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Gay Is Good

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GAY IS GOOD

MATT FOREMAN*

Thank you—it is a tremendous honor to be here with you this evening.

I went to law school in the late 70s, was a member of what was then a pretty well-established gay and lesbian law students association, and helped organize the first national conference for law students on gay issues—it was called “Law and the Fight for Gay Rights.” I bring this up not to show my age, which is increasingly evident, but rather as a time marker for my remarks tonight.

I’m not sure how far others thought we would be now, nearly thirty years later, but I thought that full equality was just around the corner. Straight America was singing along with the Village People’s “YMCA” and “In the Navy,” our movement’s leaders were invited to meet in the White House, we had a huge national march on Washington, and gay issues were everywhere in the media, or at least it seemed that way to me.

We were convinced that the courts and the Constitution would be there for us. The political and religious rights—people like Anita Bryant’s crusade in Miami-Dade—were just beginning their assault on gay America, and they seemed destined to be quickly relegated to the reactionary fringe. The rightness of our cause and the slogan so many of us espoused—that gay was indeed *good*—seemed unstoppable. I was clearly wrong.

While we have, indeed, made enormous progress—perhaps more progress more quickly than any other social justice movement in the history of the world—we are not where we should be by any stretch of the imagination. While we have won many important court cases and state and local legisla-

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tive victories, and while public opinion has changed dramatically over the last thirty years, we also have lost ground in profoundly important and, I think, long-lasting ways.

We are caught in a bizarre reality, an era of utter national schizophrenia when it comes to lesbian, gay, bisexual, and transgender (LGBT) people, where completely different standards are applied when an issue involves our people or our families. Where public perception is that we are on top of the world or nearly so, while the legal, socio-economic, and political *realities* are quite the opposite. Let me share some examples.

The public myth is that we live in an age of political correctness, yet schoolyards and blogs and public discourse are awash with the faggot epithet. When Ann Coulter called John Edwards a “faggot” last year,¹ leaders of “respectable” conservative organizations howled with approval and no one seriously suggested that she be banned from her frequent TV appearances. Similarly, for more than a decade, Don Imus made overt anti-LGBT jokes with no repercussion of any kind.² Compare that to the justifiable firestorm that erupted when he denigrated the Rutgers University women’s basketball team.³

Last winter, Ellen DeGeneres hosted the Oscars and received rave reviews,⁴ while Melissa Etheridge acknowledged her wife on the show and barely raised an eyebrow. Within days, here in Florida, a screaming mob of hundreds called for the literal and figurative head of the city’s much-respected, long-tenured city manager because he disclosed he was transitioning to be a woman. The response? The city commission capitulated to their howling.⁵

Over the summer, two “family values” Republican senators were caught with their pants down. Senator David Vitter of Louisiana admitted to using

1. See Kerry Laureman, *Freak Speech*, SALON.COM, March 3, 2007, http://www.salon.com/ent/video_dog/politics/2007/03/02/coulter/index.html (last visited Mar. 30, 2008); see also Michael Scherer, *The Republican Candidates—and Ann Coulter—Try Out Their Acts*, SALON.COM, March 3, 2007, <http://www.salon.com/news/feature/2007/03/03/cpac/> (last visited Mar. 30, 2008).

2. See, e.g., *Matthews Cited Savage’s “Bareback Mounting” Characterization of Brokeback Mountain; Imus Cited Producer’s “Fudgepack Mountain” Remark*, MEDIA MATTERS FOR AMERICA, Jan. 19, 2006, available at <http://mediamatters.org/items/200601200002>. On the January 18, 2006 edition of *Imus in the Morning*, Don Imus refers to the award-winning film *Brokeback Mountain* as “Fudgepack Mountain.” *Id.*

3. See *CBS Fires Don Imus over Racial Slur*, CBS NEWS, Apr. 12, 2007, <http://www.cbsnews.com/stories/2007/04/12/national/main2675273.shtml>.

4. See *Ellen DeGeneres Looks Comfortable as Oscar Host*, FOX NEWS, Feb. 26, 2007, <http://www.foxnews.com/story/0,2933,254579,00.html> (last visited Mar. 30, 2008).

5. See Mitch Stacy, *Transgender Fla. City Manager Loses Job*, ABC NEWS, <http://www.abcnews.go.com/print?id=2978322> (last visited Mar. 30, 2008).

the services of the “D.C. Madam,”⁶ and other sources said Vitter’s relationship with prostitutes was well known to insiders when he ran for the U.S. Senate in 2004.⁷ Paying for sex is a felony in both D.C. and Louisiana.

Then, Senator Larry Craig of Idaho was entrapped in a foot-tapping public restroom episode in the Minnesota-St. Paul airport, and pled guilty to misdemeanor disorderly conduct.⁸ The Vitter revelation faded from public view in days, while the Craig episode went on for weeks. More tellingly, Senate Republican leaders immediately called for and are now conducting an ethics investigation into the Craig incident—but none for Vitter.⁹ And even more tellingly, when Vitter returned to the Senate after his confession, he received thunderous applause from his Senate GOP colleagues while Craig has been shunned.¹⁰

One thing that these relatively disparate examples say to me is that the issue of how people see sexual orientation *morally* is the biggest challenge we face in moving forward. I will go so far as to say that we consciously and unconsciously allowed our opponents to seize and hold the issue of moral values around our lives and that we are paying for that now. To move forward and go on the offensive we must create a new moral values frame.

This evening, I’d like to propose three ways to do that. First, I think we need to be much more aggressive in talking about the immorality of homophobia. Second, I believe we must stop avoiding talking about the morality of homosexuality by using “moral bracketing” to advance our civil rights. And finally, I’d like to lay out a way for us and others to articulate that acting on our sexual orientation or gender identity is not only not bad or morally neutral, it is a moral imperative.

THE IMMORALITY OF HOMOPHOBIA

Let me start with some of the ugly facts about the immoral results that discrimination against lesbian, gay, bisexual and transgender (LGBT) people

6. See *Scandal-linked Senator Breaks a Week of Silence*, CNN, July 17, 2007, <http://www.cnn.com/2007/POLITICS/07/16/vitter/index.html> (last visited Mar. 30, 2008).

7. See Shailagh Murray, *Senator’s Number on ‘Madam’ Phone List*, WASH. POST, July 10, 2007, at A3.

8. See John McArdle, *Craig Arrested, Pleads Guilty Following Incident in Airport Restroom*, ROLL CALL, Aug. 27, 2007, available at http://www.rollcall.com/issues/1_1/breakingnews/19763-1.html.

9. See *Craig Admonished over Men’s Room Incident*, MSNBC, Feb. 13, 2008, <http://www.msnbc.msn.com/id/23154082>.

10. See Charles Babington, *Sen. Vitter Quietly Returns to Work*, ABC NEWS, July 17, 2007, <http://a.abcnews.com/Politics/wireStory?id=3385860>.

inflicts. I bring this up because I don't believe any thinking or feeling person can say these results are good from any moral values perspective.

Here we go:

- Still today, young LGBT people are at least three times more likely than their heterosexual counterparts to attempt and commit suicide.¹¹
- Up to forty percent of homeless youth in this country are LGBT, thrown out of their homes simply because of who they are.¹²
- Survey after survey shows widespread anti-gay discrimination in employment, with between two-thirds and three-quarters of us hiding our sexual orientation on the job or on the street for fear of discrimination or violence.¹³ Yet, discrimination in employment, housing, public accommodations and credit is perfectly legal in thirty states and in thirty-seven states if you are transgender.¹⁴
 - An analysis of FBI statistics—which notoriously undercount anti-gay hate crimes—shows that gay and bisexual people (they don't track anti-transgender crime, unfortunately) are more likely to be a victim of hate violence than any other minority in this country.¹⁵
 - And, as I'm sure you are aware, Florida is hardly immune to this epidemic. Earlier this year, Ryan Skipper of Polk County was stabbed more than twenty times, his body was left on the side of a road, and the two assailants bragged to their friends about savagely killing him.¹⁶ Anti-gay hate crimes are at their highest level ever in Florida, and according to the Florida

11. Paul Gibson, *Gay Male and Lesbian Youth Suicide*, in REPORT OF THE SECRETARY'S TASK FORCE ON YOUTH SUICIDE 3-110, at 115 (1989), available at http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/23/15/84.pdf. See generally WARREN J. BLUMENFELD & LAURIE LINDOP, GAY, LESBIAN & STRAIGHT EDUC. NETWORK, GAY, LESBIAN, BISEXUAL, TRANSGENDER YOUTH SUICIDE (1994), <http://pactsnetwork.org/grace/docs/Youth%20Suicide.pdf>.

12. See NICHOLAS RAY, NAT'L GAY & LESBIAN TASK FORCE POL'Y INST., LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH: AN EPIDEMIC OF HOMELESSNESS 1, 166 (2006), <http://www.thetaskforce.org/downloads/HomelessYouth.pdf> (citing the National Network of Runaway and Youth Services which estimates "that 20–40% of youth who become homeless each year are lesbian, gay, or bisexual").

13. See generally M.V. LEE BADGETT ET AL., THE WILLIAMS INST., BIAS IN THE WORKPLACE: CONSISTENT EVIDENCE OF SEXUAL ORIENTATION AND GENDER IDENTITY DISCRIMINATION (2007), available at <http://www.law.ucla.edu/williamsinstitute/publications/Bias%20in%20the%20Workplace.pdf>.

14. Nat'l Gay & Lesbian Task Force, State Nondiscrimination Laws in the U.S., (Jan. 8, 2008), http://www.thetaskforce.org/downloads/reports/issue_maps/non_discrimination_01_08_color.pdf.

15. William B. Rubenstein, *The Real Story of U.S. Hate Crimes Statistics: An Empirical Analysis*, 78 TUL. L. REV. 1213, 1229 (2003).

16. Eva Kis, *Men Charged in Wahneta Killing*, LEDGER, Mar. 17, 2007, <http://www.theledger.com/article/20070317/NEWS/703170401>.

Attorney General's office, hate crimes targeting LGBT Floridians have increased thirty-three percent in the most violent categories during the two most recently reported years. But, there's been near silence by Florida's religious and political leaders.

▪ And, of course, the examples of injustices in the area of partner and family recognition are too many to list—from grossly disparate taxation to partners of twenty or thirty years being denied pension or line of duty death benefits to the unending stories of someone not being able to say goodbye to his or her partner of forty or fifty years in a hospital Intensive Care Unit because they're not “family.”¹⁷

I do want to emphasize that each of these injustices—as with the rest of society's ills—fall hardest on LGBT people of color and poor LGBT people. And, contrary to popular wisdom, studies and U.S. Census data show that on average LGBT people and our families are significantly poorer than others.¹⁸

No, we're not all Will & Grace or L Word people, not by a long shot.

I could go on and on with other examples, but you get the picture. Clearly, LGBT people are targets, victims—or whatever word you choose—of discrimination. Again, what thinking or feeling person can believe that these injustices are moral? Indeed, even our most ardent opponents have backed away from such a position.

Yet, our own movement has often shied away from talking directly and forcefully about all of these problems. We have not wanted to sound like whiny victims, or that we are trying to compare and rank our problems over those of other minorities. We have been afraid that the facts—data that show high rates of substance abuse in our community, for example—will be used

17. *See generally* Dayna K. Shah, Associate General Counsel, U.S. General Accounting Office to Bill Frist, Majority Leader, U.S. Senate (Jan. 23, 2004), *available at* <http://www.gao.gov/new.items/d04353r.pdf> (identifying the 1,138 federal statutory provisions in which “marital status is a factor in determining or receiving benefits, rights, and privileges”).

18. *See* M.V. LEE BADGETT, THE POL'Y INST. OF THE NAT'L GAY & LESBIAN TASK FORCE & THE INST. FOR GAY & LESBIAN STRATEGIC STUD., *INCOME INFLATION: THE MYTH OF AFFLUENCE AMONG GAY, LESBIAN, AND BISEXUAL AMERICANS* i, 14 (1998), *available at* <http://www.thetaskforce.org/downloads/reports/reports/IncomeInflationMyth.pdf> (examining data from seven different surveys and concluding that none support the stereotype that GLB people are an economic elite insulated from discrimination by their wealth and disconnected from society at large by a privileged status). *See generally* JUDITH BRADFORD ET AL., THE NAT'L GAY & LESBIAN TASK FORCE POL'Y INST., *THE 2000 CENSUS AND SAME-SEX HOUSEHOLDS: A USER'S GUIDE* (2002), *available at* <http://www.thetaskforce.org/downloads/reports/reports/2000Census.pdf>.

by others to argue that we are, in the words of the current Pope, “intrinsically disordered.”¹⁹

These have all been legitimate concerns because, in fact, our opponents skillfully attack us using these points, including the charge that we are seek to expropriate—indeed equate—our own struggles with the long, brutal and still unfolding civil rights movement to end racism and the still much-alive legacy of slavery in this country.

This ugly canard has been a deliberate and focused strategy of the anti-gay industry in America for more than twenty-five years. But, that does not mean we cannot speak the truth that anti-gay discrimination shares a common source and a common language with racism, anti-Semitism, and other forms of religious and ethnic bigotry our nation knows all too well. Indeed, the parallels in the rhetoric behind the current attack on LGBT Americans and past attacks on others are too striking to be ignored.

In 1871, Pope Pius IX said that Jews, “owing to their obstinacy and their failure to believe, they have become *dogs*,”²⁰ adding that “[w]e have today in Rome unfortunately too many of these dogs, and we hear them barking in all the streets, and going around molesting people everywhere.”²¹ This is the Pope beatified by John Paul II in 2000.²²

Today, a justice of the United States Supreme Court, Antonin Scalia, says that ending the criminalization of gay adults having private, consensual sex calls into question laws banning bestiality.²³ In the 1880’s and beyond, interracial marriage was an effort to “destroy western civilization itself.”²⁴

19. See Sacred Congregation for the Doctrine of the Faith, *Persona Humana: Declaration on Certain Questions Concerning Sexual Ethics*, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19751229_persona-humana_en.html. The Declaration maintained that according to scripture, “homosexual acts are intrinsically disordered.” *Id.* Eight years later, the Vatican’s Congregation for Catholic Education, acknowledging the role of physiological or psychological factors in homosexuality, drew the same conclusion. *Id.*

20. DAVID I. KERTZER, *THE POPES AGAINST THE JEWS* 130 (2001).

21. *Id.*

22. See John W. O’Malley, *The Beatification of Pope Pius IX*, AMERICA, Aug. 26, 2000, available at https://www.americamagazine.org/content/article.cfm?article_id=2118.

23. See *Lawrence v. Texas*, 539 U.S. 558, 590 (2003) (Scalia J., dissenting).

24. See Robert Patterson, *Protect Arizona Now Selects White Supremacist Leader to Chair National Advisory Board*, CITIZENS INFORMER (Council of Conservative Citizens, St. Louis, Mo.), Fall 1994, at 3. “Western civilization with all its might and glory would never have achieved its greatness without the directing hand of God and the creative genius of the white race. Any effort to destroy the race by a mixture of black blood is an effort to destroy Western civilization itself.” *Id.*; see also Steve Rendall, *A Sex-Free Scandal*, EXTRA! (Fairness & Accuracy in Reporting (Fair), New York, N.Y.), Mar./Apr. 1999, available at <http://www.fair.org/index.php?page=1451>.

Today, James Dobson says that due to our campaign to win the freedom to marry “[b]arring a miracle, the family as it has been known for . . . five millennia will crumble, presaging the fall of [w]estern civilization itself.”²⁵

One hundred fifty years ago, the Bible was used to justify slavery and the moral superiority of white people. Just 47 years ago, 41 states had anti-miscegenation laws on the books and their rationale was simple and absolute, as exemplified by the Virginia Supreme Court in holding that “Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. . . . The fact that he separated the races shows that he did not intend for the races to mix.”²⁶

Today, seven of the more than one million verses in the Bible are deliberately misinterpreted to justify anti-gay animus, and the airwaves are full of preachers misquoting Leviticus and Saint Paul, railing against the abomination of homosexuality.²⁷

In spite of what I see as a near perfect alignment between the justifications offered for past, immoral treatment of other minorities and women and today’s anti-gay movement, many of our opponents say—and I think a majority of Americans believe—that prejudice and discrimination on the basis of sexual orientation and gender identity are profoundly different. Indeed, that it’s understandable and in some way justified. Why? Because of moral values.

That is, while most religions and most people are now to the point of saying—but perhaps not really believing—that sexual orientation by itself is morally neutral, acting on it—and let’s be straightforward here, gay sex—is immoral. Why? The Bible tells us so. And, pundits say there is an “ick” factor—that the thought of gay sex revolts non-gay people, as if it were an innate, visceral reaction—and that reaction is proof positive that there is something wrong with homosexuality.

I actually sort of get this argument because ever since I can remember and to this very day, the thought of heterosexual sex makes me queasy. But I’ve actually never thought that meant straight people were intrinsically immoral.

25. See James C. Dobson, *In Defending Marriage—Take the Offensive!* (Focus on the Family, Colo. Springs, CO), Apr. 2004, <http://www.focusonthefamily.com/docstudy/newsletters/A000000334.cfm>.

26. *Loving v. Virginia*, 388 U.S. 1, 3 (1967).

27. See generally DANIEL A. HELMINIAK, *WHAT THE BIBLE REALLY SAYS ABOUT HOMOSEXUALITY* (1994); MEL WHITE, SOULDFORCE INC., *WHAT THE BIBLE SAYS—AND DOESN’T SAY—ABOUT HOMOSEXUALITY*, available at <http://www.soulforce.org/pdf/whatthebiblesays.pdf> (last visited Mar. 30, 2008).

Here again, this “ick” rationale—prejudice based on another community’s behaviors—is not unique to gay people, but has past parallels, including European immigrants to this country merging racial and sexual ideology to differentiate themselves from Indians and Blacks; to strengthen the mechanisms of social control over slaves; and to justify the appropriation of Indian and Mexican lands through the destruction of native peoples and their cultures. But, again, past parallels have little persuasive value in today’s discourse.

The sad thing? Not only have we and liberals not talked about the immorality of anti-gay discrimination, we have constructed an alternative to morality-based politics, a practice called “moral bracketing.”

MORAL BRACKETING

According to Georgetown Law Professor Chai Feldblum and Michael Boucai—from whom I am borrowing heavily tonight, to engage in moral bracketing is to ask voters, policy-makers, judges, and other political actors to set aside their moral views on the political or legal question before them and try to decide, as “neutrally” as possible, what is best for a society in which people subscribe to many different moral systems. The essence of moral bracketing is that it should not matter if we do not like someone—or if we do not like something that someone is doing—as long as that person and/or his behavior does not hurt anyone else.²⁸

This moral bracketing started eclipsing “gay is good” early on.²⁹ We have been saying to straight people: you don’t have to like us or approve of what we do or even consider us fully human, so long as you share some of your rights with us.

Polling information underscores how effective this moral bracketing has been. Even today, a majority of Americans believe that sexual relations between two adults of the same sex is “always wrong”³⁰ or “morally wrong”³¹—depending on how the question is asked—while only one-third are willing to state unequivocally that gay sex is not wrong.³² Yet, since

28. See CHAI R. FELDBLUM & MICHAEL BOUCAI, *THE MORAL VALUES PROJECT: DEPLOYING MORAL DISCOURSE FOR GAY EQUALITY* 26–27 (2006).

29. Chai R. Feldblum, *The Federal Gay Rights Bill: From Bella to ENDA*, in *CREATING CHANGE: SEXUALITY, PUBLIC POLICY, AND CIVIL RIGHTS* 149 (John D’Emilio et al. eds., 2000).

30. See KARLYN BOWMAN & ADAM FOSTER, *AM. ENTER. INST., ATTITUDES ABOUT HOMOSEXUALITY & GAY MARRIAGE* 2 (2006), available at http://www.aei.org/research/politicalcorner/publications/pubID.14882,projected.14/pub_detail.asp.

31. *Id.* at 4.

32. *Id.* at 2.

1996, public opinion polls have found that more than eighty percent of Americans believe “homosexuals should have equal rights in terms of job opportunities.”³³

So what’s so wrong with moral bracketing? First, it completely cedes the moral argument to the other side. We say right up front, “it doesn’t matter what you believe about me, you just shouldn’t discriminate against me.” But even more important, once we start moving away from basic nondiscrimination protections and push for broader human rights such as adoption, the freedom to marry, equal benefits and the like, public and legislative support declines precipitously. Why? Because, as Feldblum and Boucai state, these matters “connote approval of homosexuality—in an explicit manner.”³⁴ Legislators and many in the public are simply not ready for laws that presume a moral *equivalence* between homosexuality and heterosexuality.

It is precisely because we have avoided the moral issue, made moral bracketing the cornerstone of our discourse, and refused to insist on our fundamental goodness and equality as human beings, that when we push into these core areas, such deep-seated unease arises from even our closest friends and family members. You feel that push back, that hesitancy, that unwillingness to go there. Why? Because so many people still believe deep down that heterosexuality is fundamentally and morally superior to homosexuality and that gay people are fundamentally inferior to straight people.

This, I believe, also explains the depressing and shocking societal tolerance and acceptance of the many tentacles of anti-LGBT discrimination and the appalling harm it inflicts on our people. It explains how in just over a decade, forty-one states have passed laws or state constitutional amendments to prohibit the recognition of same-sex marriage³⁵—that is, to deprive a tiny minority of a right the majority sees as a fundamental human right. And yet, almost never, were these attacks framed in morality. It was as if the public and legislatures were voting on property tax measures, not the lives and futures of other human beings. This explains the string of state Supreme Court decisions—New York, New Jersey, Washington State, and Maryland—refusing to extend the freedom to marry to same sex couples. It is as if the majority opinions are talking about alien species.

33. *Id.* at 11.

34. Feldblum, *supra* note 29, at 12; see FELDBLUM & BOUCAI, *supra* note 28, at 12.

35. See Nat’l Gay & Lesbian Task Force, Anti-Gay Measures in U.S. (Sept. 25, 2007), http://www.thetaskforce.org/downloads/reports/issue_maps/GayMarriage_09_25_07.pdf.

TOWARD A NEW MORAL FRAMEWORK

The final thing I want to talk about is how to move away from moral bracketing and start talking about a new framework that advances the morality of being gay from a secular point of view. We need to reach back into beginnings of our movement and reassert the fundamental principle that being gay—and that means acting on one's gayness—is, indeed good, *morally good*. And, second, because being gay is good, actions which other people or society take to hurt gay people, and to keep us from being openly gay, are wrong, *morally wrong*.

Getting back to “gay is good” does not require moving the needle as much as some might think. First off, only right-wing extremists are willing to publicly defend the objective harms that homophobia inflicts on LGBT people that I cited earlier—hate violence, job discrimination, homelessness among LGBT youth, and on and on. Second, many of our most ardent opponents do not assert that *being* gay is immoral, only that *acting* on our orientation is. In other words, and as I mentioned earlier, most people are neutral about our existence, and the growing understanding of the impact of homophobia on LGBT people, I believe, sets us up to move them into forward gear.

How do we move people from neutrality to the fundamental concept that gay is good? Feldblum and Boucai identify four principles that even our most vocal opponents cannot dispute that a good society embodies. These four moral understandings are: 1) it is good for people to feel safe; 2) it is good for people to be happy; 3) it is good for people to give and receive care; and 4) it is good for people to live a life of integrity.³⁶ These understandings are not tied to any particular religious belief.

If these understandings are valid—and I would challenge anyone to explain how they are not—then it is clear that anti-gay attitudes and discrimination are not only objectively wrong, but so is the position that it is fine for LGBT people to *be*, so long as they do not act on their orientation or identity. In other words, forcing LGBT people to live in the closet; and life in the closet is wrong and damaging.

A. *Safety*

Let's start with safety. Whenever I speak at an anti-violence rally, I start by asking people to raise their hands if they have been beaten, chased,

36. FELDBLUM & BOUCAI, *supra* note 28, at 25. See generally ROBIN WEST, CARING FOR JUSTICE (1997); ROBIN WEST, RE-IMAGING JUSTICE: PROGRESSIVE INTERPRETATIONS OF FORMAL EQUALITY, RIGHTS, AND THE RULE OF LAW (2003).

or otherwise physically harassed because of their sexual orientation or gender identity. Nearly everyone raises their hand. I then ask if someone they know and love who is LGBT has been beaten, chased, or otherwise physically harassed because of who they are. At that point, every hand is up. Clearly, hate violence, and fear of it, is a near-universal experience of gay people. The hate crimes statistics I discussed earlier underscore this fact.

But physical violence is on the far side of the safety continuum.³⁷ Along the continuum are all the other things that contribute to a person's sense of safety—the ability to get and hold a job, rent an apartment, or get service in a restaurant or hotel. Even today, LGBT people face daily and difficult choices about whether they should try to hide their orientation or identity to escape overt or subtle discrimination, and many LGBT people could not hide who they are even if they wanted to.

Most victims of anti-LGBT discrimination in employment, public accommodations, credit, and education will not find a safety net in the law. Here in Florida—and twenty-nine other states—it's still perfectly legal to fire, evict, or deny services to someone because of their sexual orientation, and in forty states on account of one's gender identity.³⁸ This lack of legal recourse undermines the ability of LGBT people to feel safe in almost every aspect of life.

The impact of this discrimination cannot be denied, and here are just two examples. Even though academia is known for attracting large numbers of lesbian and gay people into its ranks, there is only one openly gay law school dean in the nation, and only two openly gay or lesbian college presidents.³⁹ Similarly, even though so many LGBT people are actively involved in politics, less than one-tenth of one percent (0.08%) of all elected officials in this country are openly LGBT.⁴⁰ Clearly, LGBT people do not see their out colleagues breaking through lavender ceilings, which only leads to LGBT people continuing to hide their orientation and identity in hopes of keeping their jobs and moving ahead, which leads to the lavender ceiling remaining intact, and on and on.

Some might say LGBT people encounter discrimination when they “flaunt” their orientation or identity. For many of us, it is simply not possi-

37. FELDBLUM & BOUCAI, *supra* note 28, at 26.

38. Nat'l Gay & Lesbian Task Force, *State Nondiscrimination Laws in the U.S.*, (Jan. 8, 2008), http://www.thetaskforce.org/downloads/reports/issues_map/non_discrimination_01_08_color.pdf.

39. See Paul Fain, *And Now There Are 3*, CHRON. OF HIGHER EDUC., Aug. 10, 2007, at A18.

40. See Rachel La Corte, *Gay Caucus Grows in Washington*, REGISTER-GUARD, Jan. 24, 2008, at E34.

ble to hide one's sexual orientation or gender identity, no matter how hard one tries, and, as discussed below, for those who can, passing or hiding inescapably involves deceit and loss of personal integrity—hardly a morally defensible outcome.

B. *Happiness*

Happiness is defined as “feeling or showing pleasure or contentment.”⁴¹ It's obviously difficult—if not impossible—to feel happy when you don't feel safe at work, or on the street, or when you are bombarded by anti-LGBT jokes from all sides, or when you're worried about or unable to protect your family. Happiness isn't only the absence of fear or harm. Feldblum and Boucai say: “[h]appiness may mean being in a relationship that you can share and celebrate with others and have formally recognized.” Or it can be as simple as putting a picture of your lover on your desk at work, just like your straight colleagues.⁴²

Sadly, data indicate that because of all the challenges they face, LGBT people experience rates of depression that are significantly higher than heterosexual people,⁴³ and, of course, for many people—if not most at one time or another—happiness comes from sex.

Yet, the way so many of us are raised—again because of moral values—is to believe that gay sex is wrong and harmful. It takes enormous work to overcome that and many never do completely. In fact, the House of Representatives voted a huge increase for the utterly discredited abstinence-only programs, which say to gay young people “no sex until you're married,” and, by the way, that means no sex your entire life because you can't get married!⁴⁴

41. OXFORD AMERICAN DICTIONARY 297 (1980).

42. See FELDBLUM & BOUCAI, *supra* note 28, at 26.

43. SPENCER COX, MEDIUS INST., LIVING ON THE EDGE: GAY MEN, DEPRESSION AND RISK-TAKING 6 (2007), available at <http://mediusinstitute.org/Living%20On%20The%20Edge.pdf>. The most reliable “estimates suggest that gay men are about three times more likely than the general population to experience depression.” *Id.* “In a study of depression and gay youth, researchers found depression strikes homosexual youth four to five times more severely than their non-gay peers.” Parents, Friends and Family of Lesbians and Gays (PFLAG), Welcome, <http://www.pflag.com/pages/0022.html> (last visited Mar. 30, 2008).

44. See H.R. 3043, 110th Cong. § 2 (2007). On July 19, 2007, the United States House of Representative passed, by a vote of 276 to 140, the Labor-HHS Appropriations Bill which included an unprecedented \$27.8 million increase for abstinence-only-until-marriage programs. *Id.* Ultimately, the spending bill that Congress passed contained flat funding for abstinence-only programs at \$113.5 million. A total of over \$1.5 billion in government funding has been spent on abstinence-only programs since 1982. This is despite repeated publicly funded and private studies that have shown that these programs are ineffective, do not de-

Some gay and lesbian people deal by forcing themselves into abstinence or sex with people of the opposite gender, which explains high rates of pregnancy among young lesbians, or gay and lesbian people get married to straight people that they truly love, but not sexually, which frequently causes tremendous hurt and harm to that person's spouse and children.

But this issue—gay sex—is where the rubber hits the proverbial road when it comes to moving people from being neutral to positive about our lives. It's remarkable to me that straight people cannot imagine living their lives without having sex—but that's what so many of them expect of us. This view isn't restricted to those who think we "choose" to be LGBT, but even religious leaders, who admit there might be some genetic basis to sexual orientation or gender identity, still say we need to commit to a life of abstinence.

There's no sidestepping this fundamental point and the question needs to be posed directly: If you can't imagine living your life happily without sex, how do you demand abstinence from gay people and still expect them to be happy?

C. *Give and Receive Care*

The third moral principle that Feldblum and Boucai posit is that it is good for people to give and receive care. Gay people certainly know what it is like to care for our families of birth and of choice. When the AIDS crisis hit, lesbians and gay men rallied to care for our own when the government and so many blood relatives turned their backs. Gay and lesbian siblings even assume disproportionate responsibility for caring for their aging parents.⁴⁵

On the other hand, we also know about not being able to take care of those we love in times of sickness and trouble.⁴⁶ The broad protections we have won under state law through marriage equality—in Massachusetts—and civil unions—in Vermont, Connecticut, California, New Hampshire and New Jersey—are not recognized by the federal government and effectively vanish the minute we cross state lines. Contrary to popular wisdom, we cannot get the same protections, benefits or peace of mind through legal con-

crease pre-marital sex or unsafe sexual practices and often contain religious doctrine, and propose inaccurate medical information and harmful stereotypes about LGBT individuals.

45. See, e.g., MARJORIE H. CANTOR, ET AL., NAT'L GAY AND LESBIAN TASK FORCE POL'Y INST., CAREGIVING: AMONG OLDER LESBIAN, GAY, BISEXUAL, AND TRANSGENDER NEW YORKERS (2004), available at <http://www.thetaskforce.org/downloads/reports/reports/CaregivingAmongOlderLGBT.pdf>.

46. See Feldblum, *supra* note 29, at 26; FELDBLUM & BOUCAI, *supra* note 28, at 26–27.

tracts or wills and even these second-rate options are out of the financial reach of most of us. Second parent adoptions, for example, run as high as \$25,000 and, of course, are illegal here in Florida. After we die, we want our partners to get our social security and pension benefits and our estate pass without taxation, but that doesn't happen. When our partners die, we want their remains treated the way he or she wished, but that too is all too frequently not the case.

Our opponents cannot have it both ways. They cannot preach family values, monogamy, family responsibilities, and life-long commitment and then fight tooth-and-nail any law or policy that promotes these things for gay families.

D. *Integrity*

Finally, and most importantly, is the value of integrity. All too many lesbian, gay, bisexual, and transgender people know what it is like to feel forced into lying and hiding who we are and what we do. For many, even the simple question posed by work colleagues on a Monday, "What did you do last weekend" becomes a daunting exercise in evasion. In this reality, it's virtually impossible to live a life based on internal and external integrity.

This isn't abstract or a rare occurrence for many of us. I've had the privilege of leading three gay organizations over the last eighteen years, but even I have to weigh how to respond to the questions, "What do you do?" or "Are you married?" depending on where the question is asked and who is doing the asking. Even weighing how to respond makes me feel ashamed.

Professor Kenji Yoshino discusses this experience in terms of "covering," which refers to an increasingly prevalent norm in society and anti-discrimination law, which tells gay people that it is acceptable to be gay as a matter of fact, but that it is unacceptable for gay people to act out that identity. In other words, while it is acceptable to be gay, it is not acceptable to show same-sex affection, to discuss gay sexuality in any significant way, or to engage in behaviors that are perceived as "gay." As Yoshino argues, this denial of integrity, this severing of the self, can exact significant physical damage on gay people and their relationships, and is ultimately stifling and harmful to society as a whole.⁴⁷

This takes us back to the "flaunting" argument. How does simple honesty with friends, family, and colleagues get turned into flaunting? I'm always struck by the low threshold that triggers this insult. Straightforward

47. See Feldblum, *supra* note 29, at 27–28; FELDBLUM & BOUCAI, *supra* note 28, at 27–28.

statements that have nothing to do with sex—"I spent the weekend with my boyfriend" or "We went to X club dancing"—are somehow interpreted as "forcing one's 'lifestyle' down someone else's throat."

Here again, the issue is that if we believe it is good for people to live lives of integrity, isn't it wrong to force LGBT people to live lives based on lies and half-truths? Of course it is.

The inescapable conclusion of all of this is that our society and our government *fail* to support the ability of LGBT people to uphold these moral, good-society principles. Indeed, our society and its institutions work overtime—overtly and covertly—to deny them to LGBT people. This is wrong, morally wrong.