

Prepared Remarks of
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Good evening. Thank you for the introduction and thank You BALIF – and especially, Rob Depew, Torr Melling, Daniel Powell and the other organizers of this wonderful event – for the opportunity to speak to you at this celebration of BALIF’s 30th anniversary. I am honored to appear before you to speak about the efforts underway in the Obama Administration to advance LGBT equality.

It is fitting that I am delivering my first keynote address as an Obama Administration appointee here in the Bay Area, because this is where my legal career began as a law student at Stanford – now more years ago than I care to admit. I chose Stanford because of my strong interest in studying constitutional law, my desire to become a civil rights lawyer – oh, and the weather.

Back then, the Civil Rights issues of the day were different. The Supreme Court was backpedaling on affirmative action and raising the bar for civil rights plaintiffs. And Because the Court’s Leading Due Process decisions included *Bowers v. Hardwick*, victories in the courts on gay rights were exceedingly rare. I can recall Sitting in Professor Gunther’s con Law class, thinking that *Bowers* was the single-most appalling and destructive modern-day opinion.

Not only were the legal Protections for LGBT individuals elusive, individuals with HIV/AIDS were the victims of invidious discrimination, violations of privacy, and even prosecution. In the early 1990s, upholding civil Liberties and protecting public health were deemed by many to be mutually exclusive.

I had the opportunity to join that fight as a Skadden Fellow at the ACLU of Illinois working on the organization’s AIDS and Civil Liberties and Gay and Lesbian Rights projects. One of the first things I did in that job was to write an op-ed for the *Chicago Sun-times*, following Magic Johnson’s disclosure that he is HIV-positive, urging that people should recognize by his courageous statement the need to overcome prejudices and unfounded fears about HIV status and to stop abridging the civil rights of those living with HIV.

I represented a hairdresser at the Cut ‘n Dried Salon who couldn’t get health insurance because the company excluded hairdressers, graphic designers, florists and antique dealers; a boy scout troop leader who was relieved of his responsibilities when

he came out: and an HIV-positive Public Health Service dentist who was barred from practicing.

Back then, I was the self-described straight guy working on HIV/AIDS issues. And I worked for a brilliant openly gay attorney named John Hammell. John died of complications from aids in the mid-1990's, and it feels right to me to honor his memory tonight, because he was a courageous and effective advocate who helped to advance the cause of LGBT equality for the generations who followed.

Fast-forward to today – well, the issues have changed, and so have I. I have gone from being a skadden fellow to what some have called the DOJ gay czar – on what is the defining civil rights challenge of our day – the unyielding effort of LGBT Americans to overcome discrimination and second-class citizenship and obtain the full measure of equality that we deserve. And I am fortunate enough to be working on these issues in the Civil Rights Division, which Attorney General Eric Holder calls the crown jewel of the Justice Department. President Obama even singled us out – among all the subcabinet agencies – for a shout-out during his powerful State of the Union speech last month, noting for the many millions watching that we now have a Civil Rights Division that enforces our civil rights laws.

We are back in business and engaged in a vigorous, full throttle effort to restore and transform the Division. We are *restoring* it by no longer picking and choosing which civil rights laws to enforce – Assistant Attorney General for Civil Rights Tom Perez likes to say that enforcing our nation's civil rights laws is not like going through the buffet line in the cafeteria. The dedicated Career attorneys who work in the Division no longer have to do their jobs with one hand tied behind their backs, and we are steadily restoring the luster to the crown jewel. As we like to say – in the Civil Rights Division, every day is Martin Luther King Day.

And we are *transforming* the Division to address the pressing civil rights issues of the 21st century. These include reinvigorating voting rights enforcement, combating discrimination that has occurred in the housing and fair lending crises, and arguing for greater inclusion for persons with disabilities.

Transformation also includes building our ranks so that we have the capacity to fire on all cylinders. We are in the process of hiring for 102 new positions that were added to the Division by Congress in the 2010 budget. Hopefully, some of you in this room – or your friends and colleagues – have applied for these jobs – 60 of them are for lawyers. If you haven't and are interested, it's not too late, so go to the Civil Rights Division's homepage on the Justice Department website to see descriptions of the various career openings, which are available in all of our sections. You'd have to leave the Bay Area to work in post-Snowpocalyptic Washington, so there are some huge tradeoffs.

Finally, transformation means using our existing authority to promote and protect LGBT civil rights and to support the adoption of new authorities that will enhance our capacity to advance them.

Early in the Obama Administration, after mysterious eight year hibernation, the Division's GLBT Working Group was reestablished. The Working Group was founded during the Clinton Administration by Assistant Attorney General Bill Lann Lee to advise the Division leadership on legal issues relating to sexual orientation, to determine ways in which discrimination experienced by LGBT individuals, and by persons with HIV/AIDS may be addressed under existing civil rights laws, and to identify appropriate cases in which the Division can participate as an *amicus curiae* or intervenor.

Using our existing authority, and for the first time in nearly a decade, we recently sought to intervene in the case of an openly gay teenager who was bullied because he fails to conform to gender stereotypes in both behavior and appearance.

The Equal protection Clause of the U.s. Constitution and Title IX of the Civil Rights Act of 1964 prohibit bullying or harassment of students based on their gender or on gender stereotypes. Every student has a constitutional right to go to school without fearing he or she will be scapegoated by their peers.

We also recently settled a case involving an HIV-positive 2-year old boy. The boy and his family had planned a month-long stay at the Wales West RV Resort and Train and Garden Lovers Family Park in Silverhill, Alabama, so that the father could commute to nearby Mobile for ongoing cancer treatment. But when the family-themed RV park found out the boy is HIV-positive, they banned the family from using the common areas of the resort, including the swimming pool and showers. We reached a settlement under the Americans with Disabilities Act. The RV Park paid a civil penalty and adopted measures to ensure that patrons and their families are not discriminated against on the basis of disability.

And last, but certainly not least, there are hate crimes. I vividly recall a conference call I led in August 2008, while I was working in Florida on the Obama campaign and helping to lead the campaign's LGBT Policy Group. The call was with leading LGBT reporters and House Judiciary Committee Chairman John Conyers. And we highlighted candidate Obama's commitment to passage of a federal hate crimes law that would finally give the Civil Rights Division of the Justice Department the ability to prosecute hate crimes committed on the basis of sexual orientation and gender identity. His support stood in stark contrast to his opponent's unyielding opposition.

We were joined on that call by Damien Skipper, the brother of Ryan Skipper. Ryan was a 26-year-old gay man from Polk County, Florida. On March 14, 2007, after finishing work, and having dinner with a friend, Ryan met two men who drove away with Ryan in his car. Fifteen minutes later, the two men returned to town alone. His body had been dumped by the side of the road. He had been beaten, stabbed 20 times, and

his throat was slit. The fingerprints of both accused were found inside the abandoned car. The two men who killed Skipper were tried for murder, because Florida's hate crimes law does not include sexual orientation or gender identity. Fortunately, their efforts to use a so-called "gay panic" defense were unsuccessful and they were sentenced to life in prison. Ryan's murder was a hate crime, which the Polk County Sheriff initially tried to minimize through erroneous, homophobic and irresponsible statements that suggested Ryan was guilty of check fraud and bore responsibility for his own death.

We met Ryan's brother, Damien, because he taped a powerful video that he posted on YouTube describing just how much the 2008 election meant to him and his family in their quest for justice. They viewed the 2008 election through the lens of the hate crimes debate, not because a federal law would have helped them, but because it would help to prevent other LGBT individuals from becoming tomorrow's victims and send a strong signal that hate crimes victimize individuals and entire communities, and will not be tolerated in America.

In the spring of 2009, Attorney General Holder testified in strong support of hate crimes legislation, and we in the Civil Rights Division provided critical assistance to the Congress during the negotiations over the bill's final provisions. President Obama called repeatedly on Congress to send him a hate crimes bill and pledged to sign it. And sign it he did – on October 28. At a White House reception to celebrate the passage of the Matthew Shepard, James Byrd Jr. Hate Crimes Prevention Act, featuring the President and Dennis and Judy Shepard, I stood in the East Room with Damien Skipper. For him, passage of the new law meant that the full force of the federal government's authority finally would be brought to bear on violent anti-gay criminals like those who murdered Ryan.

The responsibility to enforce the new law belongs principally to the Criminal Section of the Civil Rights Division, and we are working closely with the FBI's Civil Rights Unit and U.S. Attorney's offices throughout the nation, to inform federal, state and local law enforcement about the law's new provisions. We're planning trainings throughout the country – yesterday we were at the LA Gay and Lesbian Center – to engage law enforcement and community leaders about the law's provisions, and to ensure that the first responders have the training they need to effectively investigate hate crimes based on the victim's actual or perceived sexual orientation and gender identity.

This is a big deal. It is the first time that the words, "lesbian, gay, bisexual and transgender" appear in the U.S. Code to protect us, and if we are successful it won't be the last. Last week, I attended a training held at the Justice Department's national Advocacy center (the NAC), for federal prosecutors and FBI agents from around the country on the New law. During the training, as colleagues reviewed the law's provisions, the Acting Chief of the Criminal Section, who is also gay and has been working for the Department for more than 15 years, e-mailed me, exclaiming, "can you

believe we're sitting here at the NAC listening to prosecutors and agents repeatedly use the words 'gay', 'lesbian', and 'transgender'? For him, this underscored the significance of what we have achieved by winning passage of this landmark law.

The work, however, does not stop there. The ink barely dried on the Shepard-Byrd Act before we put passage of an inclusive Employment Non-Discrimination Act (ENDA) at the top of the Civil Rights Division's legislative priority list. We helped ensure an administration witness testified in support of ENDA at both ends of the capitol. In fact, the Senate ENDA hearing was the first time Tom testified as head of the Civil Rights Division.

During his testimony, he emphasized that the very same arguments being made against ENDA today were made in an earlier era in opposition to the Civil Rights Act of 1964. Many a Dixiecrat decried passage of the Civil Rights Act, warning that it would make American businesses unable to function and would surely transform America into a socialist nation.

At the hearing, Senator Al Franken noted that for his kids, being gay or lesbian is about as interesting as being left-handed. To that Tom quickly replied, "I'm ambidextrous," to which Franken responded, "I'm not touching that." He hoped that employment discrimination against LGBT individuals would largely become a relic of the past.

Tom testified that the Administration supports an inclusive ENDA, and since the Senate hearing, we have been providing technical assistance to the Congress as the bill moves through the legislative process towards passage, and remain committed to doing what we can in the department to make sure that it happens.

That is a snapshot of what's going on in the Civil Rights Division, and while we are the leading civil rights enforcement agency within the federal government, our work to advance LGBT equality represents only a fraction of the activities and accomplishments of this Administration to further LGBT rights.

In the 13 months since President Obama took office, there has been extensive activity within the Administration to promote civil rights for all Americans, including LGBT Americans, and to include LGBT individuals in every facet of this Administration's work. I understand that for some of you, the steps we have taken haven't been big enough, far enough or fast enough. As President Obama said at the Human Rights Campaign dinner, he understands your impatience, but "do not doubt the direction we are headed." While these steps haven't necessarily made the front page, each of them represents progress – breaking down barriers big and small, and moving us in the direction of greater equality.

Here are a few examples of what President Obama – and our Administration – have done to further LGBT equality:

- He reversed an inexcusable U.S. position by signing the UN Declaration on Sexual Orientation and Gender Identity.
- He extended various benefits to the same-sex partners of federal employees and the State Department issued diplomatic passports, and provided other benefits, to the partners of same-sex foreign service employees
- He endorsed, and the Administration's top LGBT official, John Berry, testified in support of The Domestic Partnership Benefits and Obligations Act of 2009, to provide full partnership benefits to federal employees.
- He has called for the legislative repeal of the Defense of Marriage Act and the Justice Department, in fulfilling its responsibility to enforce the laws passed by Congress when there are reasonable arguments that can be made in support of their constitutionality, has rejected any justifications for this discriminatory law that are based on the fitness of gay men and lesbians to be good parents.
- He signed the Ryan White HIV/AIDS Treatment Extension Act.
- He lifted the HIV Entry Ban effective January 2010.
- He released the first Presidential PRIDE proclamation since 2000 and hosted the first LGBT Pride Month Celebration in White House history.
- He awarded the Presidential Medal of Freedom to Harvey Milk and Billie Jean King.
- He has hired and appointed a record number of qualified LGBT Americans, including more than 10 Senate-confirmed appointments, including David Huebner as the Ambassador to New Zealand, chai feldblum to be a Commissioner on the equal employment opportunity commission, and just yesterday, Laura Duffy to become the U.S. Attorney in San Diego.
- HUD committed to ensuring that its core housing programs are open to all, regardless of sexual orientation or gender identity, and the agency is undertaking a comprehensive study of housing discrimination against LGBT individuals.
- HHS committed to establish a National Resource Center for Lesbian, Gay, Bisexual and Transgender seniors – the nation's first ever – and issued a \$900,000 grant to SAGE, an organization that focuses on the needs of LGBT seniors.
- The Bureau of the Census eliminated the discriminatory Census Bureau policy that kept our relationships from being counted.
- And President Obama has spoken out in support of LGBT rights and against discrimination before all kinds of audiences – receptive ones, like the thousands of LGBT individuals and their straight allies who came together in Washington at the HRC national dinner – and not so receptive ones, like the recent National Prayer Breakfast. There, President Obama said, "We may disagree about gay marriage, but surely we can agree that it is unconscionable to target gays and lesbians for who they are – whether it's here in the United States or . . . more extremely in odious laws that are being proposed most recently in Uganda."
- Finally, in his first State of the Union address, he repeated his commitment to sign into law a repeal of "Don't Ask, Don't Tell"

For me, the hearing earlier this month in the Senate Armed Services Committee on ending the policy embodied the enormous difference an election makes. I will never forget Admiral Mullen, the Chairman of the Joint Chiefs of Staff powerful and historic statement:

No matter how I look at this issue, I cannot escape being troubled by the fact that we have in place a policy which forces young men and women to lie about who they are in order to defend their fellow citizens.

He later tweeted, "Stand by what I said: Allowing homosexuals to serve openly is the right thing to do. Comes down to integrity."

I'd like to close by quoting President Obama from the LGBT Pride reception held last June at the White House. At the time, I had only just learned that I would be working on LGBT issues in the Administration. He said:

The truth is when these folks protested at Stonewall 40 years ago no one could have imagined that you – or, for that matter, I would be standing here today. So we are all witnesses to monumental changes in this country. That should give us hope, but we cannot rest. We must continue to do our part to make progress – step by step, law by law, mind by changing mind. And I want you to know that in this task I will not only be your friend, I will continue to be an ally and a champion and a President who fights with you and for you.

These words have motivated me to forge ahead and work to overcome challenges and build on successes. There is a tremendous amount of work to be done to further LGBT rights and civil rights more broadly, and we cannot do that work alone. We need your engagement, your help and your active support during the months and years ahead to make the promise of equality a reality for our community and for all Americans.

Thank you again for the opportunity to join you here tonight and best of luck to BALIF during the next 30 years.