

Executive Summary

1. The founding documents of the United States speak of equality and inalienable rights, and in that spirit, the United States proudly contributed to the founding of the United Nations and the birth of the modern human rights movement. However, lesbian, gay, bisexual, and transgender (LGBT) Americans remain decidedly second-class citizens in the United States in 2010. Deprived of basic Constitutional protections at the federal level and denied essential family recognition in most state and local jurisdictions, LGBT Americans are still waiting for the long arc of the moral universe to bend toward justice, as it has for other historically disadvantaged communities in the long struggle for fully equal civil rights in the United States. Although several crucial pieces of LGBT equality legislation are winding their way slowly through the U.S. Congress, discrimination, violence, and disrespect remain daily realities for far too many citizens.
2. The struggles depicted in this narrative reflect basic human aspirations to be free from violence and fear, to have an equal chance for employment based on merit that can contribute to the economic life of the country, and to protect and provide for one's family. These are basic to the promises of life, liberty, and the pursuit of happiness that undergird the United States' founding.
3. We are proud that our country has announced its commitment to the UN General Assembly Statement on Human Rights, Sexual Orientation and Gender Identity, but it must also ensure that those same protections are afforded to LGBT Americans in this country. It is time for the United States to adopt legislation that will give full human rights to all LGBT Americans, while simultaneously standing squarely for human rights protections on the world stage.
4. Based on U.S. obligations under the International Covenant on Civil and Political Rights (ICCPR), as well as other international human rights mechanisms that the U.S. has ratified, the United States should move with alacrity to provide remedies that address the following human rights concerns in the United States.
 - Hate crimes based on sexual orientation and gender identity must be actively deterred. Those that occur must be prosecuted with the full force of the law and with a conviction that reflects the harm that such crimes impose not just on a victim but on an entire community. State and local jurisdictions must continue to pass laws to protect victims from hate crimes, as well as report hate crimes to federal authorities.
 - Private and governmental employers in the United States must be prohibited in law from discriminating against individuals because of their sexual orientation or gender identity. This protection should apply to hiring and firing, training and promotion, and employee benefits.
 - LGBT individuals must be allowed to form secure and stable families in the United States.

Information on NGO

5. The Council for Global Equality is a coalition of 19 U.S.-based organizations that together encourages a clearer and stronger U.S. voice on international lesbian, gay, bisexual, and transgender (LGBT) human rights concerns. Its member organizations are American Jewish World Service, Amnesty International- USA, Anti-Defamation League, Center for American Progress, Gay and Lesbian Leadership Institute, Global Rights, Heartland Alliance, Human

Rights Campaign, Human Rights First, Human Rights Watch, Immigration Equality, International Gay & Lesbian Human Rights Commission, Metropolitan Community Church, National Center for Lesbian Rights, National Center for Transgender Equality, National Gay & Lesbian Chamber of Commerce, National Gay & Lesbian Task Force, Open Society Institute, and Out & Equal Workplace Advocates. The Council for Global Equality is a fiscally sponsored project of Public Interest Projects, based in New York.

Hate Crimes

“The impact of human rights abuses goes beyond the loss of human life.... Human rights abuses are wounds on our collective sense of purpose and harmony. Only by addressing their root causes –through government and community action—can we hope to build a future in which, even if our own wounds are not completely healed, wounds such as ours are much more rare.”

Testimony of Sylvia Guerrero at the UPR Listening Session in San Francisco, March 26, 2010. Sylvia’s daughter, Gwen Araujo, was brutally murdered in 2002 at the age of 17 in Newark, CA for being transgender.

6. Bias-motivated hate crimes against LGBT Americans represent concerns under Articles 6 and 9 of the ICCPR. In particular, the ICCPR requires the United States to take appropriate measures to prohibit acts of violence or bodily harm, whether inflicted by government officials or by any individual or group, and to guarantee the security of the person for everyone, regardless of sexual orientation or gender identity.
7. In 2006, during a review of our nation’s compliance with the ICCPR by the UN Human Rights Committee, the Committee noted that the United States “should ensure that its hate crime legislation, both at the federal and state levels, address sexual orientation-related violence.” Fortunately, the United States has made substantial progress in achieving federal-level protection, although a number of states still refuse to adopt state-level protections.
8. Hate crimes occur when a perpetrator of a crime intentionally selects a victim based on a bias-based motivation against a protected group. These crimes may be motivated by the victim’s actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. Such crimes are generally motivated by extreme prejudice and often visceral animus toward the protected group to which the perpetrator assumes the victim belongs. As such, a hate crime affects not only the victim and his or her family but an entire community or category of people and their families. The LGBT community, both in the United States and abroad, historically has been victimized by these types of bias-motivated crimes.
9. The Federal Bureau of Investigation (FBI) produces an annual report on hate crimes statistics within the United States. At the end of 2009, it released its report on hate crimes committed in 2008. This report – a compilation of the hate crimes that states, cities, towns, colleges, and universities have reported to the federal government – revealed that hate crimes are at their highest reported level in America since 2001, with a total of 7,783 crimes reported.
10. According to the report, hate crimes based on an individual’s sexual orientation have increased every year since 2005. (The FBI was not required to collect statistics on hate crimes

based on gender identity until 2009). FBI statistics report that there was an 11% increase in victims of hate crimes based on sexual orientation from 2007 to 2008. In all, 1,617 offenses against lesbian and gay victims were reported to the FBI in 2008.

11. Clearly, FBI statistics only represent a sample of the actual number of hate crimes that occurred in 2008. By way of example, the National Coalition of Anti-Violence Programs, a non-profit organization that tracks bias incidents against lesbian, gay, bisexual and transgender people, reported 1,677 incidents for 2008 in only four states and 10 cities, which starkly contrasts with the 1,617 reported to the Federal Bureau of Investigation in 2008 by 13,690 local and state agencies. This discrepancy reflects the fact that many victims do not report their victimization to authorities. In addition, state and local authorities are not required to report hate crimes to the FBI as participation in the federal statistics program is voluntary. Thus, countless incidents are not represented in the FBI's annual hate crimes statistics report.
12. Of the 1,617 offenses against lesbian and gay victims reported to the FBI in 2008, there were five murders, six rapes, 733 assaults, and 50 robberies. Seven bias-motivated murders were reported to the FBI in 2008, and five of those murdered victims were murdered because of their sexual orientation. This is just one of many pieces of evidence demonstrating that the LGBT community is often subjected to the most gruesome and violent of bias-motivated crimes.

The Matthew Shepard and James Byrd, Jr. Act

13. After 12 years winding through the legislative process, the U.S. Congress passed the first federal law protecting LGBT individuals from bias-motivated crimes in 2009 – the Matthew Shepard and James Byrd, Jr. Hate Crimes Protection Act (HCPA). This legislation was quickly signed into law by President Obama, making it the first federal law in the U.S. to protect LGBT individuals.
14. The HCPA gives the federal government power to investigate and prosecute bias-motivated violence where a perpetrator selects a victim because of the victim's actual or perceived sexual orientation or gender identity, as well as other characteristics. It also provides federal funding opportunities for local law enforcement agencies to help them investigate and prosecute these crimes, since the nature of the crime may require additional forensic attention that can stretch state and local budgets. Furthermore, the HCPA requires the Federal Bureau of Investigation to track statistics on hate crimes based on gender identity (statistics for sexual orientation were already tracked). The HCPA also requires that the Attorney General's annual summary of the data acquired under the Hate Crimes Statistics Act include a report on hate crimes committed by, and hate crimes directed against, juveniles.

Opportunities Better to Address Hate Crime Problems

15. **Implement the HCPA.** In order for the HCPA to have its intended effect, the law must be effectively implemented by the federal government. This requires the federal government to train federal and state investigators and prosecutors on the new authority provided under the law, and about the concomitant availability of new resources to address hate violence. In addition, it requires the federal government to begin collecting statistics on hate crimes based on gender identity.
16. **Expand State Hate Crimes Laws.** Despite the HCPA, states governments need to continue to pass laws that protect LGBT individuals from hate crimes. The HCPA only protects LGBT victims from violent crimes where the federal government has jurisdiction over the underlying

criminal act, regardless of the bias motivation. Since most crimes in the U.S. are still prosecuted at the state level, LGBT victims remain particularly vulnerable to hate crimes in the 38 states that do not provide protections for individuals based on gender identity, and in the 29 states that do not provide protections for individuals based on sexual orientation. Passage of state level HCPAs allows states to prosecute hate crimes without a federal nexus and in many instances crimes against property.

17. **Improve Statistics Collection.** In addition, the United States must improve hate crimes reporting. Since the enactment of the 1990 Hate Crime Statistics Act (HCSA), the FBI hate crimes statistics report has sparked improvements in hate crime response – since in order to effectively report hate crimes, police officials must be trained to identify and respond to them. The FBI report is now the most authoritative snapshot of hate violence in America – though clearly incomplete, with thousands of police agencies reporting no hate crime data at all.
18. As in past years, the vast majority of participating agencies (84.4%) reported that zero hate crimes occurred in their jurisdictions. This does not mean that they did not report hate crimes; it means that they affirmatively reported to the FBI that there were no hate crimes in their jurisdiction. This is difficult to believe.
19. In addition, thousands of police agencies across the nation did not provide statistics at all – including at least five agencies in cities with populations over 250,000 and at least 11 agencies in cities with populations between 100,000 and 250,000. Because participation is not mandatory and some agencies fail to report, the report fails to cover almost 40 million people.
20. While FBI statistics provide a snapshot of hate crimes in the United States, local and state law enforcement authorities should be required to provide accurate data to the FBI in order to assess with greater accuracy where the federal government can best target its resources to address hate crimes in America.
21. **Institute Federal Education and Prevention Initiatives.** The government must complement tough laws and more vigorous enforcement – which can deter and address violence motivated by bigotry – with education and training initiatives designed to reduce prejudice. The federal government has an essential role to play in helping law enforcement, communities, and schools implement effective hate crimes prevention programs and activities. Education and exposure are the cornerstones of a long-term solution to prejudice, discrimination, and bigotry against all communities. A federal anti-bias education effort would exemplify a proactive commitment to challenging prejudice, stereotyping, and all forms of discrimination that affect the whole community.

Employment Discrimination

22. The principle of non-discrimination, as enshrined in Articles 2(1) and 26 of the ICCPR, provides a substantial level of protection for lesbian, gay, bisexual and transgender persons under the jurisprudence of the ICCPR. The Human Rights Committee has upheld this basic premise since its 1992 decision in the case of *Toonen v. Australia*, when it found that the criminalization of private sexual activity between consenting, same-sex adults violated articles 2(1), 17 and 26 of the ICCPR. The U.S. Supreme Court, in the 2003 case of *Lawrence v. Texas*, also found that such laws violate the right to liberty under the Due Process Clause of the U.S. Constitution, but the U.S. Supreme Court's jurisprudence has not developed significantly beyond the right to live free from criminal sanction. So while human rights law has by now firmly extended the ICCPR's non-discrimination provisions to other areas of daily

life, including education and employment, the U.S. Supreme Court's jurisprudence has not developed as robustly, and LGBT Americans can still be discriminated against in the workplace – including in hiring, firing, and workplace-related benefits – simply because of their sexual orientation or gender identity in a majority of states in the United States.

23. In 2006, during a review of our nation's compliance with the ICCPR by the UN Human Rights Committee, the Committee's concluding observation "notes with concern the failure of the U.S. to outlaw employment discrimination on the basis of sexual orientation in many states." The Committee called on the United States to "acknowledge its legal obligation under articles 2 and 26 to ensure to everyone the rights recognized by the Covenant, as well as equality before the law and equal protection of the law, without discrimination on the basis of sexual orientation." It also specifically asked the United States to ensure that "federal and state employment legislation outlaw discrimination on the basis of sexual orientation."
24. Unfortunately, qualified, hardworking Americans are still denied job opportunities, fired or otherwise discriminated against just because they are LGBT. There is no federal law that consistently protects LGBT individuals from employment discrimination. It remains legal in 29 states to discriminate in employment based on sexual orientation, and in 38 states to do so based on gender identity or expression. As a result, LGBT people face serious discrimination both in the job market and within the workplace.
25. Such discrimination is not only legal in the private sector, but it is also legal for many state and local governments. For example, according to her testimony before the U.S. Senate Health, Education, Labor and Pensions Committee on September 23, 2009, Ms. Vandy Beth Glenn was fired in 2007 from her job working for the General Assembly in Georgia because of her gender identity. Glenn, who served in the U.S. Navy as a lieutenant, had been hired by the Georgia General Assembly in 2005 as an editor in the Office of Legislative Counsel, where she edited bills and resolutions during the annual legislative session. At that time, Glenn was still living as a man – despite having understood since childhood that her gender identity was female. In the fall of 2007, after she had told her friends and family that she was transgender, she was ready to come to work as female. When she told her supervisor that she would be transitioning, her immediate boss called her into his office and told her that her decision was immoral and inappropriate and that she was fired. In her testimony before the Committee, Glenn emphasized:

"My editorial skill had not changed. My work ethic had not changed – I was still ready and willing to burn the midnight oil with my colleagues, making sure that every bill was letter-perfect. My commitment to the General Assembly, to its leaders, and to Mr. Brumby [her boss] had not faltered. The only thing that changed was my gender—and because of that, the legislature I'd worked so hard for no longer had any use for my skills. I was devastated."

26. The State of Georgia fired Glenn because of her gender identity, and there is no law that explicitly protects Glenn from being fired for that reason.

Employment Discrimination in the Armed Forces

27. Moreover, the U.S. Armed Forces, which is the largest employer in the United States, statutorily discriminates against lesbian and gay individuals. The U.S. Code currently prohibits lesbians and gays from serving openly in the U.S. Armed Forces. This law, commonly referred to as "Don't Ask, Don't Tell" (DADT), is the only law in the country that

requires people to be dishonest about their personal lives or face the possibility of being fired. Since DADT was enacted in 1993, over 13,500 lesbian and gay service members have been discharged from the armed forces because their sexual orientation was exposed against their will or because they were open and honest about their sexual orientation.

28. Mike Almy serves as an example of the many individuals discharged from the armed forces under DADT. Almy joined the U.S. Air Force in 1993. He served a total of thirteen years on active duty as a communications officer before he was discharged under DADT in 2006. During his career in the Air Force, Almy was stationed in both the United States and Germany. He was deployed to the Middle East four times during his career, supporting Operation Desert Fox, Operation Southern Watch and Operation Iraqi Freedom. As a service member, Almy was awarded the Joint Commendation Medal, the Air Force Commendation Medal and the Humanitarian Service Medal. He was also named Officer of the Quarter and Officer of the Year several times throughout his career. In 2005 he was named the top communications officer for the Air Force in Europe, and in 2006 he was recommended for promotion to Lieutenant Colonel. Despite these accomplishments, Almy was discharged from the Air Force because of his sexual orientation.
29. During his time in Iraq, the Air Force restricted service members from accessing private email accounts. As such, service members were authorized to use work email accounts for personal or morale purposes. Shortly after Almy left Iraq, someone in the unit that replaced Almy's unit did a routine search of computer files and found Almy's personal emails, which were written from a combat zone to family and friends, including a person he had dated. Because Almy is gay, and his emails documented this, Almy was discharged from the Air Force – losing his career and his access to certain benefits.

“Don't Ask Don't Tell failed me despite the fact that I lived up to the premises of this law and never disclosed my private life.” Lieutenant Colonel Mike Almy

Solutions

30. Employment discrimination by the private sector, by state and local governments, and by the U.S. Armed Forces could become a relic of the past if the U.S. Congress were to pass legislation that is pending in the U.S. House of Representatives and Senate.
31. **ENDA.** The Employment Non-Discrimination Act (ENDA) would provide basic protections against workplace discrimination on the basis of sexual orientation and gender identity. ENDA, which would apply to both the public and private sectors, simply provides all Americans with basic employment protection from discrimination based on irrational prejudice.
32. **MREA.** The Military Readiness Enhancement Act (MREA) would end DADT, replacing it with a law preventing discrimination on the basis of sexual orientation. The legislation permits the U.S. Armed Forces to prescribe and enforce conduct regulations as long as they are designed and applied without regard to sexual orientation. MREA also permits those discharged because of their sexual orientation under previous laws and policies to seek to re-enter the military without consideration of their previous separation.

Family Recognition

33. Article 23 of the ICCPR recognizes that the “family is the natural and fundamental group unit of society and is entitled to protection by society and the state.” The UN Human Rights Committee has not established a fundamental right to same-sex marriage under the ICCPR, but evolving standards of human rights law now recognize that everyone has a right to form a family, and that no family may be subjected to discrimination on the basis of sexual orientation or gender identity. This means that same-sex partners must be provided with equal rights and responsibilities, including rights to family-related social welfare and other public benefits, employment and immigration.

Immigration

“I have a partner who is a U.S. citizen, and two beautiful children who are also U.S. citizens. But none of them can petition for me to remain in the United States with them. Because my partner is not a man, she cannot do anything to help me. I am very lucky Senator Dianne Feinstein sponsored a private bill for me. Because of Senator Feinstein’s efforts my deportation has been temporarily delayed until 2011.”

From Shirley Tan’s testimony at the UPR Listening Session in San Francisco, March 26, 2010.

34. Although the concept of family unification is central to the American immigration system, accounting for roughly 65% of all legal immigration,¹ lesbian and gay families are completely excluded from this system. Under the U.S. Immigration and Nationality Act, U.S. citizens and legal permanent residents may sponsor their spouses (and other immediate family members) for immigration purposes. But same-sex partners of U.S. citizens and permanent residents are not considered “spouses,” and their partners cannot sponsor them for family-based immigration.
35. In many cases this leaves many Americans with the untenable choice of giving up a life partner or giving up one’s country. Many of these couples are forced to leave family and friends, sell businesses, and abandon the community and country they love in order to keep their families together. An analysis of data from the 2000 Decennial Census estimated that approximately 36,000 same-sex binational couples live in the United States, approximately 46% of whom are raising children.² Behind each of these statistics lies a family who struggles every day for the basic right to be together.
36. For example, in January 2009, Shirley Tan, the life partner of U.S. citizen Jaylyn Mercado, and stay-at-home mother to their twin sons, then aged twelve, was arrested at her home and taken into detention by agents of Immigration and Customs Enforcement because she had a removal order against her which her attorney had never informed her was final. Shirley has been in the United States for over twenty years; is the primary caretaker for Jaylyn’s elderly mother as well as the twins; and is a pillar of her community, acting as a Eucharistic minister

¹ Department of Homeland Security, Annual Flow Report, March 2009, Table 2, at 3 http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2008.pdf.

² *Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples Under U.S. Law*, joint report by Human Rights Watch and Immigration Equality, 2006, at 17 and 176, available at <http://www.hrw.org/en/reports/2006/05/01/family-unvalued>.

in her church and singing in the church choir. However, under U.S. immigration law, Jaylyn is not considered Shirley's family and so she has no ability to sponsor her for immigration benefits. The family was unusually fortunate that a U.S. Senator intervened to stay deportation for two years, but without a lasting solution, the stay will only delay Shirley's inevitable deportation.

Solution

37. The Uniting American Families Act (UAFAs), a bill currently pending in the U.S. Congress, would remedy this injustice and allow U.S. citizens and permanent residents to sponsor their same-sex partners for family-based immigration. As with any opposite-sex married couple, under UAFAs permanent partners would need to prove that they are in a long-term committed relationship and that they are financially interdependent. Passage of this bill would keep thousands of families from living with daily uncertainty about their future.

Relationship Recognition

“My partner Tom has worked for the federal government for 20 years, we have been together 11 years, and we have two adopted children. And even with that very typical American family, I am still denied medical benefits because the federal government does not recognize our relationship. To compound that, I am HIV positive, so I am denied coverage because of my pre-existing conditions if I do not have full time employment. The necessity for me to have full time employment has forced me to take jobs that I wouldn’t have...I would have chosen to stay home to take care of our children.”

From Henry Pacheco's testimony at the UPR Listening Session in San Francisco, March 26, 2010.

Family Recognition

38. Children with LGBT parents often do not have a legal relationship to at least one of their parents. As a result, they can be denied social security benefits or can be separated from their non-biological parent if their parents separate or their biological parent dies. LGBT parents who are not legal parents may not be able to consent to medical care for the child or even have the authority to approve things like school field trips, and may have no ability to claim the child as a dependent for health insurance. In the absence of a will stating otherwise, a child generally has no right to inherit from a person who is not a legal parent or relative.
39. Many states allow second-parent adoption, which allows a co-parent to adopt his or her partner's biological child without terminating the rights of the biological parent. Sixteen states have a statute or appellate decision allowing second-parent adoption, a process that allows both parents in a same-sex couple to be legally recognized as parents. At least 15 additional states have allowed second-parent adoptions by same-sex couples in certain counties. However, 8 states have restrictions limiting or prohibiting lesbians and gay men from adopting jointly, and one state even prohibits adoption by lesbian or gay individuals. Some states allow same-sex parents to obtain a parentage judgment recognizing their parental rights.
40. Even where parents have been able to protect their parental rights through an adoption or parentage judgment, some states have refused to recognize such judgments from other states. Under the Full Faith and Credit Clause of the U.S. Constitution, all states are required to

recognize judgments from other states, but in practice, many states have refused to recognize adoptions granted to same-sex couples. For example, a Florida judge refused to recognize a second-parent adoption completed in Washington by a same-sex couple after the couple moved to Florida and broke up. A Florida Court of Appeal held that Florida must recognize this adoption, but the adoptive mother was separated from her child for years while this case was pending.

Solution

41. All states should provide legal recognition to LGBT families by providing joint adoptions to same-sex couples and second parent adoptions to a non-biological parent who has functioned as a child's parent. In addition, states should recognize all the adoptions and parentage judgments issued by other states. The federal government should also provide child-based benefits to children of de facto parents. The federal government should also revise rules for children born abroad to same-sex parents to allow children born abroad to have U.S. citizenship through their non-biological parents.

Relationship Recognition

42. Only 14 states and the District of Columbia provide any form of relationship recognition for same-sex couples (through marriage, civil unions, domestic partnerships, or a similar status), and in 6 of these states, benefits are substantially limited. The remaining 32 states treat same-sex couples as legal strangers. While couples can obtain some degree of protection through private agreements, such agreements cannot confer most of the rights and protections that are provided through marriage or other forms of official relationship recognition. Moreover, even when same-sex couples execute these agreements, they often are not respected. For example, in 2010, a Florida hospital refused to allow Janice Langbehn and her children to visit her partner of 18 years, Lisa Pond, even though the partner had executed an advanced directive and power of attorney naming Janice. Lisa passed away after collapsing with an aneurysm while her family was kept in a waiting room.
43. In addition, in California, voters used the initiative amendment process to enact a state constitutional amendment stripping same-sex couples of a previously established right to marry. A challenge to this measure is currently pending in federal court.
44. Even if a same-sex couple lives in one of the states that recognize their marriage, civil union, or domestic partnership, the couple is denied the numerous federal protections provided to married couples. In 2004, the U.S. General Accounting Office identified 1,138 federal rights and responsibilities that turn on marital status.³ These include federal tax benefits, the ability to sponsor same-sex partners in family-based immigration, spousal benefits for federal employees, and marital protections in federal benefit programs. For example, when one spouse receives Medicaid coverage for nursing home care, a same-sex spouse who is not institutionalized could end up losing the couple's home because federal Medicaid spousal protections do not apply to same-sex couples. Under current federal law, none of these rights, benefits, or protections are available to same-sex couples – even if a couple is legally married or in another type of legally recognized relationship under state law. In addition, the federal government does not provide spousal-equivalent benefits, including with regard to health insurance coverage and pension conferral, to the partners of homosexual federal employees.

³ U.S. General Accounting Office, GAO-04-353R, DEFENSE OF MARRIAGE ACT: UPDATE TO PRIOR REPORT 1 (2004) (available at www.gao.gov/new.items/d04353r.pdf).

Solution

45. States should remove discriminatory amendments and legislation that prohibit same-sex couples from marrying. The federal government should recognize marriage between same-sex couples and provide these couples with the attendant federal rights and benefits.
46. **DPBO.** The Domestic Partnership Benefits and Obligations Act should be passed so that the same-sex spouses of federal employees can be provided with the benefits available to different-sex spouses.
47. **DOMA.** In addition, the Defense of Marriage Act, which prohibits the federal government from recognizing same-sex marriages and permits states to refuse to recognize lawfully-performed marriages from other states, should be repealed.

State Ballot Measures

48. Twenty-eight states in the United States have ballot initiatives or popular referenda whereby citizens, collecting a minimum number of signatures on a petition within a specified time, place statutes or constitutional amendments on the ballot for citizens to adopt or reject. These mechanisms have increasingly allowed voters to limit the rights of LGBT people and other minority populations – sometimes taking away rights previously enjoyed and allowed by State legislatures or courts. Popular votes have been held in 30 states, enshrining discrimination into state constitutions regarding same-sex relationship recognition. Other states have held popular votes on other LGBT family recognition issues such as adoption. For example, in Arkansas in the 2008 election, the citizens stripped away the rights of same-sex couples to adopt or be foster parents.
49. When democracy goes too far, and rights are removed from a particular group in society, this violates the principle of non-discrimination that is upheld in the ICCPR Article 26. It also violates Article 3 of the Inter-American Democratic Charter, which claims, “Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms...” When the United States allows a majority of citizens to take away existing rights away from minority group, it is not applying equal protection under the law for all of its citizens and is not respecting human rights and fundamental freedoms.

Solution

50. When states recognize the relationships of LGBT citizens, they should not be able to take away those rights through a majority vote of the people. People should not be able to vote to take away the civil rights of minority populations. The federal government, and its laws, should oppose ballot initiatives that strip same-sex couples of existing relationship and family protections.

Conclusion

51. We look forward to working with the Human Rights Council and with the Obama Administration to give full implementation to our human rights obligations, and to ensure that those obligations extend to all LGBT Americans. As we do so, we also will continue to speak out on behalf of LGBT individuals in other countries who are struggling simultaneously to defend their lives and their livelihoods and to protect their families from the abuse and violence to which LGBT Americans have been subjected for too long.