

**Remarks of Matt Nosanchuk,
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Good Morning. Thank you for the introduction. Thank you to the Texas Bar – and especially to Eduardo Juarez and Teresa Cain – for inviting me to speak to you today. I am honored to appear before you to discuss the efforts underway in the Obama Administration – and in particular at the Justice Department – to advance LGBT equality.

I am fortunate to be able to work in this Administration on 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. What better place, moreover, to work on these issues than the Civil Rights Division of the Department of Justice.

As we were getting settled into our offices in the Robert F. Kennedy Main Justice building – the Division occupies some historic space – our conference room used to be FBI Director J. Edgar Hoover’s office – there were articles appearing in newspapers asking the question, “Do we even need a Civil Rights Division?” With an African-American President, a Latina Supreme Court Justice, and a female Speaker of the House – has the Civil Rights Division outlived its utility?

Unfortunately, for some pundits, this is more than a rhetorical question. Fortunately, that isn’t the case in the Obama Administration. Attorney General Eric Holder calls the Civil Rights Division the crown jewel of the Justice Department. And in his first-ever State of the Union address, President Obama even singled out the Civil Rights Division – among all the subcabinet agencies – for a shout-out, noting for the tens of 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 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. We are using all the arrows in our quiver. This includes using our authority to bring pattern and practice cases like our challenge to the New York City firefighters’ longstanding exclusion of minorities through discriminatory hiring practices that prompted a judge to find that they established violations under both disparate impact and disparate treatment theories.

And it includes our extensive efforts to fulfill the promise of the Supreme Court's *Olmstead* decision – which has been called the *Brown v. Board of Education* for the disability rights movement, and requires persons with disabilities to be placed into integrated, appropriate settings in their communities to prevent them from being warehoused and marginalized, which is why we have brought or joined *Olmstead* challenges throughout the country, like in Georgia, where the treatment of persons with intellectual disabilities was so bad that one resident died from constipation, which was a side effect of medications she was taking. Her complaints of pain went unheeded. An autopsy found that her colon had been stretched to the point of bursting, and an investigation found that her condition could have been detected through more careful medical care.

And we are reinvigorating our voting rights work, enforcing Section 2 of the Voting Rights Act, and the NVRA to ensure that jurisdictions make voter registration available in social service agencies.

In the restored Civil Rights Division, dedicated, long-serving career attorneys 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.

We also are transforming the Division to address the pressing civil rights issues of the 21st century. This includes addressing discrimination in lending that has caused minorities to be especially impacted by mortgage fraud and predatory lending. It includes addressing the applicability of the Fair Housing Act and the Americans with Disabilities act in the age of Craigslist and the Kindle.

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. For those of you who are still in law school or know law students or 2010 graduates who are going into clerkships, the Honors program hiring process opens this summer. And we are may have additional positions to fill in the near future. So if you are interested, 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.

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 an eight-year hibernation, the Division's GLBT Working Group was reestablished. The Working Group was founded during the Clinton

Administration 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.

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 from upstate new york who was harassed because he fails to conform to gender stereotypes in both behavior and appearance. The school district knew about the harassment but didn't stop it.

This failure to act to ensure that that this gay teen could go to school without fear of being beaten up is both unacceptable and unlawful. 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 and harassed by their peers. In this case, *J.L. v. Mohawk County*, the New York Civil Liberties Union brought a lawsuit, and we used our authority under Title IX to intervene and now are part of a settlement under which the school district will adopt policies and incorporate training provided by the Anti-Defamation League that ensure that the next time a gay or transgender teen is bullied, the school district puts a stop to it.

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.

Using our existing authority to prosecute law enforcement "color of law" cases, we recently prosecuted a case involving a transgender woman who was arrested for walking the streets and alleged she was severely beaten in the booking facility by one of the arresting officers.

And in the category of using our existing authorities to protect LGBT civil rights, there is the new federal hate crimes law. The Civil Rights Division has had the responsibility to prosecute federal hate crimes cases for decades. And while we continue to prosecute hate crimes cases involving race, national origin and religion, we now have expanded authority to pursue hate crimes committed on the basis of sexual orientation and gender identity, as well as disability and gender, under the Matthew Shepard and James Byrd, Jr. Hate Crime Prevention act.

Passage of the Shepard-Byrd Law was a long time in the making – 14 years in fact. 14 years. Tom Perez talks of being a staffer to the late Senator Edward Kennedy back then, and he helped the Senator to draft the very first version of this landmark civil rights legislation.

From the beginning of the Administration, passage of the new hate crimes law was a top civil rights legislative priority. 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. Congress had passed the law before, but President Bush threatened to veto it. Not President Obama. He called repeatedly on Congress to send him a hate crimes bill and pledged to sign it. And sign it he did – on October 28, 2009. A White House reception to celebrate the passage of the Matthew Shepard, James Byrd Jr. Hate Crimes Prevention Act, featured the President and Dennis and Judy Shepard, Matthew's parents. For them, 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 Matthew.

I met the Shepards that day. They were tireless and compelling advocates for the law that bears their son's name. To give you an idea of what I am talking about, Judy sent me Dennis's statement that he delivered in court at the sentencing of Aaron McKinney, one of the two men responsible for Matthew's murder.

“Matt's beating, hospitalization, and funeral focused worldwide attention on hate. Good is coming out of evil. People have said ‘Enough is enough.’ You screwed up, Mr. McKinney. You made the world realize that a person's lifestyle is not a reason for discrimination, intolerance, persecution, and violence. This is not the 1920s, 30s, and 40s of Nazi Germany. My son died because of your ignorance and intolerance. I can't bring him back. But I can do my best to see that this never, ever happens to another person or another family again. As I mentioned earlier, my son has become a symbol—a symbol against hate and people like you; a symbol for encouraging respect for individuality; for appreciating that someone is different; for tolerance....

Dennis goes on to recount how Matthew believed that the killers of James Byrd, Jr., which happened here in Texas – in the town of Jasper – should receive the death penalty. But as some of you may recall, the Shepards made the difficult decision not to seek the death penalty against Matthew's murderer. I'll let Dennis's own compelling words speak for themselves, but they reflect the spirit of the law that bears Matthew's and James Byrd's name:

“Mr. McKinney, I'm going to grant you life, as hard as that is for me to do, because of Matthew. Every time you celebrate Christmas, a birthday, or the Fourth of July,

remember that Matt isn't. Every time that you wake up in that prison cell, remember that you had the opportunity and the ability to stop your actions that night. Every time that you see your cell mate, remember that you had a choice, and now you are living that choice. You robbed me of something very precious, and I will never forgive you for that. Mr. McKinney, I give you life in the memory of one who no longer lives. May you have a long life, and may you thank Matthew every day for it."

Now, we are working closely with Dennis and Judy Shepard in our efforts to implement that new law. As I noted, The responsibility to enforce the Matthew Shepard, James Byrd, Jr. 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 – and community stakeholders – especially in the LGBT and disability communities – about the law's new provisions. We have held training meetings and conferences in LA, Seattle, Atlanta (where we had more than 310 Georgia law enforcement and community representatives in attendance), South Carolina, and, earlier this week in Boston. At several of the conferences, Dennis and Judy Shepard, and Dave O'Malley, the police chief in Laramie, Wyoming who oversaw the investigation into Matthew's murder, are participating, providing attendees with a powerful and inspiring message. When I last saw Judy she was wearing this wristband, from the Matthew Shepard Foundation. It reads "erase hate". It reminds me every day about the importance of the work we do.

The Boston meeting this week had more than 150 attendees and took place at the FBI's headquarters in downtown Boston. Everyone there was struck by the fact that here we were in FBI headquarters, facilitating a discussion that involved about a half-dozen transgender person, and several openly gay police officers from New England. This doesn't happen every day – in fact this may be the first time it ever has happened – at the FBI's offices.

We have upcoming meetings in New York, Omaha, Little Rock, and Indianapolis, and we will continue planning and holding these training conferences throughout the nation. The ink had barely dried on the Shepard-Byrd Act before we were sued by the Thomas More Law Center, in *Glenn v. Holder*, a constitutional challenge to the law by several pastors.

The big picture argument is that the Act violates the plaintiffs' freedom of speech because it will prevent their criticism of "the homosexual lifestyle" the "homosexual agenda" and "homosexual acts," and it gives lesbians and gay men "special rights."

According to the Statement of Facts, homosexual acts are ones of "grave depravity that are intrinsically disordered." It further alleges that such acts "do not proceed from a genuine affective and sexual complementarity." And yes, "Complementarity" is a word.

Our brief moves to dismiss on multiple grounds, including standing, ripeness and failure to state a claim under the First, Fifth or Tenth Amendments. Our defense in this case is a reminder of the importance of the Department's longstanding bi-partisan tradition of defending duly enacted statutes under our obligation to take care that the laws are faithfully executed. We wouldn't want another Justice Department in another administration declining to defend this statute because they happen to disagree with it as a matter of policy.

Finally, not only is this law important as a measure to combat hate and promote tolerance, it also is the first time that the words, "sexual orientation and gender identity" appear in the U.S. Code to protect us, and hopefully it won't be the last.

In addition to defending our existing authorities, we also are seeking passage of new ones. At the top of that list is passage of an inclusive Employment Non-Discrimination Act (ENDA). 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. Back then, opponents of that legislation 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.

Since the Senate hearing, we have been providing technical assistance to the Congress as the bill moves through the legislative process, and remain committed to doing what we can in the Department to support this important legislation.

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 not all of 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 just a few examples of what President Obama and this Administration have done to further LGBT equality:

- As reported yesterday, the Justice Department's Office of Legal Counsel recently opined that the criminal prohibitions contained in the Violence Against Women Act extend to protect the victims of such abuse in same-sex relationships.
- Following the President's directive, the Office of Personnel Management has extended various benefits to the same-sex partners to the extent permitted under law of federal employees and the State Department issued diplomatic passports, and provided other benefits, to the partners of same-sex foreign service employees
- The Administration's top LGBT official, John Berry, testified in strong support of The Domestic Partnership Benefits and Obligations Act, to provide full partnership benefits to federal employees.
- President Obama has called the Defense of Marriage Act discriminatory and supports the law's repeal, and the Justice Department, in upholding the tradition of enforcing 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.
- The President lifted the HIV Entry Ban effective January 2010.
- He has released the first Presidential PRIDE proclamations 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 three U.S. Attorneys, Laura Duffy, Jenny Durkan and Anne Tompkins, to name a few. And he recently nominated Ed Dumont to become a judge on the federal circuit.
- HUD issued an order directing that its funding 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.

- He directed HHS to provide hospital visitation rights to same-sex couples at federally-funded health care facilities.
- 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 finally, the President has committed to the repeal of Don't Ask, Don't Tell, and sent the Chairman of the Joint Chiefs of Staff and the Secretary of Defense up to Capitol to offer powerful and compelling testimony in support of repeal.

I'd like to close by quoting President Obama from the LGBT Pride reception held last June at the White House. His words are a testament to what Tom Perez noted about Senator Ted Kennedy's commitment to civil rights. Through his words and actions, Senator Kennedy recognized what is essential in long march toward Equality – persistence.

At the time President Obama said the following, 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 during this Administration, 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 today.