

COPY

RESOLUTION OF NATIONAL
CAPITAL AREA CIVIL LIBERTIES
UNION* ON FEDERAL EMPLOYMENT
OF HOMOSEXUALS

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It is widely recognized that the homosexual in the United States is the target for prejudice, discrimination and abuse in many areas of life. It is of particular concern to the NCACLU that an important source of such discrimination is the Federal government.

It is the present official policy of the United States Civil Service Commission that homosexuals are not suitable for Federal employment. Under present policies a record of homosexual activity, past or continuing, is sufficient to deny a citizen Federal employment of any sort. Such a record leads to disqualification as a candidate for a position or for retention of a position already held. Disqualification occurs without regard for the individual employee's capability and talent, often results in a permanent denial of livelihood inconsistent with training and background, and thus constitutes a waste of manpower which is not in the national interest.

These employment practices are discriminatory, for they involve the prejudging of an individual with regard to his job qualifications solely upon the basis of attributes which bear no necessary relation to job qualifications. These practices are inconsistent with basic Federal employment policies which seek to insure that the selection and retention of employees is not determined by irrelevant factors, but rather by the ability of the individual to perform his work. The exclusion policy operates to bar those who have homosexual preferences, those who have had only an isolated homosexual experience at some remote time in the past, as well as those who may have occasional or continuing homosexual relationships in the present, but always without any reference to actual fitness for Federal employment.

In addition, serious problems arise in connection with efforts to enforce the policy of exclusion based upon sexual behavior which takes place in private between consenting adults, or even upon sexual preferences not accompanied by action. Such efforts almost necessarily lead to the use of demoralizing, degrading and oppressive inquiries and methods, including entrapment, designed to ferret out the offending attitude, practice, or past history.

Three principal arguments are commonly offered in support of the present policy. First, it is argued that homosexuals should not be admitted to Federal employment because the presence of a homosexual in a government office would be detrimental to the morale and efficient operation of the office. The Civil Service Commission has offered no evidence to support such a conclusion, and in any event it appears to constitute insufficient justification for discriminatory policies.

* This resolution reflects the thinking of the National Capital Area Civil Liberties Union only and not the National ACLU, which has the resolution under consideration.

Disruptive and improper behavior on the job is easily and rapidly ascertained by supervisory personnel and is clearly grounds for dismissal in private and in Federal employment. There is no valid justification for policies which discriminate against capable people on the supposition that they might present personnel problems when there is no clear indication to this effect in the individual case and there are adequate means of eliminating those who are responsible for disruptive behavior when it actually occurs.

Secondly, it is argued that homosexuality constitutes "immoral conduct" and is therefore grounds for disqualification from Federal employment. This is the argument principally relied on by the Civil Service Commission. In affixing the label "immoral" upon homosexuality or other conduct which takes place in private between consenting adults, the Civil Service Commission raises grave questions. The complex issues involved in judging the propriety or morality of private consensual sexual behavior of adults are matters of personal opinion and individual ethical and often religious belief. The Federal government should not seek to enforce conformity in such areas, or incorporate its moral judgments on such matters into its formal policies.

Government policy toward homosexuals is a part of the general problem of government policy respecting private actions and morality. Without determining whether the Government ever has a legitimate interest in such matters, it can be said that some matters of morality and private conduct should be reserved solely to the judgment of the individual and should not be the subject of government policy or inquiry. One such matter is the area of individual sexual thoughts, preferences and practices as between consenting adults. Sexual acts, whether homosexual or heterosexual, if committed in public, might justify dismissal or disqualification from Government employment, because of their effect on persons other than the participants. Certainly a substantial and specific showing of harm to the public must be shown to warrant any Government inquiry into or policy regarding so personal a matter as private sexual behavior.

The NCACLU therefore believes that the use of the criterion of "immoral conduct" as a basis for disqualification of homosexuals from Federal employment is invalid and contrary to fundamental principles of individual freedom and the right to privacy.

Thirdly, it is argued that homosexuals should not be employed by the Federal government because of their greater susceptibility to coercion through blackmail, by reason of which they would constitute a serious security risk for the country. This argument fails on three counts. First, although many positions in the Federal service do not involve the need for access to security information, homosexuals are presently barred from all Federal employment. Second, the vulnerability of individuals to coercion and blackmail varies greatly from one to another regardless of sexual preferences. History is replete with instances where heterosexual behavior has led to serious difficulties, yet heterosexuals are not barred from government employment. A discriminatory practice which categorizes an entire group of people as potentially disloyal to their country is unjust and does not take into consideration the individual variations which

certainly exist. Third, to the extent that an individual homosexual is vulnerable to blackmail, a principal basis for pressure is the fear of the loss of job which would result from exposure. That fear stems directly from the Government's policies against employment of homosexuals. Thus the Federal government by its policies against homosexuals is creating one of the important bases for susceptibility to blackmail, a problem which would substantially less if homosexuality were not a bar to Federal employment.

CONCLUSION:

The NCACLU calls upon the United States Civil Service Commission to reconsider its policies under which homosexuals are considered to be unsuitable for employment or retention in the Federal service, simply by virtue of past or present homosexual preferences, tendencies, or private practices. This is consistent with the view that it is not the concern of the Government, in employment or otherwise, to scrutinize sexual activities which take place in private between consenting adults. If equal employment opportunity is to be denied to a particular group on the basis of sexual preference and activities, a clear relationship must be established between such activities and job performance. The burden of proof rests with those who would impose the discriminatory policies and such proof lacking, each case must be judged on its individual merits.

It is not the contention of the NCACLU that homosexuals are invariably good Federal employees, but only that homosexual behavior per se is irrelevant to Federal employment and that current policies of the Civil Service Commission do not provide equal opportunity for all people. On the contrary, those policies discriminate against homosexuals for reasons which have not been shown to have basis in fact.

We suggest that the Federal government end its policy of rejection of all homosexuals on that ground alone. Exclusion of any individual from government employment should be based only upon considerations which are relevant to that individual's qualifications for the job in question.