National Air and Space Museum Archives, available at http://edan.si.edu/slideshow/viewer/?eadrefid=NASM.2018.0042_ref3

⁷⁸ *See id.* at ¶ 11.

⁷⁹ *See id.* at ¶ 16.

⁸⁰ *Id.* at ¶ 22.

⁸¹ *See id.* at ¶¶ 23-26.

⁸² *See* Record of Proceedings, The Helen G. James Collection, *supra* note 76.

⁸³ Sharise Wallace, “An Honor Taken, Now Restored,” AIR & SPACE MAGAZINE, September 2018.

Col. Margarethe Cammermeyer

After President Clinton's election in 1992, Congress held hearings regarding gay and lesbian service in the military. Decorated Vietnam War veteran, Col. Margarethe Cammermeyer was the only lesbian invited to testify before the 1993 Senate Armed Services Committee hearings on Gays-in-the-Military chaired by Senators Nunn and John Warner. Col. Cammermeyer had served as the Head Nurse at the Army Neurosurgical Intensive Care Unit in Long Binh, Vietnam, and later, the Assistant Chief of the 50th General Army Reserve Hospital at Fort Lawson in Seattle. Col. Cammermeyer was awarded the Veterans Administration's Nurse of the Year award in 1985. In 1992, after 26 years of exemplary service, Col. Cammermeyer was discharged upon disclosing that she was a lesbian in a security clearance interview.

Throughout her testimony before the Senate and in her broader fight against her discharge, Col. Cammermeyer maintained her poise. In 1991, Cammermeyer explained that when she admitted her sexual orientation to the investigator, she did not consider her case "a cause."⁸⁴ As her fight progressed, though, she noted that she hoped "that the fact that I, as a senior military person, have come out . . . that perhaps it will enable people to see that we are not out of the ordinary, that homosexuality is a part of life, it is a part of our society, and currently that homosexuals are probably the most discriminated against group here in the United States."⁸⁵ Ultimately, the U.S. District Court ruled in her favor, finding that her discharge was based "solely on prejudice" and did not interfere with the military's ability to maintain readiness and combat effectiveness.⁸⁶

Major Margaret Witt

A decade later, inspired by her personal hero Col. Cammermeyer, Air Force Major Margaret Witt later filed suit in U.S. District Court seeking declaratory and injunctive relief that DADT violated substantive due process, the Equal Protection Clause, and procedural due process.⁸⁷ An eighteen-year decorated veteran of the Air Force, Witt had been informed by the Air Force that discharge proceedings had been filed against her for being a lesbian. "This is what you're going to do," Cammermeyer told her, "Drive to my house, Major. Your mission has changed. You're going to make a difference."⁸⁸ The Court stated in part, "The evidence produced at trial overwhelmingly supports the conclusion that the suspension and discharge of Margaret Witt did not significantly further the important government interest in advancing unit morale and cohesion. To the contrary, the actions taken against Major Witt had the opposite effect." Again, it would take the Courts—not the Congress—to provide the moral leadership to end the federal assault on LGBT citizens.

⁸⁴ See Lynne Duke "Military's Last Social Taboo," THE WASHINGTON POST, August 19, 1991.

⁸⁵ *Id.*

⁸⁶ See "Guard Colonel is Reinstated in Washington," Associated Press, July 9, 1994.

⁸⁷ Witt v. Dep't of the Air Force, et al, 527 F. 3d 806 (9th Cir. 2008).

⁸⁸ Lillian Faderman, "The Gay Revolution, The Story of the Struggle", Simon & Schuster, 2015, page 509.

Congress Repeals DADT

The DADT policy, with its ongoing persecution of homosexual service members, continued until 2010 when Congress—influenced by the success of Major Witt’s case—finally overturned it. From its adoption in 1993 until its repeal in 2010, more than 13,000 individuals were targeted and discharged for violating the DADT policy.⁸⁹ At the bill signing ceremony, President Obama said, “[n]o longer will our country be denied the service of thousands of patriotic Americans who were forced to leave the military—regardless of their skills, no matter their bravery or their zeal, no matter their years of exemplary performance—because they happen to be gay.⁹⁰ No longer will tens of thousands of Americans in uniform be asked to live a lie, or look over their shoulder, in order to serve the country that they love.”⁹¹

President Obama concluded his remarks by stating “we are not a nation that says, ‘don’t ask, don’t tell.’ We are a nation that says, ‘Out of many, we are one.’ We are a nation that welcomes the service of every patriot. We are a nation that believes that all men and women are created equal. Those are the ideals that generations have fought for. Those are the ideals that we uphold today. And now, it is my honor to sign this bill into law.”⁹²

CONGRESS HAS APOLOGIZED FOR THE MISTREATMENT OF MARGINALIZED GROUPS

In the last thirty years, Congress has officially acknowledged and apologized for the mistreatment of marginalized groups on six different occasions. These include the acknowledgement and apology for Japanese-American internment, for the mistreatment of Native Hawaiians, for failure to enforce anti-lynching laws to protect African Americans, for the enslavement of African Americans, for mistreatment of Native Americans, and for the exclusion of Chinese immigrants.

Every time, either both Houses of Congress or the Senate acting alone, acknowledged the history of what occurred to these Americans and officially apologized for the suffering inflicted upon them. A similar acknowledgement and apology is warranted to the LGBT community.

⁸⁹ Gary Gates, *Discharges Under the Don’t Ask/Don’t Tell Policy: Women and Racial/Ethnic Minorities*, The Williams Institute (Sept. 2010), <https://williamsinstitute.law.ucla.edu/research/military-related/discharges-under-the-dont-ask-dont-tell-policy-women-and-raciaethnic-minorities-2/> (last visited Sept. 4, 2019).

⁹⁰The White House, Office of the Press Secretary, *Remarks by the President and Vice President at Signing of the Don’t Ask, Don’t Tell Repeal Act of 2010* (Dec. 22, 2010), <https://obamawhitehouse.archives.gov/the-press-office/2010/12/22/remarks-president-and-vice-president-signing-dont-ask-dont-tell-repeal-a> (last visited September 5, 2019).

⁹¹ *Id.*

⁹² *Id.*

1. Acknowledgement, Apology and Restitution for Internment of Japanese-Americans

On February 19, 1942, President Franklin D. Roosevelt signed Executive Order 9066 that authorized the Secretary of War to intern Japanese Americans during the prosecution of World War II. Through the internment program, the Secretary of War and the federal government required that those of Japanese ancestry (i) depart certain areas on the West Coast of the United States; (ii) report to and remain in an assembly center; and (iii) go under military control to a relocation center and remain for an indeterminate period until released by the military.

In 1988, Congress enacted the Civil Liberties Act, Pub. L. 100-383, that acknowledged and apologized to people of Japanese descent who experienced internment during World War II. In particular, through this action, Congress:⁹³

- (1) Acknowledged the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry during World War II;
- (2) Apologized on behalf of the people of the United States for the evacuation, relocation, and internment of such citizens and permanent resident aliens;
- (3) Provided a fund to educate the public about the internment in order to prevent the recurrence of any similar event;
- (4) Made restitution to those individuals of Japanese ancestry who were interned.

2. Acknowledgement and Apology for Mistreatment of Native Hawaiians

On January 17, 1893, a group of businessmen and its militia overthrew Queen Liliuokalani, the ruler of Hawaii, in a coup d'état. Under the orders of John L. Stevens, the U.S. Minister to Hawaii, 162 U.S. Marines and Navy sailors assisted in the overthrow of the Queen. The Queen surrendered peacefully to avoid violence and later, while under house arrest, agreed to formally abdicate and dissolve the Hawaiian monarchy.⁹⁴

In 1993, Congress enacted Public Law 103-150, informally known as the Apology Resolution, addressing the mistreatment of Native Hawaiians. The resolution acknowledges that John L. Stevens “conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawaii” and that Stevens “caused armed naval forces of the United States to invade the sovereign Hawaiian nation . . . to position themselves near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government.” The act provided for an Acknowledgement and Apology as follows:⁹⁵

⁹³ Pub. L. No. 100-383 (Aug. 10, 1988), <https://www.gpo.gov/fdsys/pkg/STATUTE-102/pdf/STATUTE-102-Pg903.pdf> (last visited Sept. 5, 2019).

⁹⁴ THE NEW YORK TIMES, *Jan. 17, 1893, Hawaiian Monarchy Overthrown by American-Backed Business Men* (Jan. 17, 2012) <https://learning.blogs.nytimes.com/2012/01/17/jan-17-1893-hawaiian-monarchy-overthrown-by-american-backed-businessmen/> (last visited Sept. 5, 2019).

⁹⁵ Pub. L. No. 103-150 (Nov. 23, 1993), <https://www.gpo.gov/fdsys/pkg/STATUTE-107/pdf/STATUTE-107-Pg1510.pdf> (last visited Sept. 5, 2019).

SECTION 1. ACKNOWLEDGMENT AND APOLOGY. The Congress—

(1) on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawaii on January 17, 1893, acknowledges the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people;

(2) recognizes and commends efforts of reconciliation initiated by the State of Hawaii and the United Church of Christ with Native Hawaiians;

(3) apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination;

(4) expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people; and

(5) urges the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and the Native Hawaiian people.

3. Acknowledgement and Apology for Failure to Enact Anti-Lynching Laws

In 2005, the Senate passed Senate Resolution 39 addressing the federal government’s failure to enact anti-lynching laws.⁹⁶ Similar resolutions had passed the House of Representatives on earlier dates.⁹⁷ In the “whereas clauses” of the resolution, the Senate acknowledged that:

- “the crime of lynching succeeded slavery as the ultimate expression of racism in the United States following Reconstruction”;
- “at least 4,742 people, predominantly African-Americans, were reported lynched in the United States between 1882 and 1968”;
- “99 percent of all perpetrators of lynching escaped from punishment by State or local officials”; and

⁹⁶ *Apologizing to the Victims of Lynching and the Descendants of those Victims for the Failure of the Senate to Enact Anti-Lynching Legislation*, S. Res. 39 109th Cong., <https://www.gpo.gov/fdsys/pkg/BILLS-109sres39ats/pdf/BILLS-109sres39ats.pdf>.

⁹⁷ *Id.* at 2.

- “protection against lynching was the minimum and most basic of Federal responsibilities, and the Senate considered but failed to enact anti-lynching legislation despite repeated requests by civil rights groups, Presidents, and the House of Representatives to do so.”⁹⁸

Then, the Senate stated, “Whereas an apology offered in the spirit of true repentance moves the United States toward reconciliation and may become central to a new understanding, on which improved racial relations can be forged: Now, therefore, be it Resolved, That the Senate—

- (1) apologizes to the victims of lynching for the failure of the Senate to enact anti-lynching legislation;
- (2) expresses the deepest sympathies and most solemn regrets of the Senate to the descendants of victims of lynching, the ancestors of whom were deprived of life, human dignity, and the constitutional protections accorded all citizens of the United States; and
- (3) remembers the history of lynching, to ensure that these tragedies will be neither forgotten nor repeated.”⁹⁹

4. Acknowledgment and Apology for the Enslavement and Racial Segregation of African-Americans

In 2008 and 2009, Congress finally apologized to African Americans for enslavement and racial segregation through resolutions passed by the House of Representatives (H. Res. 194) and the Senate (Senate Concurrent Resolution 26).¹⁰⁰

These resolutions recognized, among other things, that:

- “millions of Africans and their descendants were enslaved in the United States and the 13 American colonies from 1619 through 1865”;
- “Africans forced into slavery were brutalized, humiliated, dehumanized, and subjected to the indignity of being stripped of their names and heritage”;
- “after emancipation from 246 years of slavery, African-Americans soon saw the fleeting political, social, and economic gains they made during Reconstruction eviscerated by virulent racism, lynching, disenfranchisement, Black Codes, and racial segregation laws that imposed a rigid system of officially sanctioned racial segregation in virtually all areas of life”;
- “the system of de jure racial segregation known as Jim Crow, which arose in certain parts of the Nation following the Civil War to create separate and unequal societies for whites

⁹⁸ *Id.* at 2–3.

⁹⁹ *Id.*

¹⁰⁰ *Apologizing for the Enslavement and Racial Segregation of African-Americans*, H.R. Res. 194, 110th Cong. (July 29, 2008), <https://www.govtrack.us/congress/bills/110/hres194/text>; *A Concurrent Resolution Apologizing for the Enslavement and Racial Segregation of African Americans*, S. Con. Res. 111th Cong. (June 18, 2009), <https://www.congress.gov/bill/111th-congress/senate-concurrent-resolution/26/text>.

and African-Americans, was a direct result of the racism against persons of African descent engendered by slavery”; and

- “an apology for centuries of brutal dehumanization and injustices cannot erase the past, but confession of the wrongs committed can speed racial healing and reconciliation and help Americans confront the ghosts of their past.”¹⁰¹

In its 2008 Resolution, the House of Representatives stated that it:

(1) acknowledges that slavery is incompatible with the basic founding principles recognized in the Declaration of Independence that all men are created equal;

(2) acknowledges the fundamental injustice, cruelty, brutality, and inhumanity of slavery and Jim Crow;

(3) apologizes to African Americans on behalf of the people of the United States, for the wrongs committed against them and their ancestors who suffered under slavery and Jim Crow; and

(4) expresses its commitment to rectify the lingering consequences of the misdeeds committed against African Americans under slavery and Jim Crow and to stop the occurrence of human rights violations in the future.

The Senate’s 2009 concurrent resolution stated that Congress:

(A) acknowledges the fundamental injustice, cruelty, brutality, and inhumanity of slavery and Jim Crow laws;

(B) apologizes to African-Americans on behalf of the people of the United States, for the wrongs committed against them and their ancestors who suffered under slavery and Jim Crow laws; and

(C) expresses its recommitment to the principle that all people are created equal and endowed with inalienable rights to life, liberty, and the pursuit of happiness, and calls on all people of the United States to work toward eliminating racial prejudices, injustices, and discrimination from our society.

5. Acknowledgement and Apology to Native Americans

In 2009, Senator Sam Brownback (R-KS) introduced a resolution of apology to Native Peoples of the United States.¹⁰² The Senate passed the resolution in 2009, just as it had passed a similar resolution introduced by Senator Brownback in 2008. The House included the text of the resolution as part of the Department of Defense Appropriations Act, 2010 which passed both

¹⁰¹ *Id.*

¹⁰² S.J. Res. 14, 111th Cong. (Apr. 30, 2009), <https://www.congress.gov/bill/111th-congress/senate-joint-resolution/14/text>.

chambers on December 19, 2009.¹⁰³ President Obama signed the Bill—including the Apology Resolution—the same day.

The final text of the Acknowledgement and Apology was as follows:

Section 8113. (a) ACKNOWLEDGMENT AND APOLOGY—The United States, acting through Congress—

(1) recognizes the special legal and political relationship Indian tribes have with the United States and the solemn covenant with the land we share;

(2) commends and honors Native Peoples for the thousands of years that they have stewarded and protected this land;

(3) recognizes that there have been years of official depredations, ill-conceived policies, and the breaking of covenants by the Federal Government regarding Indian tribes;

(4) apologizes on behalf of the people of the United States to all Native Peoples for the many instances of violence, maltreatment, and neglect inflicted on Native Peoples by citizens of the United States;

(5) expresses its regret for the ramifications of former wrongs and its commitment to build on the positive relationships of the past and present to move toward a brighter future where all the people of this land live reconciled as brothers and sisters, and harmoniously steward and protect this land together;

(6) urges the President to acknowledge the wrongs of the United States against Indian tribes in the history of the United States in order to bring healing to this land; and

(7) commends the State governments that have begun reconciliation efforts with recognized Indian tribes located in their boundaries and encourages all State governments similarly to work toward reconciling relationships with Indian tribes within their boundaries.

(b) DISCLAIMER.—Nothing in this Joint Resolution— (1) authorizes or supports any claim against the United States; or (2) serves as a settlement of any claim against the United States.

6. Acknowledgment and Expression of Regret for the Mistreatment of Chinese Immigrants

In 1882, the Chinese Exclusion Act suspended all Chinese labor immigration to the United States for ten years.¹⁰⁴ It also banned Chinese immigrants from being U.S. citizens.¹⁰⁵ Although the Act was supposed to terminate after ten years, Congress renewed it in 1892 and made it permanent in

¹⁰³ Pub. L. No. 111-118, 111th Cong. (Dec. 19, 2009), <https://www.copyright.gov/legislation/pl111-118.pdf>.

¹⁰⁴ Dan Margolis, *U.S. Senate Apologizes for Chinese Exclusion Act*, 1882 FOUNDATION, (Oct. 11, 2011) <https://1882foundation.org/uncategorized/u-s-senate-apologizes-for-chinese-exclusion-act/> (last visited Sept. 5, 2019).

¹⁰⁵ *Id.*

1902. It was not until 1943 that Congress repealed the law in the Magnuson Act. Even then, Chinese immigration was limited to only 105 Chinese people per year. Indeed, it was not until the Immigration and Nationality Acts of 1962 (abolishing racial barriers) and 1965 (abolishing quotas on the basis of existing proportions of racial and ethnic groups already part of the American population) that Chinese immigration increased.¹⁰⁶

Both the Senate and the House passed unanimous resolutions of Acknowledgement and Regret for the Chinese Exclusion laws. The Senate resolution was introduced by Senator Scott Brown (RMA) on May 26, 2011. The House resolution was introduced by Representative Judy Chu (D-CA) on June 18, 2012. Both the Senate and House resolutions passed unanimously and include a detailed history and accounting of the various Chinese Exclusion laws used to discriminate against those of Chinese descent and then acknowledge and express regret for the passing of these laws. The Senate Resolution has the more robust acknowledgement¹⁰⁷ and states as follows:

SECTION 1. ACKNOWLEDGMENT AND EXPRESSION OF REGRET.¹⁰⁸

The Senate—

- (1) acknowledges that this framework of anti-Chinese legislation, including the Chinese Exclusion Act, is incompatible with the basic founding principles recognized in the Declaration of Independence that all persons are created equal;
- (2) deeply regrets passing 6 decades of legislation directly targeting the Chinese people for physical and political exclusion and the wrongs committed against Chinese and American citizens of Chinese descent who suffered under these discriminatory laws; and
- (3) reaffirms its commitment to preserving the same civil rights and constitutional protections for people of Chinese or other Asian descent in the United States accorded to all others, regardless of their race or ethnicity.

SEC. 2. DISCLAIMER.

Nothing in this resolution may be construed—

¹⁰⁶ Wikipedia, the Free Encyclopedia, *Chinese Exclusion Act*, https://en.wikipedia.org/wiki/Chinese_Exclusion_Act (last visited Sept. 5, 2019); Wikipedia, the Free Encyclopedia, *National Origins Formula*, https://en.wikipedia.org/wiki/National_Origins_Formula (last visited Sept. 5, 2019).

¹⁰⁷ The acknowledgement and expression of regret in the House Resolution states: “That the House of Representatives regrets the passage of legislation that adversely affected people of Chinese origin in the United States because of their ethnicity.” It further adds a disclaimer that “Nothing in this resolution may be construed or relied on to authorize or support any claim, including but not limited to constitutionally based claims, claims for monetary compensation or claims for equitable relief against the United States or any other party, or serve as a settlement of any claim against the United States.” H. Res. 683 (June 18, 2012) <https://www.govtrack.us/congress/bills/112/hres683/text>

¹⁰⁸ S. Res. 201, 112th Cong. (Oct. 6, 2011), <https://www.congress.gov/bill/112th-congress/senate-resolution/201/text> (passed unanimously).

- (1) to authorize or support any claim against the United States; or
- (2) to serve as a settlement of any claim against the United States.

* * *

Each of these six Congressional actions acknowledge mistreatment, recount the history that required an apology, and apologize for causing the mistreatment. In addition, most of them include language insuring that the apology neither supports nor forecloses any claim against the government.

7. **America’s Allies and Religious Groups Have Issued Apologies to the LGBT Community**

When it comes to acknowledging and apologizing for the shameful mistreatment of LGBT Americans, the United States lags behind its international allies.¹⁰⁹ Many of America’s allies have already apologized for mistreating their own citizens:

Spain: In 2004, the Spanish parliament issued a declaration expressing remorse for the treatment of the LGBT community under the dictatorship of Francisco Franco. Since 2007, LGBT people who were prosecuted under Franco’s homophobic laws have been allowed to file for compensation under the country’s Law of Historical Memory.

Canada: Canada officially apologized for its treatment of LGBT Canadian service members and civilian employees who were victims of its “Gay Purge”, as well as those convicted under statutes that criminalized private consensual relationships.¹¹⁰ The former law was Canadian Criminal Code, 1892, SC 1982, c 29.¹¹¹ A companion piece to the apology, Canada enacted “The Expungement of Historically Unjust Convictions Act” allowing people to apply to the Parole Board of Canada to have the records of their convictions destroyed for “buggery, gross indecency and anal intercourse.” The Canadian government has approved a payout of approximately 85 million Canadian dollars to cover compensation to the victims of its “Gay Purge.” The Canadian government is also building a monument to the purge victims, “The National LGBTQ2+” monument in its capital city of Ottawa.¹¹²

United Kingdom: The United Kingdom apologized for its 1950s mistreatment and persecution of Alan Turing for being gay under Section 61 of the Offences Against the Person Act of 1861

¹⁰⁹ See Omar G. Encarnación, *Why Gay Reparation’s Time Has Come*, The New York Review of Books (Oct. 30, 2019) <https://www.nybooks.com/daily/2019/10/30/why-gay-reparations-time-has-come/> (last visited Nov. 19, 2019).

¹¹⁰ Associated Press, *For State-Sponsored, Systemic oppression and rejection, we are sorry: Justin Trudeau CRIES as he offers formal apology to Canada’s LGBT communities for ‘gay purge’* (Nov. 28, 2017) <https://www.dailymail.co.uk/news/article-5126283/Canada-PM-apologizes-oppression-LGBT-communities.html> (last visited Sept. 4, 2019).

¹¹¹ See Todd Edward Ross, Martine Roy and Alida Satalic, *Plaintiffs v. Her Majesty the Queen, Defendant*, Court File No. : T-370-17, Canadian Federal Court

¹¹² Ian Austin, “New York Times”, “Canada’s Gay Purge” Memorial, January 24, 2020.

and its amendment, Section 11 of the Criminal Law Amendment Act of 1885.¹¹³ Ireland and Scotland have apologized for passing discriminatory laws targeted against gay men.¹¹⁴

Following the Turing apology, in 2017 Britain issued a posthumous pardon¹¹⁵ to thousands of gay and bisexual men who had once been convicted of crimes such as “buggery,” gross indecency, and loitering with intent.¹¹⁶

Australia: The former law was the Offences Against the Person Act 1861 (adopted in state of Victoria in 1919). Australia’s state of Victoria apologized to its LGBT citizens for their persecution.¹¹⁷

Germany: In 2002, the German government issued an apology and a pardon to the victims of the so-called “gay Holocaust.” In 2008, it unveiled a memorial in Berlin to the victims. The former law was Paragraph 175 (known formally as §175 StGB; also known as Section 175 in English), a provision of the German Criminal Code from May 15, 1871 to March 10, 1994. It made homosexual acts between males a crime. In apologizing, Germany has gone a step further in rectifying its treatment of gay men. The German parliament established a fund of 30 million euros to compensate the living victims of Paragraph 175.¹¹⁸

Brazil: In 2004, became the first country in the world to include a section on LGBT discrimination and violence in the final report of the truth commission for the human rights abuses of the military regime in place between 1964 and 1985.¹¹⁹

The Netherlands: In 2020, the Dutch government formally apologized and compensated approximately 2,000 transgender and intersex citizens who were required to undergo sterilization surgeries in order to legally change their gender from 1980 to 2014.¹²⁰

In addition, religious leaders, and organizations have acknowledged past mistreatment and apologized to LGBT individuals, such as Pope Francis. On June 26, 2016, he said that “I believe that the church not only should apologize to the person who is gay whom it has offended but has

¹¹³ Caroline Davies, *PM’s apology to codebreaker Alan Turing: We Were Inhumane*, THE GUARDIAN (Sept. 10, 2009) <https://www.theguardian.com/world/2009/sep/11/pm-apology-to-alan-turing> (last visited Sept. 4, 2019).

¹¹⁴ Sarah Bardon, *Government to Apologise to Gay Men for ‘Discriminatory’ Laws*, The Irish Times (June 19, 2018) <https://www.irishtimes.com/news/politics/government-to-apologise-to-gay-men-for-discriminatory-laws-1.3535150> (last visited Sept. 4, 2019); *Gay Men to Receive Scottish Government Apology*, BBC NEWS (Oct. 29, 2017) <https://www.bbc.com/news/uk-scotland-41788247> (last visited Sept. 4, 2019).

¹¹⁵ “The Alan Turing Law” in the Policing and Crime Act of 2017

¹¹⁶ “The Global Rise of Gay Reparation”, Professor Omar Encarnacion, NEW YORK REVIEW OF BOOKS.

¹¹⁷ Ben Preiss, *Gay Men Receive Apology More Than 30 years After Homosexuality Decriminalized*, THE AGE (May 24, 2016) <https://www.theage.com.au/national/victoria/gay-men-receive-apology-more-than-30-years-after-homosexuality-decriminalised-20160524-gp2m4o.html> (last visited Sept. 4, 2019).

¹¹⁸ Professor Omar Encarnacion background briefing to Charles Francis, January 28, 2020.

¹¹⁹ Ibid., Encarnacion.

¹²⁰ “Dutch Government Apologies for Forcible Sterilization of Trans, Intersex People,” THE WASHINGTON BLADE, (Dec. 3, 2020), <https://www.washingtonblade.com/2020/12/03/dutch-government-apologies-for-forcible-sterilizations-of-trans-intersex-people/>

to apologize to the poor, to exploited women, to children exploited for labor; it has to ask forgiveness for having blessed many weapons.”¹²¹

Conservative Christian Ex-Ministry Exodus International, which previously sought to help people limit their “homosexual desires” and supported conversion therapy, actually issued an apology in 2012 for its mistreatment of LGBT individuals.¹²² Other Ex-Gay Ministers such as John Smid of Love in Action and McKrae Game of Hope for the Wholeness Network, have publicly admitted that such programs and therapies do not work and caused substantial harms to LGBT youth and adults.¹²³ These Ex-Ex-Gay Ministers have offered apologies to LGBT families who were hurt by these programs.¹²⁴ In some cases, these apologies cannot be heard by those who were most damaged by the programs espoused by these Ex-Ex-Gay Ministers because these LGBT people have committed suicide rather than live inauthentic lives.

THE IMPORTANCE OF A TRUTHFUL ACKNOWLEDGEMENT AND APOLOGY

“Apologies are never easy,” said Melissa Nobles, a Massachusetts Institute of Technology political science professor and author of *The Politics of Official Apologies*. “These things are always hard-fought, never mind the political stuff, the implications of what they mean down the line, and who’s sponsoring the resolution.” The acknowledgement and apology movement across the globe reflects generational change and a desire to honor these group members while some are still alive, Nobles said.¹²⁵

The history of national apologies, either by the executive or legislative branches, either in the U.S. or other countries, reveals the importance of reckoning with the past. Moving forward is often predicated on the acknowledgement and regret for earlier mistaken acts by governments.

Historians recognize the benefits to a well-functioning democracy from revealing the truth about the past and expressing authentic regret. As the Institute for Human Rights at Columbia University concludes, “Political apologies can be a powerful tool in the re-examination of a

¹²¹ Delia Gallagher and Daniel Burke, *Pope Says Christians Should Apologize to Gay People*, CNN (June 27, 2016) <https://www.cnn.com/2016/06/26/world/pope-apologize-gays/index.html> (last visited Sept. 4, 2019).

¹²² Alix Bryan, ‘Pray Away the Gay’ Group Issues Apology to LGBT Community, CBS 6 WTVR-TV (June 20, 2013) <http://wtvr.com/2013/06/20/exodus-apologizes-to-gays/> (last visited Sept. 4, 2019).

¹²³ Marisa Iati, *Conversion Therapy Center of Founder Who Sought to Turn LGBT Christians Straight Says He’s Gay and Rejects ‘Cycle of Self Shame,’* THE WASHINGTON POST (Sept. 5, 2019) <https://www.washingtonpost.com/religion/2019/09/03/conversion-therapy-center-founder-who-sought-turn-lgbtq-christians-straight-now-says-hes-gay-rejects-cycle-shame/> (last visited Oct. 25, 2019).

¹²⁴ *Id.*

¹²⁵ William Douglas, *Congress’ Apology for Slavery Just Proves It’s Hard to Say Sorry*, MCCLATCHY NEWSPAPERS, (July 2, 2009) <https://www.mcclatchydc.com/news/politics-government/article24544429.html> (last visited Sept. 4, 2019).

nation's history, and the significance this history has on democratic processes.”¹²⁶ A national apology reflects changed values, condemns past misconduct, and promises better action in the future. It can also bring about a reconciliation between those harmed and the nation that caused the harm.¹²⁷

The Time Has Come for the U.S. Government to Acknowledge and Apologize for Its Treatment of LGBT Americans

Over the course of the last fifteen years, the fight for LGBT civil rights has come a long way. Advocates for LGBT civil rights have won victories at the ballot box, in state and federal courts, and even at the Executive level.¹²⁸ States have begun recognizing the historical mistreatment of their LGBT citizens.¹²⁹ Yet to date, Congress has not issued an acknowledgement and apology to the LGBT community as it has to other similarly situated groups.

Although there has been no movement for an acknowledgement and apology to LGBT American service members, the government has taken incremental steps toward an acknowledgement and apology for its persecution of LGBT federal civilian employees. The following developments have laid groundwork toward an official and widespread acknowledgement of mistreatment and apology:

1. In June 2009, the Office of Personnel Management Director, John Berry, formally apologized to Frank Kameny (the founder of the original Mattachine Society of Washington, DC) for his firing by the federal government and presented Dr. Kameny with the Theodore Roosevelt award, the most prestigious recognition for a federal employee.¹³⁰
2. Subsequently, President Obama invited Dr. Kameny to the signing of an executive order authorizing certain domestic partner benefits for federal employees, acknowledging that the time had long since passed for the cessation of discrimination against federal employees.¹³¹
3. In 2015, the Office of Personnel Management's ("OPM") Office of General Counsel and staff drafted a general statement of apology for the past mistreatment and firing of LGBT

¹²⁶ Columbia University, Institute for the Study of Human Rights, POLITICAL APOLOGIES ARCHIVES <http://www.humanrightscolumbia.org/ahda/political-apologies> (last visited Sept. 4, 2019).

¹²⁷ Edwin Battistella, *When Nations Apologise*, AEON (Mar. 27, 2017) <https://aeon.co/essays/a-national-apology-has-the-power-to-change-the-future> (last visited Sept. 4, 2019).

¹²⁸ Camila Domonoske, *State Dep't Apologizes For Decades of Anti-LGBT Discrimination* (Jan. 9, 2019) <https://www.npr.org/sections/thetwo-way/2017/01/09/508966318/state-department-apologizes-for-decades-of-anti-lgbt-discrimination> (last visited Sept. 20, 2019).

¹²⁹ See February 4, 2020 announcement by California Governor Gavin Newsom and California Executive Order N.24-20.

¹³⁰ Ed O'Keefe, *Eye Opener: Apology for Frank Kameny*, THE WASHINGTON POST (June 29, 2009), http://voices.washingtonpost.com/federal-eye/2009/06/eye_opener_june_29_2009.html (last visited Sept. 4, 2019).

¹³¹ YouTube, <https://www.youtube.com/watch?v=WcM8J5HzUWM>

federal employees. OPM never made the statement public, and it is not clear whether the draft was ever signed.¹³²

4. In 2016, Senator Ben Cardin (D-MD), Ranking Democrat on the Senate Committee on Foreign Relations, wrote then Secretary of State John Kerry requesting an official apology from the Department of State for the past mistreatment and firing of LGBT federal employees. Secretary Kerry issued that official apology for the State Department in December 2016.¹³³
5. In June of 2017, Senator Cardin subsequently introduced S.1420 with eighteen original cosponsors. This bill requires the Department of State to review employee terminations at the State Department in the 1950s and 1960s to determine who was wrongfully terminated due to their actual or perceived sexual orientation (known as the Lavender Scare). The bill contains an apology from Congress for its role in encouraging the termination of State Department employees based on sexual orientation. In addition to Senator Cardin, other original cosponsors included Senators Markey, Merkley, Van Hollen, Schatz, Booker, Kaine, Baldwin, Coons, Whitehouse, Blumenthal, Gillibrand, Shaheen, Wyden, Feinstein, Murphy, Murray, Menendez, and Udall.¹³⁴ The bill was reintroduced in the 116th Congress by Senator Robert Menendez (D-NJ).¹³⁵
6. Recently, in June 2018, the New York Police Department apologized for the raid of the Stonewall Inn. During a safety briefing related to World Pride month, Commissioner James P. O’Neill said, in part, “The actions taken by the N.Y.P.D. were wrong — plain and simple” and “the actions and the laws were discriminatory and oppressive, and for that, I apologize.”¹³⁶ He further stated that “I think it would be irresponsible to go through World Pride month, not to speak of the events at the Stonewall Inn in June of 1969. . . . I do know what happened should not have happened.”¹³⁷
7. On February 4, 2020, California Governor Gavin Newsom issued Executive Order N.24-20, which pardoned gay civil rights leader Bayard Rustin under a new state clemency initiative.¹³⁸

¹³² The Mattachine Society of Washington, D.C. provided the educational and documentary background to the OPM General Counsel’s Office for this effort.

¹³³ Rick Valelly, *Kerry’s “Lavender Scare” Apology Reveals an Important Shift in LGBT Politics*, THE WASHINGTON POST (Jan. 19, 2017) https://www.washingtonpost.com/news/monkey-cage/wp/2017/01/19/john-kerrys-startling-apology-marks-an-important-shift-in-lgbt-politics/?utm_term=.587a5e866c33 (last visited Sept. 4, 2019).

¹³⁴ S. 1420 (115th Congress)

¹³⁵ S. 1252 (116th Congress)

¹³⁶ Michael Gold and Derek M. Norman, *Stonewall Riot Apology: Police Actions Were ‘Wrong,’ Commissioner Admits*, THE NEW YORK TIMES, (June 6, 2019) <https://www.nytimes.com/2019/06/06/nyregion/stonewall-riots-nypd.html?module=inline> (last visited Sept. 4, 2019).

¹³⁷ *Id.*

¹³⁸ See Cal. Exec. Order N. 24-20, available at <https://www.gov.ca.gov/wp-content/uploads/2020/02/EO-N-24-20-Bayard-Rustin-02.04.2020.pdf>

Apologies to the LGBT community are no longer unprecedented in America. The time has come for the federal government to issue its own “acknowledgement and apology” and follow the precedent established by Congress with respect to other marginalized communities. A straightforward acknowledgement of the mistreatment of these military and civilian employees and an official apology is overdue. Both the Congress and the Executive Branch were complicit in this pervasive mistreatment of LGBT citizens. From Congressionally-mandated investigations of LGBT Americans, to the 1947 Department of Defense edict, to the FBI “sex deviate memo,” to Executive Order 10450, to the torture of LGBT Americans at the hands of the physicians at St. Elizabeths Hospital, the United States government has terrorized hundreds of thousands of its own citizens. As a result, men and woman lost their jobs, families were destroyed, and, at times, victims even took their own lives. It is time to acknowledge this shameful history and apologize to those who were persecuted by their own government.

Congress can provide closure for this time of federal assault to the victims, families and future generations of LGBT Americans through a resolution, similar to the six adopted between 1988 and 2011. By simple resolution, the Congress can acknowledge the scale of what befell LGBT Americans so that society can progress and learn from the injustice. In the face of such large scale harm, the question arises, “Do we want to remember or forget?”¹³⁹ The resolution would acknowledge and apologize for government mistreatment of LGBT federal employees and service members. Senator Cardin’s bill acknowledging and apologizing for the persecution of employees of the State Department is an excellent start. But the ultimate resolution must speak more broadly and address the misconduct of every federal agency, coordinated by the CSC and by Congress.¹⁴⁰

CONCLUSION

Many of those that the government interrogated, incarcerated, fired, or court marshalled have passed away. Their legacies and their families, however, live on along with the thousands of LGBT Americans who still live with the stain of their termination or convictions without pardon for no other reason than for being who they are. An official acknowledgement of what happened by the government and an apology for this mistreatment will have particular significance for all of these citizens. But, it will also have significance around the world. It will show the world that our nation is better than its worst acts. It will hold us accountable to do better in the future. And, it will remind us that, no matter how dark or shameful parts of our past may be, the arc of our nation’s history does indeed, “bend toward justice.”

¹³⁹ Priscilla Hayner asks leaders worldwide, (“Unspeakable Truths”, Routledge, 2010), “Do you want to remember or forget?”

¹⁴⁰ Finally, to keep the resolution focused solely on acknowledging the truth and an apology, rather than reparation, the formal Acknowledgment and Apology should include the language contained in several of these previously passed resolutions: “Nothing in this resolution authorizes or supports any claim against the United States; or serves as a settlement of any claim against the United States.” A model resolution is attached as Exhibit A.