

MINUTES
STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION (WVHRC)
COMMISSION MEETING

THURSDAY, APRIL 10, 2008

10:00 AM-12:00 PM

1321 Plaza East

Charleston, WV 25301-1400

(Conference Room)

Taken and Prepared by:

Mania S. Turley

Administrative Secretary

Members of the Commission Present:

Dr. Dairell Cummings, Chair Tim
Hairston
William L. Williams "Tank" Wesley
Dobbs, (New Commissioner) Karl S.
Gattlieb (New Commissioner)

WVHRC Staff Present:

Paul Cook, IS Coordinator Monia
S. Turley Admin. Secretary
MaryKaye Jacquet, Deputy Director
Ivin B. Lee, Executive Director Brian
W. Wells, General Counsel

Guests:

Kevin McCoy, President WV Family Foundation
Rev. Lloyd Hill Channel
13 News Terry Little
Marilyn Hanks Wells

Members of the Commission Absent:

Ellen Alien
Dr. Helen Bond
Lisa Younis

Attorney General's (AC) Office
Civil Rights Division (CRD).Staff
Present:

Paul Sheridan, Deputy AG

Attachments: (distributed by Kevin McCoy)

Letterhead to Delegate Carrie Webster
U.S. Office of Personnel Management Guide to
Employee's Rights addressing Sexual Orientation
Letter signed by four Senators to Kevin McCoy re:
SB 600
Copy of Senate Roll Call Memo
from Stephen Crampton to Mr. McCoy dated
March 4, 2008 Annual Report of WV Hate Crimes
Task Force June 2002 Article
re; WV Attorney General uses Students as
Informants on Homophobic Speech Excerpt
from Lesbian Gay Bisexual Transgender
Project from the ACLU

Whereupon, the Minutes of the March 13, 2008, meeting stand approved as written.

III. New Business

- A. Ms. Lee announced that the HUD workshop is scheduled for the 24th of this month (May 24, 2008). We had a closing date to RSVP for the 11th and had to close that down because we are beyond our capacity. In fact we now have a waiting list that Marykaye has put together. Commissioner Williams announced that he will be there. Chair Cummings asked what time that it would start. Ms Lee answered that it will start at 8:30 at the WV State University. We had planned on a 125 participants and it is at full capacity. We are starting a waiting list. If anyone cancels we will fill it up. Chair Cummings announced that he would be there.

- B. Chair Cummings asked if Ms. Lee had an Executive Report. Ms. Lee answered no. However, Ms. Lee asked if everyone would look at the pink sheet that was handed out to everyone regarding Leona Chupick. Ms. Lee stated that for those who remember her, she died on March 22, and was buried on the 24th. The Commission sent flowers and a card. She has one child 21 years old. She was 54 years of age. And it is indeed a loss to our agency. Ms. Chupick had 30 years with the Commission. Chair thanked Ms. Lee for showing concern and announcing this to the Commission and expressed his regret.

- C. Chair Cummings asked if Deputy Attorney General Paul Sheridan had a report. Mr. Sheridan announced that he did not prepare one for this meeting but would have one for the next meeting.

- D. Chair Cummings announced that we have a guest, Mr. Kevin McCoy, President of the West Virginia Family Foundation who requested speaking to the Commissioners via letter dated April 2, 2008, and welcomed him. Chair Cummings asked Mr. McCoy, if he could, to please limit his presentation to ten minutes.

Mr. McCoy began by stating: "Chair Cummings, Fellow Commissioners, Executive Director, Ivin Lee, I am here this morning to speak to you about an issue that the Human Rights Commission had become involved in the 2008 Legislative Session. I have a letter that was sent to Delegate Carrie Webster supporting Senate Bill 600 signed by, I guess, the majority of the commissioners. The Bill would have added gays, lesbians, bi-sexual, transgender, gender identity to the Human Rights Act, granting instant recognition as a civil rights recognized status within the meaning of the law."

"We are very troubled by this, in that: I am a Christian myself, I've been all over the country, I've got many friends that have come out of the homosexual lifestyle, by accepting Christ as their Savior, they've been transformed, they no longer live that lifestyle. I would like to distribute some of this information I did not have it broke down, but you can just grab you whatever you can there of it. But, the most troubling part that bothers me is, is who provided the Letterhead to the Commissioners for this politically correct agenda I might add, because it was very troubling to us that its got the Governor's name on it, and so my first question would be Chair Cummings, was the Governor aware of Senate Bill 600 and the Commission taking a position on that particular Bill?"

Chair Cummings answered by stating, "I am not there to speak for the Governor about what he knew and what he didn't know or anything of that nature, but you're welcome to go ahead with your presentation, but she (*referring to Executive Director Lee*) may be able to speak towards this."

Ms. Lee stated, "Let me stop this on this. The Governor or the Secretary whose name is on that letterhead has no knowledge, nor did myself as the Executive Director. I was not at the meeting on the 27th, so therefore, 'no,' the Governor was not aware of that as far as the letterhead is concerned. After I was questioned about the letterhead, I put out an e-mail requesting the staff of trying to find out where the letterhead had come from. I have in my possession, or my secretary's possession, each staff member said they did not provide anyone with the letterhead, any commissioner with the letterhead, and I have that in our possession. I can't tell you where the letterhead actually comes from. But, I can tell you that it did not come from the 'Governor,' that it did not come from the 'Secretary,' and it did not come from the 'Commission.' The 'Commission' is run by me, and there is a difference when it is signed the Commission. That would mean the agency and the agency did not sign anything, because I would have signed for the agency. As far as the Commissioners are concerned, I don't know where they got it from, and I don't have any idea. I knew nothing of that letter until I got a call from Carrie Webster's office asking me about the letter. I told her that the letter did not come from the agency, and I stand by that."

Commissioner Williams stated, "I don't see where it's a problem because after all you've got all this new modern technology all you've got to do is copy it. I don't know about it and I don't have a computer and I don't have this modern stuff. Anybody could have gotten that."

Mr. McCoy stated, "well the troubling part to us is that, as I understand it, the commissioners are appointed and serve at the pleasure of the Governor and his name was on that letterhead and the Commissioners did sign on that and interjected themselves into a very controversial issue. Let me also add...

—Chair Cummings asked for a copy of the letter and stated that he didn't believe he had seen the letter, (copies were being distributed)—

"Let me add that in the Minutes of the February 27th of the Human Rights Commission Minutes, it states there was overwhelming support by Commissioner Cohen for Senate Bill 600 in that it cleared the Senate on a 32/0--2 absent vote. By the time I found out about the Bill I went up there and the Senators told me that they were under the impression that it was a Mandate by federal law. What happened was Senator Kessler, who we've had to deal with on this issue, he used President Clinton's executive order, which has absolutely no affect whatsoever on state law. It would be equivalent to Governor Manchin saying state employees cannot smoke in state buildings. He used this and they thought, that in fact that they were complying with federal law. I have a letter here signed by four of the senators to that affect and I believe that I have provided you all a copy. There were other senators who came to me afterwards stating that they would have signed the letter but I could not find them in time to get it over to judiciary committee. I have provided a copy of those letters,"

"Our feelings is simple this: that we have compassion for homosexuals, but we believe they can be changed, I know they can be changed by the power of Christ, it is a lifestyle choice, and I think it is an insult to the Civil Rights Movement and Martin Luther King for anybody in this room to try to equate that lifestyle as a human rights entitlement. It is no different than the drunk, the drug addict or any other immoral lifestyle choice. So Christ can save them, He can change them, He transforms lives. I believe I provided you with a pamphlet there from Mr. Stephen Bennett. He was a homosexual for 15 plus years, he's now married, he came out of that lifestyle. And, I just think it was totally inappropriate, and I say that with all due respect to the Commission, that they interjected themselves into that, in Senate Bill 600. I had spoke here on December 12, 2006, regarding this same issue. I think at that time the Hate Crimes Task Force was working under the auspices of the Human Rights Commission and on the left side it had sexual orientation as a protected class or recognized class. At that meeting, I spoke and I said that you know that's not the case. There was a resolution adopted that the Hate Crimes Task Force would leave due to recognize their contributions and so forth. But members of the Hate Crimes Task Force that

....(*inaudible*).-- 2002, and I'll leave this here for you all to check over and look over you can have a copy. I have members of the WV Lesbian and Gay Coalition, the ACLU, and course there's other reputable entities within the Hate Crimes Task Force. I propose, I state today, that the Hate Crimes Task Force has an agenda other than protecting the protected classes. As long as you see the ACLU around or the Hate Crimes Task Force you're going to find that this is always going to be an issue. Ivin Lee had mentioned one other time, I think at the December 2006 meeting, she said, 'you all fight that battle at the Legislature.' I thought that's what we were going to do. I didn't realize that we were actually going to have the commissioners involved, and then we were going to have to be down here this morning dealing with the commissioners."

Commissioner Tim Hairston interjected that, "I was one of the people that signed the letter. Now, understand that as a private citizen—I didn't sign the letter, I'm a member of the ACLU first of all- Second of all, we were fighting that battle down there, I'm also a member of the AFL-CIO. We were going at that from a different area, and, with all due respect, okay, this is a battle I think that we need to fight, because we've seen people fired from their jobs because of their lifestyle, homosexual lifestyle, so I'm fighting this from a different standpoint. I did sign this letter and I intended to, but I had my reasons, and I think it's all right. We didn't sign it as a Commissioner, we signed it as individuals, so, I don't think really the Commission should be involved directly in this, I have know idea where the letterhead came from either, I just signed it. But, we are fighting this from a different standpoint. And, again, we think 'discrimination' is 'discrimination.' And, if I'm going to be fired, if I'm an excellent employee, and because of my lifestyle as a homosexual (*which I'm not*) but, because of that lifestyle I can be fired for just that reason, that's not right either."

Mr. McCoy stated, "I understand and I appreciate that, but as I said earlier we know first hand that homosexuals, and you said it yourself, 'lifestyle.' There's not one shred of scientific evidence of a 'gay' gene, not one. It is a lifestyle; it's a choice. You were born black and God made you that way. God did not make homosexuals that way, and they should not be afforded the protected class on the same basis of your, the color of your skin. And, we say that there is help for the homosexuals, they can be changed. But, there is a nationwide effort and an agenda to try to ride under the Martin Luther King banner and try to get that same civil rights status; and I think it's an insult to Martin Luther King and the Civil Rights Movement in general; and, I would just ask that the Commission refrain, in the future, from getting involved in this political juggernaut. And, I would like, in closing, I would like to have some of these documents made part of the record, particularly the letter signed by the state Senators, the executive order that Senator Kessler used, the letter in of itself, and I believe that should pretty much do it-" Chair Cummings

Ms. Lee interjected, "I do need to say this, and I speak for the Commission. The Commission will abide by the law as it is written. That is why I am here. That is what we as the West Virginia Human Rights Commission stands on. And, again, I repeat, if the law changes, then, 'yes' that's what we will abide by. But as the law is written now, that is what we will stand on."

Chair Cummings stated, "I would also like to say that I don't think I've seen the letter before, I definitely didn't sign it, but I definitely knew of the letter. I can't justify where the letterhead came from. But, I would say that, I would remind the Commission that, at the meeting, that I stated that as a private citizen anybody could do whatever they want, send the letter to anybody they want, but I didn't think that it was right as a Commission that we do it, and I guess that, once it was put on letterhead and the Commission voted for it and put it on the Minutes, even though I was on the minority side, it does give the appearance that the Commission did this, and I understand, now, that we're backing away from that. But, I would think that, I don't know that we're doing an investigation or anything, but somebody who signed it would know where the letterhead came from. I don't know who that is."

Mr. McCoy stated that, "I'm here this morning to try to see if I could ascertain that. I see Ms. Cohen is not here."

Chair Cummings interjected that, "Ms. Cohen is no longer a part of, (*Mr. McCoy stated, I see.*) and neither is Ms. Burke, so those two people are no longer a part of the Commission."

Mr. McCoy stated, "I just want you know I support the Human Rights Commission, and I'm with you all the way, as a matter of fact, I had a guest that was supposed to be with me here this morning, Reverend—he's with the Charleston Black Ministerial Alliance—(*Ms. Lee stated Reverend Hill*) Reverend Hill, (*Ms. Lee stated, he came in behind you*) and I'm so glad he's here, but I think that he shares the same perspective as I do on this issue, that this is a moral issue, that we love the homosexual, but there's hope for the homosexual by accepting Christ as Savior, and He transforms life everyday. That's pretty much it.

(Inaudible question asked of Chair Cummings to Ms. Lee)

Chair Cummings stated, "Just for the record, is there anybody sitting on the Commission

today (Mr. Wells) just for the record is there anybody sitting on the Commission today that knows where the letterhead came from.

Mr. Wells answered, "I'm completely unaware of that." Chair Cummings stated, "I wasn't asking you directly, I was asking the Commission as a whole. (Mr. Wells stated, *I understand'*) All right, obviously somebody typed it, somebody sent it, somebody presented it, and somebody faxed it.

Ms. Lee stated, "**I will publicly ask that if a commissioner is going to use our letterhead, I would ask that you get that letterhead from me, not from anyone else, but from me, because you do have to understand that it does have the Governor's name on it, that it does have the Secretary's name on it and I answer to those two people.**"

Chair Cummings asked, "Do we even have access to the letterhead?"

Commissioner Gattlieb stated, "My question would be, 'Why would anybody do it to begin with?'"

Ms. Lee stated, "I am saying that this agency is a neutral agency. That is the stand we take. We are a neutral agency, and we abide by the law, and whatever the law is what we will abide by. I repeat, if you do not want the law as it is, then I would suggest that you go to lawmakers, because we are not lawmakers."

Commissioner Gattlieb stated, "Right! That's my question, I don't understand how anybody could send out a letter with the Commission's name on it without the Commission meeting approval."

Chair Cummings stated, "I want to emphasize, it was with the Commissioners, that were present at that meeting's, approval. That's why I said, 'I know about the letter, although I did not see the letter.' Because, it was a vote that was taken, I think the Minutes would reflect that, there was a vote. I don't want to give the impression that there wasn't a vote. There was a discussion, there was a vote and (*Chair Cummings asked if we had the Minutes of that meeting because he didn't want to say something out of turn—a copy was given to him*) and

Chair Cummings read verbatim from the February 27, 2008 Minutes approved at the current meeting as follows:

Under III, New Business.

A. Chair Cummings ...

B. Commissioner Naomi Cohen said that the Agenda stated that the Committee was to discuss the proposed legislation before the West Virginia Senate and the House of Delegates as well as the discussion on the Hate Crimes Task Force. She stated that the Committee was ready to present on the proposed legislation, but was not yet ready to report on the Hate Crimes Task Force.

C. Chair Cummings said the change would be noted, and asked for the Committee's proposal regarding the proposed sexual orientation legislation.

D. General Counsel Brian Wells asked if the Commissioners wanted to conference in Judith Scully and Commissioner Cohen stated that former Commissioner Judith Scully had resigned from the Commission.

E. Commissioner Cohen handed out copies of the Senate and House Bills, which propose adding sexual orientation as a protected class under the West Virginia Human Rights and Fair Housing Acts. She informed

the commissioners that Senate Bill 600 had passed on February 26, 2008, with an amendment, by a vote of 32 approved, 0 against and 2 absent at the time of voting. She read the amendment to the Commissioners and explained that it provides an exemption for religious and non-profit organizations.

- F. Commissioner Cohen informed the Commissioners that the bill would now move to the House of Delegates, where she believes that it will pass with the same amendment added in the Senate bill.
- G. Commissioner Cohen stated that it was her proposal that the Commissioners vote to send a recommendation to the House of Delegates recommending the adoption of this legislation. She stated that Commissioners had the power to recommend legislation as cited in WV Code §5-1-1-8(e).
- H. Chair Cummings asked for open discussion on the matter.
- I. Commissioner Lisa Younis stated that she was uncomfortable with the Commissioners taking the action to recommend this legislation, as she believed, it was a political, partisan issue. She encouraged the Commissioners to think objectively.
- J. Vice Chair Dawn Raines Burke stated that the question before the Commission was whether this was a human rights issue. She stated that she did not see how the Human Rights Commission, if they believed this to be an issue affecting human beings, could step away from the issue. She further proposed discussion on the issue by all Commissioners.
- K. Commissioner Cohen asked if the Commissioners should try to reach Commissioner Helen Bond again so that she might be included in the discussion.
- L. Vice Chair Burke stated that she believed it imperative to have Commissioner Bond available for this discussion, as she believed Commissioner Bond had worked hard on the first proposal of sexual orientation legislation under the first Bush administration.
- M. The Commission remained unsuccessful in reaching Commissioner Bond at this point.
- N. Commissioner Ellen Alien stated that she has homosexual friends that have been denied a safe work environment because of their orientation. She stated that she believes the Commissioners should take a stand on the issue.
- O. Commissioner Younis stated that she still had questions. She asked why the Commissioners were not discussing the other side of the issue. She also stated that she believed this to be a political tool, in which the Commissioners should have no place.
- P. Chair Cummings stated that he believed there were other questions to be asked. He asked if the other Commissioners believed that the House of Delegates was waiting on the Commissioners' recommendation before proceeding to pass the legislation. He asked if the Commissioners had been asked to comment on the issue. He stated that he believed a recommendation to be an aggressive move where it was not needed. Chair Cummings stated that he believed the House did not need the Commissioners' help in this matter.
- Q. Chair Cummings reminded the Commissioners that they still had not completed their training. He said that although the text read by Commissioner Cohen giving them the authority to make recommendations might be valid, he believed they needed to wait for further interpretation. He stated that these questions might be answered at the March 13, 2008, meeting which would include ethics training from the Ethics Commission.
- R. Commissioner Timothy Hairston stated that he believed what the Committee was recommending was a way to "strike while the iron is hot." He stated that he

had already had experience working on this legislation, separate from his role with the Commission, for quite some time and admitted that it was personal for him. He said that since the bill was already moving he thought it was imperative that the Commissioners make a recommendation. Commissioner Hairston warned that if the Commissioners waited, the bill could be looking at several more years in the process.

- S. Vice Chair Burke asked Commissioner Hairston to elaborate on his experiences working on the legislation and asked for any problems he had encountered in the process.
- T. Commissioner Hairston stated that while he had not experienced this harassment in his workplace, he had heard rumors of things going on around him.
- U. Chair Cummings excused himself and asked Commissioner William Williams to take control of the meeting while he was gone.
- V. Commissioner Allen stated that this discrimination does exist and said it happens quite often and the companies get away from it.
- W. Commissioner Cohen read a quote from Senator McCabe, a sponsor of the bill, as published in an article on the topic. She read, "He said, 'Passage of this Bill would put West Virginia in line with other states and with the private sector in regards to anti-discrimination policies.'"
- X. Commissioner Younis asked for clarification that only 20 states had passed this legislation into law.
- Y. Commissioner Cohen quoted Brooks McCabe again from the article. She stated that West Virginia needed to attract young people to the state and she believed this legislation would do that. She also stated that this issue was a concern for a Commission that cared about the human rights of all people to take a step forward to extend the protection of the Human Rights Act.
- Z. Commissioner Younis stated that she did not believe this legislation would be a significant way to attract or keep young people in the state, even though it may help. She also wanted to confirm that she is someone who cared about human beings, even if she did not agree with them on the issue.

AA. Commissioner Cohen asked for the discussion to be suspended in order to wait for Commissioner Bond to be reachable by telephone. She asked that the Commission move on to the next order of business....

Chair Cummings stated, "and I thought that was going to be it, but it isn't, but then later on they did make a vote, and it did pass, and I think there were two abstentions, but I'm not sure. So, it was voted on. All right, that's a lot of reading. So does that answer your question, it was voted on. I don't want to give the impression that five people got together ran out and did something that nobody else knew about. Commissioner Gattlieb stated, "That answered my question."

Chair Cummings asked if there was anything else.

E. Mr. McCoy stated, "just one other question, "Is it required for Commissioners to have ethics training, mandatory ethics training, prior to getting involved in these kind of issues?"

Chair Cummings stated, "we would hope so, but it was definitely mentioned that ethics training is required. (Ms. Lee stated, " We have had it.") Chair Cummings reiterated, and we have had it now."

Mr. McCoy stated, "I really appreciate the opportunity to be here and speak before you this

morning and would like to make these (documents) a part of the record."

Commissioner Hairston stated, "just one more quick thing, bringing in Dr. King about civil rights, understand that I'm looking at this from a labor stand point, understand that Dr. King was killed working for a labor issue, this is a labor issue to me also, in and above beyond what's here, the labor issue, so understand where I'm coming from. Okay."

Chair Cummings thanked him (Mr. McCoy) for his time.

F. Chair Cummings stated that he was going to be passing out material today for the next commission meeting in May. He asked that everyone read the material and be prepared to discuss in the Executive Session to decide.

G. Ms. Lee informed the new commissioners that Chief Judge Carter would be getting in touch with them, and make arrangements here at the commission and go to Fairmont for about an hour and a half for orientation training. She explained that we did this to the new commissioners before, and stated that Judge Carter will answer any questions, but she will not go over the case, but only the duties of the commissioner.

H. Chair Cummings reminded everyone that there was a proposal from Commissioner Younis, She wants the Commission meeting to come to Shepherdstown, July, 24, and 25, 2008. Chair Cummings cannot attend and stated that is not the regular commission meeting date. This is before the Commission to decide whether they wanted to go there. He asked if everyone wanted to table it to next month or deal with it now.

Ms. Lee stated that the trip to Logan brought zero cases. There was already one case that had been brought before the commission from Logan before the Logan Meeting was held. Ms. Lee wanted everyone to understand that because of the fact that you are going out on the road does not necessarily mean that you're going to get complaints. She didn't know if there were any major problems in Shepherdstown any more than anywhere else within the state. She informed everyone that we currently did not have the capability to ascertain where the concentration of complaints were being filed in the counties, that we used to, but the computer system was changed. Unless you know of some major problems in Shepherdstown, she asked everyone to keep that in mind when you decide where to have the next meeting in July.

Mr. Dobbs stated he had other obligations on that date.

Chair Cummings asked for a motion that the decision to take the Commission Meeting to Shepherdstown in July be tabled until the May, Commission Meeting.

Motion: **Timothy Hairston**

2nd: **William Williams**

Vote: **All in favor**

Whereupon, discussion to take the Commission Meeting in July to Shepherdstown was tabled to the May meeting and will be placed on the Agenda.

V. Adjournment

Chair Cummings asked for a motion to adjourn the meeting.

Motion: **William Williams**

2nd: **Timothy Hairston**

Vote: **All in favor**

The next Commission Meeting will take place at the office of the Commission on May 8, 2008, at 10:00 AM in the Conference Room, 1321 Plaza East, Charleston, West Virginia 25301-1400

Entered this 5th day of May 2008.

Respectfully submitted,

A handwritten signature in cursive script, reading "Ivin B. Lee", written in black ink on a white background.

Ivin B. Lee
Executive Director



STATE OF WEST VIRGINIA
 DEPARTMENT OF HEALTH AND HUMAN RESOURCES
 HUMAN RIGHTS COMMISSION

Joe Manchin III
 Governor

1321 Plaza East, Room IOBA
 Charleston, WV 25381-1400
 KM) 55S-2filfi Fax; (304) 55S-0085)
 55S-2976

Martha Yeager Walter
 Secretary

February 28, 2008

Delegate **Carrie** Webster Chair,
 Judiciary Committee 418M,
 Building 1 State Capitol
 Complex Charleston, West
 Virginia 25351

Dear Delegate Carrie Webster

At their regularly scheduled monthly meeting on February 27, 2008, the West Virginia Human Rights Commission passed the following resolution:

"The West Virginia Human-Rights Commission pursuant to its authority and powers under Section 5-H-8(e) of the West Virginia Human Rights Act recommends that the West Virginia House of Delegates adopt the language of Senate Bill 600 to amend the West Virginia Human Rights Act"

Pursuant to the expressed desire of the Commission, this letter is being sent to you and other individual House of Delegate members for your consideration of this important matter.

Sincerely yours,
 The Commission

By Naomi Cohen, Commissioner Ellen
 Allen, Commissioner

Naomi Cohen
Timothy C. Houston
William L. Williams Jr.
 Comm.

cc: Bill Proudfoot, Vice Chair
 John Ellen, Minority Chair
 Overington, Minority Vice Chair
 Committee members

.John

U.S. Office of Personnel Management

Ensuring the Federal Government has an effective civilian workforce

Addressing Sexual Orientation Discrimination In Federal Civilian Employment

A Guide to Employee's Rights

Introduction

Executive Order 13087, issued on May 28, 1998, prohibits discrimination based upon sexual orientation within Executive Branch civilian employment. The Executive Order states this policy uniformly by adding sexual orientation to the list of categories for which discrimination is prohibited. The other categories are race, color, religion, sex, national origin, handicap, and age. On May 2, 2000, Executive Order 13153 added "status as a parent" to the list of categories for which discrimination is prohibited.

It is the policy of the Federal Government to provide an equal opportunity to all of its employees. Federal employees should be able to perform their jobs in workplaces free from discrimination-whether that discrimination is based on color, religion, sex, national origin, handicap, age or sexual orientation. The President's "Executive Order states, as a matter of Federal policy, that a person's sexual orientation should not be the basis for the denial of a job or a promotion. As the Nation's largest employer, the Federal Government sets an example for other employers that employment discrimination based upon sexual orientation is not acceptable.

Existing Federal law prohibits discrimination in certain employment decisions when the decisions are based upon conduct that does not adversely affect employee performance. Federal employees should be able to perform their jobs in workplaces free from discrimination.

The new Executive Order amends section 1 of Executive Order 11478 (1969), which now reads, in part, as follows:

Under and by virtue of the authority vested in me as President of the United States by the Constitution and Statutes of the United States, it is ordered as follows:

Section 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, or sexual orientation through a continuing affirmative program in each executive department and agency. This Policy of equal employment opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government, to the extent permitted by law.

Employee Relations

U.S. Office of Personnel Management 1900 E Street NW, Washington, DC 20415 (202) 606-1800

TTY (202) 606-2532

3/4/2008

The Senate of West Virginia

Charleston

March 3, 2008

Kevin McCoy, President
WV Family Foundation
P.O. Box 3421
Charleston, WV 25334

Dear Kevin:

Thank you for bringing the issue of SB 600, "Adding Certain Terms to Human Rights Act and Fair Housing Management" to our attention. It was introduced in the Senate on February 7, 2008 and sent to Senate Judiciary, passed out of Judiciary on February 22, 2008. When the bill came up in Judiciary, with no advance review, Senator Barnes made an amendment to exempt churches and community organizations who hold views in opposition to the homosexual life style. This amendment passed: However, the bill was sent to the floor without the amendment and had to be reinstated into the legislation on the final reading.

When questioning the legislation, Senator Sypolt asked the Judiciary Chairman exactly what this bill did. His response was a confirmation that this legislation only brought West Virginia's code into compliance with the Federal Law. Since the members understood that the bill brought the State Code up to Federal Code, it was voted unanimously and there was no further discussion before it was voted out on February 26.

This legislation has since been reviewed by the undersigned and we have determined that it goes further than Federal requirements and would Codify into State Law Sexual Orientation as a Civil Rights Entitlement. This was not our understanding nor would we have supported such legislation if it had been fully understood. We will work diligently within the remaining week of the session to defeat the bill in the House of Delegates and by any other means we are able to employ.

Sincerely,

Senator Dave Seft

Senator Clark Barnes

Senator Ronald Koley

William M. Hall

WEST VIRGINIA SENATE

ROLL CALL



SEQ. NO,0018.

BILL # SB 600

FEE 26,2008

R # 3

1:10 PM

Yea: 32

Nay: 0

Absent: 2

Y	BAILEY	Y	GULLS	Y	PREZIOSO
Y	BARNES	Y	HALL		A SKARPE
Y	BOLEY		A HELMICK	Y	SPROUSE
Y	BOWMAN	Y	HUNTER	Y	STOLLINGS
Y	CARUTH	Y	JENKINS	Y	SYPOLT
Y	CHAFIN	Y	KESSLER	Y	UNGER
Y	DEEM	Y	LOVE	Y	WELLS
Y	EDGELL	Y	MCCABE	Y	WHITE
Y	FACEMYER	Y	MCKENZIE	Y	YODER
Y	FANNING			Y	TOMBLIN
Y	FOSTER	Y	OLIVERIO		
Y	GREEN	Y	PLYMALE		
		Y	MINARD		

RCS # 1329

COPY

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Reply to: Virginia

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DATE: March 4, 2008

Number of pages including this cover page: Seven (7)

COMMENTS:

Attached please find the operative language for Title VII demonstrating that sexual preference and sexual orientation are not protected categories under Federal Law,

Title VII Employment Discrimination

42 U.S.C. § 2000e-1 FOREIGN AND RELIGIOUS EMPLOYMENT

- (a) Inapplicability of subchapter to certain aliens and employees of religious entities
This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

42 U.S.C. § 2000e-2 UNLAWFUL EMPLOYMENT PRACTICES

Employer practices

- (a) It shall be an unlawful employment practice for an employer
- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
 - (2) to limit, segregate, or classify his employees or applicants for employment in anyway which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Employment agency practices

- (b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religious, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religious, sex, or national origin.

Labor organization practices

- (c) It shall be an unlawful employment practice for a labor organization
- (1) to exclude or to. expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;
 - (2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment' opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex., or national origin; or

- (3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

Training programs

- (d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

Business or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

- (e) Notwithstanding any other provision of this subchapter--
- (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and
- (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion,

Members of Communist Party or Communist-action or Communist-front organizations

- (f) As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

National security

- (g) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for

any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

- (1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive Order of the President; and
- (2) such individual has not fulfilled or has ceased to fulfill that requirement,

Seniority or merit system; quantity or quality of production; ability test; compensation based on sex and authorized by minimum wage provisions

- (h) Notwithstanding any other provision of this subchapter, it shall not be an Unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed,

intended or used to discriminate because of race, color, religion, sex or national original. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29.

Businesses or enterprises extending preferential treatment to Indians

- (i) Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

Preferential treatment not to be granted on account of existing number of percentage imbalance

- (j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship, or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

Disparate impact as basis of practice

- (k) (1) (A) An unlawful employment practice based on disparate impact is established under this subchapter only if—
- (i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or
 - (ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.
- (B) (i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decision making process are not capable of separation for analysis, the decision making process may be analyzed as one employment practice.
- (ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.
- (C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of " alternative employment practice."
- (2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.
- (3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. § 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

Alteration of test results

- (1) It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidate for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin,

Motivation for practice

- (m) Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice,

Challenges to practices implementing litigated or consent judgments or orders

- (n) (1) (A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

- (B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws-

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (a), had:

(I)a actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(iii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

- (2) Nothing in this subsection shall be construed to-

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights or parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

- (B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;
 - (C) prevent challenges to a litigated or consent judgment or order -On the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or
 - (D) authorize or permit the denial to any person of the due process of law required by the Constitution.
- (3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of Title 28.