The issues raised by the Lesbian, Gay, Bisexual and Transgender (LGBT) community and human rights groups in support of LGBT rights are wide ranging and far reaching. The resolution of these issues, or the failure to resolve them, will have significant consequences not only for the LGBT community but for other groups, especially minorities, in American and global society. An example of such an issue, the importance of a progressive resolution to it, and its wide ranging consequences is the issue of gay/lesbian marriage. While many countries, even countries which many might think would be less progressive than the United States because of religious and cultural traditions, have or are adopting policies and legislation that allows gay marriage, the state of California through the process of a state-wide initiative has taken away the right of gays and lesbians to marry.

The consequences of the passage of Proposition 8\* for gays and lesbians is obvious; their right to be married, if they so choose, is being denied. But also the argument put forward by the supporters of the proposition labels gays and lesbians, at least implicitly, as a deviant group, and gay and lesbian marriage as a deviant practice. Further this denial of rights and the marginalizing of gays and lesbians contribute to creating a hostile social environment which makes behavior such as the bullying of gay students a prevalent social phenomenon. Less discussed in the public debate on gay marriage and family issues are the implications of the passage of Proposition 8 for American democracy and all minority groups. If Proposition 8 is not overturned by the courts, at this point, California District Court Judge Von Walker has ruled that Proposition 8 violates the Equal Protection Clause of the U.S. Constitution and is therefore unconstitutional. The Ninth Circuit Court of Appeals issued a stay on Judge Walker’s ruling until it has ruled on the appeal.\*

Proposition 8 was directed at one minority group and took away that group’s rights, but it also raised a serious question for American democracy and should be a concern of all minority groups and of all those who believe in equality of rights, a principle to which Obama repeatedly has affirmed a commitment. A profound question is raised: can the majority, through a democratic process, take away the rights of a minority? If Proposition 8 is allowed to stand, then the answer is that a legal precedent has been established doing just that. And the consequences are far reaching. Could the hysteria following another 9-11 or the more recent hysteria over the assassination of Osama Bin Laden create the environment for the majority to vote on rescinding the rights of Moslems? Shortly after the assassination of Bin Laden, a mosque was vandalized and written on the outside wall was, “Osama today, Islam tomorrow.”

This chapter will be divided into five sections. The first section will present Obama’s Open Letter to the Gay and Lesbian community, written in February of 2008, during the Democratic primary campaign. This letter discusses many of the issues raised by the LGBT community and in the letter Obama states his value commitments and policy intentions towards these issues. The letter will serve as a starting point for evaluating Obama and his administration’s policies in regard to the issues. There are several other important issues raised by the LGBT community and human rights groups that the letter does not address, but are important and have far reaching consequences. It is fair to examine these issues and the Obama administration’s policies towards them. The second section will analyze Obama and his administration’s commitment to repealing the Defense of Marriage Act. The third section will analyze Obama and his administration’s commitment to repealing Don’t Ask Don’t Tell. The fourth section will analyze the commitment to the passage of hate crimes legislation and its enforcement. And also in the fourth section, the phenomenon of school bullying and the administrations response to it will be analyzed. The last section will analyze Obama and his administrations efforts to fulfill his commitment to the passage of the Employment Non-discrimination Act and the Uniting American Families Act.

Obama’s commitment to the LGBT community

The following is the full text of Obama’s Open Letter to the LGBT community.

I'm running for President to build an America that lives up to our founding promise of equality for all - a promise that extends to our gay brothers and sisters. It's wrong to have millions of Americans living as second-class citizens in this nation. And I ask for your support in this election so that together we can bring about real change for all LGBT Americans.  
  
Equality is a moral imperative. That's why throughout my career, I have fought to eliminate discrimination against LGBT Americans. In Illinois, I co-sponsored a fully inclusive bill that prohibited discrimination on the basis of both sexual orientation and gender identity, extending protection to the workplace, housing, and places of public accommodation. In the U.S. Senate, I have co-sponsored bills that would equalize tax treatment for same-sex couples and provide benefits to domestic partners of federal employees. And as president, I will place the weight of my administration behind the enactment of the Matthew Shepard Act to outlaw hate crimes and a fully inclusive Employment Non-Discrimination Act to outlaw workplace discrimination on the basis of sexual orientation and gender identity.  
  
As your President, I will use the bully pulpit to urge states to treat same-sex couples with full equality in their family and adoption laws. I personally believe that civil unions represent the best way to secure that equal treatment. But I also believe that the federal government should not stand in the way of states that want to decide on their own how best to pursue equality for gay and lesbian couples - whether that means a domestic partnership, a civil union, or a civil marriage. Unlike Senator Clinton, I support the complete repeal of the Defense of Marriage Act (DOMA) - a position I have held since before arriving in the U.S. Senate. While some say we should repeal only part of the law, I believe we should get rid of that statute altogether. Federal law should not discriminate in any way against gay and lesbian couples, which is precisely what DOMA does. I have also called for us to repeal Don't Ask, Don't Tell, and I have worked to improve the Uniting American Families Act so we can afford same-sex couples the same rights and obligations as married couples in our immigration system.  
  
The next president must also address the HIV/AIDS epidemic. When it comes to prevention, we do not have to choose between values and science. While abstinence education should be part of any strategy, we also need to use common sense. We should have age-appropriate sex education that includes information about contraception. We should pass the JUSTICE Act to combat infection within our prison population. And we should lift the federal ban on needle exchange, which could dramatically reduce rates of infection among drug users. In addition, local governments can protect public health by distributing contraceptives.  
  
We also need a president who's willing to confront the stigma - too often tied to homophobia - that continues to surround HIV/AIDS. I confronted this stigma directly in a speech to evangelicals at Rick Warren's Saddleback Church, and will continue to speak out as president. That is where I stand on the major issues of the day. But having the right positions on the issues is only half the battle. The other half is to win broad support for those positions. And winning broad support will require stepping outside our comfort zone. If we want to repeal DOMA, repeal Don't Ask, Don't Tell, and implement fully inclusive laws outlawing hate crimes and discrimination in the workplace, we need to bring the message of LGBT equality to skeptical audiences as well as friendly ones - and that's what I've done throughout my career. I brought this message of inclusiveness to all of America in my keynote address at the 2004 Democratic convention. I talked about the need to fight homophobia when I announced my candidacy for President, and I have been talking about LGBT equality to a number of groups during this campaign - from local LGBT activists to rural farmers to parishioners at Ebenezer Baptist Church in Atlanta, where Dr. Martin Luther King once preached.  
  
Just as important, I have been listening to what all Americans have to say. I will never compromise on my commitment to equal rights for all LGBT Americans. But neither will I close my ears to the voices of those who still need to be convinced. That is the work we must do to move forward together. It is difficult. It is challenging. And it is necessary.  
  
Americans are yearning for leadership that can empower us to reach for what we know is possible. I believe that we can achieve the goal of full equality for the millions of LGBT people in this country. To do that, we need leadership that can appeal to the best parts of the human spirit. Join with me, and I will provide that leadership. Together, we will achieve real equality for all Americans, gay and straight alike.

The letter identifies the struggles of the LGBT community for equality of rights as a civil rights movement and Obama affirms his commitment to the “equal rights for all LGBT Americans.” The rhetoric of the letter emphasizes the connection between the issues of the LGBT community and the Civil Rights movement of the 1960s. The reference to our “gay brothers and sisters,” “Americans living as second-class citizens,” and the “founding promise of equality for all” are examples. However, the rhetoric obscures the substance of the letter which when analyzed closely reminds one another kind of rhetoric, the rhetoric of those committed to inequality as the law of the land, that is “separate but equal.” For Obama’s answer, in the letter, to the problem of inequality in “family and adoption” is a civil union, not marriage. The contradiction is impossible to dismiss; for Obama, denying the right of gay people to marry is the solution to the problems of inequality. This not only mirrors the ruling of Plessy v Ferguson, but mirrors the argument by supporters of Proposition 8, that the denial of the right to marriage does not deny gay couples the right to civil unions and its accompanying benefits. Gays and lesbians, in regard to marriage, become a separate but equal community.

Further, in the letter, Obama, at the very least, is disingenuous, and perhaps cynical, with regard to the principle of equality and his commitment to it when he states that “the federal government should not stand in the way of states that want to decide on their own how best to pursue equality.” The fact is that thirty-seven\* states are not pursuing equality in relation to gay and lesbian marriage, but have enacted legislation that legally enshrines inequality. The Fourteenth Amendment was passed to do just what Obama says the federal government should not do, stop states from the pursuit of (in)equality’. And although he claims that he has been courageous in speaking about the issues of the LGBT community in hostile environments and will never compromise, the real ambivalence of his position is revealed when he says that he will not “close (his) ears to the voices of those who still need to be convinced.” Those would be the people who have been successful in making inequality the law of the land for gays and lesbians in many parts of the United States, and those whose ways of thinking or systems of belief whether religious or ideological do not allow for being “convinced” of an alternate point of view. In fact, Obama invited the same anti-gay pastor he speaks of in the letter, Rick Warren, to do the invocationat his inauguration. Pastor Warren subsequently has been found to be active in generating anti-gay legislation in several African countries, one of which is Uganda. At the present, Uganda is considering draconian anti-homosexual legislation that includes the death penalty.

The issues that Obama identifies in the letter that are important to the LGBT community and for which he is says he is going to fight are the repeal of the federal legislation that deprive the LGBT community of its rights, the Defense of Marriage Act and Don’t Ask Don’t Tell. And he is going to support legislation that extends rights to the LGBT community, the previously mentioned Uniting American Families Act and ENDA, the legislation which guarantees the LGBT community equality of rights in the workplace.

In the letter Obama also identifies hate crimes as a serious issue and problem for the community and makes a commitment to the passage of the Mathew Shepard and James Byrd Jr. Hate Crimes Prevention Act. He also identifies HIV/AIDS, and sex education as issues. As mentioned earlier, the Obama administration’s response to the issues that Obama himself identifies in his letter will be examined as the primary way of evaluating his Presidency. However, it is also fair to evaluate the Administration by its response to the passage of Proposition 8 and the public debate surrounding it. And it is equally fair to evaluate the Administration in its response to an issue that is not unrelated, that is the issue of LGBT bullying in school. According to the California Educator, the problem of bullying which ranges from verbal harassment to physical assault has become a wide spread and continually growing phenomenon which has created serious problems for its victims.

Anti-Gay Legislation: Defense of Marriage Act (DOMA)

When Obama wrote the letter to the gay and lesbian community, the most important anti-gay and lesbian marriage legislation was federal legislation referred to as the Defense of Marriage Act. Subsequently, Proposition 8, discussed earlier, was passed in California. Together they constitute the most significant legislative constraints on the rights of gays and lesbians in the realm marriage and family.

The Defense of Marriage Act (DOMA) HR3396.ENR was passed by overwhelming majority in both houses of Congress and signed into law by President Bill Clinton in 1996. Within the Bill Text, the legislation is introduced as “an Act to define and protect the institution of marriage.” In so doing it defines marriage, the rights of states which prohibit same-sex marriage to those states which sanction same-sex marriage, and it defines the term spouse. Section 2 of the Act entitled “Powers Reserved to the States” says:

`No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between

Section 3 of the Act entitled “Definition of Marriage: defines both the terms “marriage” and “spouse”:

`In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word `marriage' means only a legal union between one man and one woman as husband and wife, and the word `spouse' refers only to a person of the opposite sex who is a husband or a wife.'.

While DOMA does not overturn state laws that allow same sex marriages, it effectively limits the rights of gay couples to move from state to state without the threat of having their marriage annulled or at least not recognized legally. And by defining ‘marriage’ as a “legal union between one man and one woman,” and a ‘spouse’ as “ refer(ring)only to a person of the opposite sex who is a husband or a wife,” through federal statute, the rights of partners in same-sex marriages to federal spousal benefits such as social security are effectively denied. And by defining marriage for “the various administrative bureaus and agencies”, it denies, for example, the right of gays and lesbians who are citizens or legal permanent residents of the United States to bring their foreign partners to the United States.

In his letter, Obama makes a commitment to the “repeal” of the DOMA.. However, for the first two years of his Presidency, the Obama administration had done nothing legislatively to fulfill his promise to repeal DOMA. In fact, for the first two years, the Obama Department of Justice had been defending DOMA in law suits brought against it. In a letter to Congress in February 2011, Attorney General Holder acknowledged the Department’s defense of DOMA in courts. He says, “the Department has previously defended DOMA against legal challenges involving legally married same-sex couples.” And specifically that the Department has defended Section 3 (see above) in lawsuits. However, the purpose of the letter was to inform Congress that the President and the Attorney General had determined that Section 3 of DOMA was unconstitutional and that the Department was no longer going to defend it in law suits. Holder says in the letter, “After careful consideration, including review of a recommendation from me, the President of the United States has made the determination that Section 3 of the Defense of Marriage Act (“DOMA”), 1 U.S.C. § 7, ias applied to same-sex couples who are legally married under state law, violates the equal protection component of the Fifth Amendment.”

Holder argues that the level of scrutiny applied by the circuit courts which have upheld DOMA Section 3, rational scrutiny, and which the Department defended, is not an “appropriate level of scrutiny.” He goes on, “the President and I have concluded that classifications based on sexual orientation warrant heightened scrutiny and that, as applied to same-sex couples legally married under state law, Section 3 of DOMA is unconstitutional.” He concludes in the part of the letter entitled “Application to Section 3 of DOMA:

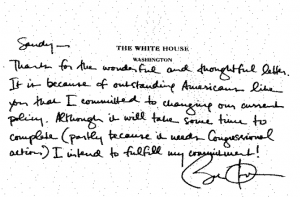
In other words, under heightened scrutiny, the United States cannot defend Section 3 by advancing hypothetical rationales, independent of the legislative record, as it has done in circuits where precedent mandates application of rational basis review. Instead, the United States can defend Section 3 only by invoking Congress’ actual justifications for the law.

The obvious question that arises concerns the timing of this change of policy; it is difficult to not view this new policy as a cynical political decision designed to regain support from a largely disappointed and disillusioned LGBT community at the start of the 2012 presidential campaign. This view is reinforced by the argument itself. It should not have taken two years for the Obama administration to determine that legislation that obviously violates the rights of a minority group is unconstitutional. The Administration should have introduced legislation to repeal the DOMA and supported those who challenged it in court. In turns out that the Administration’s position on DOMA is more “nuanced” than it seemed at first glance.. According to CitizenLink, while the Administration will no longer defend DOMA in court, the Administration has ordered all of the agencies of the executive branch to continue enforcing Section 3 of DOMA. The aforementioned Uniting American Families Act which treats gay and lesbian partners unequally because of DOMA Section 3 is an example of this.

The ballot initiative referred to as Proposition 8 was passed in California in 2008. It originated after the California Supreme Court struck down an earlier proposition, Proposition 22 that passed in 2000. Proposition 22 sought to establish marriage between a man and a woman as the law in California. The California Supreme Court ruled in 2008 that Proposition 22 was a violation of the equal protection clause of the California Constitution. As a result of the California Supreme Court ruling, it appeared that same sex marriage would be recognized as the legal right of gay and lesbian couples in California. The Proposition 8 initiative challenged this presumed right, but in a different way than the Proposition 22 initiative. Proposition 8 sought to amend the California Constitution to say that “Only marriage between a man and woman is valid or recognized in California.” Even though Proposition 8 passed by margin of 53 to 47, a judge has issued a stay, and the stay remains in effect, while the 8th Circuit Court of Appeals reviews the case.\* Despite the fact that the Obama administration has remained silent on Proposition 8, the President refusing to use even his “bully pulpit,” opponents of the Proposition are encouraged by the Administration’s change of policy on DOMA , even this change of policy his only limited to not defending DOMA in court. In Holder’s letter to Congress, he says that the Department will “take an affirmative position on the level of scrutiny that should be applied to DOMA.” This could mean that the Department and the Administration may take the side of the opponents of Proposition 8 when it finally reaches the Supreme Court. Of course, a more affirmative Administration option would be to challenge all state laws which exclude gays and lesbians from the right to marry.\* This could be done under the the Amendments equal protection clause.

Anti-Gay legislation: Don’t Ask, Don’t Tell (DADT)

In January of 2009, Sandy Tsao violated the Don’t Ask, Don’t Tell policy by informing her superiors that she was gay. Tsao was an officer in the U.S. Army and was immediately dismissed from the service.\* Following this, Tsao wrote and letter to President Obama in which she said the following, “I do hope, Mr. President, that you will help us to win the war against prejudice.” The President responded to Tsao’s letter with a handwritten letter that reaffirmed his commitment to repealing DADT.



Don’t Ask Don’t Tell was the military’s policy accompanying federal legislation that defined the conditions under which gays and lesbians could serve in the U.S. military. The policy was the result of a compromise between President Bill Clinton, who had campaigned on “the promise to allow all citizens to serve in the military despite sexual orientation,” and the military. When Clinton entered office in 1993, he wanted to change the military’s long standing policy on “homosexuals” serving in the military. The policy in 1993 was much the same as it had been since the 1950s. It stated that “homosexuality” was incompatible with service in the military and it made sodomy an act that was punishable by discharge from the service, as was the act of admitting to being a homosexual.

By the 1970s, the military was not implementing its policy with any consistency, so in 1981, it sought to reestablish its policy and its consistent enforcement. The result was DOD Directive 1332.14 which again stated that homosexuality was inconsistent with military service. Thereafter, according to a report by the Government Accountability Office (GAO), the military undertook a purge of gays and lesbians from the various branches of the military. A popular reaction to the policy and legal suits brought by service members who had been discharged seemed to create the conditions for the elimination of the policy by the time Clinton came into office. However, Clinton found considerable political resistance and considerable resistance from the military when he attempted to change the policy. Don’t Ask, Don’t Tell, Don’t Pursue was the result of a compromise between these groups. The policy is self-evident. The military agrees not to ask its service members about their sexual orientation and gay, lesbian and bisexual service members agree not to make public their sexual orientation. If they do so, they may be discharged. Also, according to the agreement, service members having sex with same sex service members is prohibited, and act for which they can be discharged.

The compromise agreement became law in 1993 (10 U.S.C.A.654). The legislation states that there is no constitutional right to serve in the military and it claims that Section 8 Article 1 of the Constitution gives Congress the right to “establish qualifications for and conditions of service in the armed forces.” The legislation then goes on to state that the uniqueness of the military as an institution demands the acceptance of certain codes of conduct relative to its successful functioning. Under 654 (a ) the legislation restates the historical contention that homosexuality is inconsistent with military service. It says:

(14) The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to the armed forces' high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.   
  
(15) The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

However, the 654(15)(b) goes on to state the results of the compromise and the new policy that would determine whether or not a service member could be discharged, called Don’t Ask, Don’t Tell, Don’t Pursue. By the end of his presidency, Bill Clinton, came to the conclusion that DODT had been a failure. Discharges of gays and lesbians had actually increased under DODT, as had harassment of gay and lesbian service members. \*(murder of a service gay service member)

By the time Barrack Obama became president, public opinion concerning gays in the military had changed significantly. A 2010 PEW survey revealed that 58% of the public approved of allowing homosexuals to serve in the military while only 27% were opposed. The 31 point margin was much larger than a similar PEW poll taken in 1994 which had only a 7 point margin. A CNN/Opinion Research Corporation poll found an even higher number of Americans supporting homosexuals being allowed to serve in the military, and an even lower number of Americans opposed. In addition, the resistance in the military had lessened. Robert Gates, Secretary of Defense, and high level military officers testified\* that DADT should be repealed. And surveys of service members revealed that a majority of service members were comfortable with gays, lesbians and bisexuals serving openly in the military. The survey was based on responses from some 115,000 troops and 44,200 military spouses. More than a half million questionnaires were distributed last summer. “For example, some 69 percent of service members say they have already worked with someone they believed to be gay. Of those, 92 percent said it had no negative impact on their “ability to work together

In a White House ceremony on Dec 22, 2010, President Obama signed the repeal of DADT. An article in the NY Times of that day described an audience of gay and lesbian rights advocates cheering Obama, “You rock, Mr. President!” And Obama, according to the article, “pronounced himself overwhelmed.” This is interesting and not a little ironic because despite the changing social and political climate, the public’s increasing support of the repeal, and the military’s changing attitude toward DADT as a workable and effective policy, Obama and his administration had introduced no legislation to repeal the law in the first two years of the Administration. In fact the Administration defended the DADT in court cases brought against it. And after DADT was ruled unconstitutional by a federal judge in Log Cabin Republicans v United States, the administration “asked the court to stay the injunction against enforcement of DADT while they appealed.”\*(Newsweek). The Obama administration also demanded that Congress do the law changing. Even more ironically, when Democratic law makers brought such legislation to the Congress in late 2010, the Administration attempted to get them to postpone its introduction of the legislation. Obama has taken credit for the passage of the repeal of DADT and claims that he has fulfilled his campaign promise to the LGBT community.

Obama’s efforts on behalf of the repeal of DODT were far short of the “leadership” he promised in his letter; it was much more, as one commentator put it, “’I’m not going to step in the middle of this’.”\* (Newsweek) It is not surprising that the LGBT community applauded him for the passage of the legislation, so little had been done by the Obama administration for two years. The Administration had done little to affect the repeal of DADT legislatively or in court but claimed that as the President, he had to defend DADT in court in order to be able to fulfill his obligation to “faithfully execute” the laws of the land. This was the same reason he gave for defending DOMA. For example, Constitutional law scholar Jonathan Turley pointed out that an administration has no obligation to align itself with a law that it believes is unconstitutional. And since Lawrence v Texas in 2005, the legal precedent was established that the rights of homosexuals were determined to be protected by the Bill of Rights. “Since then laws that impinge upon the sexual-privacy rights of gay couples are presumed unconstitutional if they have no rational state interest to justify them.” Imagine, he argues, that Congress passed a law denying a racial minority the right to marry, would the Administration defend that in court. Turley says, “The President has a duty to separate his administration from an unconstitutional statute.” The Administration could have chosen not to defend it in court, clearly could have chosen not to appeal the ruling of its constitutionality. “The appeal is completely discretionary. Whatever duty the president has to defend the existing statute was satisfied before the trial court.”\*

Also the Administration could have chosen to order the military not to enforce DADT while the court was hearing the Log Cabin Republicans case. There is some debate about whether Obama had the authority through Executive Order, or as Commander in Chief, to order DADT not be enforced while legislation was being debated, and/or court cases were being heard. But there is no argument that he could have stopped DADT from being enforced at all by using stop/loss, a power granted him through Congressional legislation. “Stop-loss authority is a statutory authority enacted by Congress. . . .It gives the president authority to suspend any law that involves the discharge of service members.

Hate Crimes and School Bullying

In Obama’s letter to the LGBT community, he identifies hate crimes as an important issue for the community and affirms his commitment to the enactment of the anti-hate crime legislation, the Mathew Shepard and James Byrd Jr. Hate Crimes Prevention Act. Hate crimes are an important issue and problem for American society and an important issue and problem for the various groups in our society that have been victimized by such crimes. One attempt to resolve the problem of crimes motivated by bias towards specific groups has been the enactment of legislation that codifies these types of crimes as hate crimes. According the U.S (WHICH/WHERE) legal code, a hate crime is a ‘criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, ethnic origin or sexual orientation.”\*(?) The first hate crimes legislation was enacted in 1969 and in 1994 hate crime legislation was passed that made the penalties for committing hate crimes more severe. The need to create a special class of crimes, hate crimes, and the need to codify more severe punishments for the perpetrators of these crimes is that they are not just crimes against persons, their property, or their immediate families, but that they are crimes against an entire group. And, in fact, a hate crime is a crime against society as a whole if that society believes that none of its citizens should live, or be treated, as second class citizens.

While hate crimes are a significant problem for American society and for the groups identified in the original legislation, hate crimes are an even more serious problem for members of the LGBT community. A minority group who were not included in the original hate crime legislation. In the latest statistics on hate crimes, overall hate crimes have decreased as have hate crimes directed at gays and lesbians. According to the latest statistics from the FBI\*, there were 7,789 hate crime offenses in 2009 down from 9,168 in 2008, and of those hate crime offenses in 2009, 1,436 were hate crime offenses based on sexual-orientation bias ranging from anti-male homosexual bias to anti-heterosexual bias (slightly over 1%). This was down from 1,617 in 2008. Gay and lesbian groups and human rights groups monitoring hate crimes believe that there is evidence that these statistics do not accurately reflect the true extent of the problem of hate crimes for the LGBT community. \* A study by the Southern Poverty Law Center supports this view. The study looked at hate crimes during the fourteen year period from 1995 to 2008 and found that members of the LGBT community were more likely to be victims of hate crimes than members of any of the other groups protected by anti-hate crime statutes. The report concludes that LGBT are 2x more likely to be victims of hate crimes than Jews or blacks, 4x more likely to be victims than Muslims, and 14x more likely to be victims of hate crimes than Latinos.

The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act expands the scope of those protected under anti-hate crimes legislation to gender, sexual identity and disability. It is named after Matthew Shepard, a gay college student, who was tortured and murdered in Wyoming and James A. Byrd Jr., a black male from Texas, who was dragged to death. Early in his administration, Obama fulfilled his commitment to the LGBT community by signing the Act into law. Not only does the legislation expand the groups covered by anti-hate crimes law, but it also expands the authority of the Attorney General in relation to certifying a crime as a hate crime. And it provides “technical, forensic, prosecutorial and any other forms of investigative assistance,” as well as providing grants to the states to help with the investigation and the prosecution of hate crimes. It gives the Federal government the authority to prosecute hate crimes when it believes that states have failed to do so.\*(SUMMARY of LAW?) The Obama administration’s Department of Justice Civil Rights Division has increased hate crimes prosecution significantly compared to the Bush administration. Its record for prosecuting hate crimes committed against members of the GLBT community is \_\_\_\_\_\_\_\_. (#)

The passage of legislation is one part of solving the problem, but enforcement is the another part. An article written in the Daily Kos in July 2010 illustratex the difficulty that the LGBT community faces in regard to the enforcement of anti-hate crime laws. The Kos article refers to the story in the Augusta Chronicle about an assault by two Marines on a local resident. According to the story, Kieren Daly was walking home when he was attacked by two Marines. The Marines said that they were just trying to get away from a gay man who they claimed had been harassing them. The justification for the assault, according to Daly, was that the Marines said that I had “winked” at them. The two Marines were easily apprehended by the police, but the assault was not prosecuted as a hate crime by the local D.A. nor was it designated a hate crime by the Justice Department. Both the local D.A. and the Justice Department claimed that there was “no merit” to the case being designated and tried as a hate crime even though the Marines admitted identifying the victim as gay and claiming that he was “coming on to them by winking at them.” Further the DA claimed that for a crime to be considered a hate crime it had to be a felony\* and there has to be “proof of sustained injury.” This was not the case, according to the DA, “Daly only suffered a punch.” Actually, according to the Augusta Chronicle,

The officer rushed to the intersection and found 26-year-old Kieran Daly **unconscious, with friends performing emergency first aid**, a report stated.   
[...]   
Daly said after his friends **performed cardio-pulmonary resuscitation at the scene**, he was taken to Memorial University Medical Center and **diagnosed with bruises to his brain**. He had **two seizures immediately after the attack** and was **expected to remain at Memorial for the next few days for observation**.

Under the Mathew Shepard Act, the offense was clearly a hate crime offense, and the state of Georgia has no state anti-hate crime law, so this was clearly the jurisdiction of the Justice Department, and it was exactly the type of offense for which the Act was intended. The DaIly Kos concluded:

While far too many people die from hate crime violence, murders constitute a very small number of the total number of hate crimes committed each year. There are far more simple and aggravated assaults, incidents of intimidation and acts of theft, burglary, arson and vandalism against property. In those cases, it was the intent of the hate crimes act to elevate such bias motivated offenses to the level of felonies and mete out more serious sentences to such offenders. Instead, the two Marines in this case will, if convicted, only have misdemeanor convictions.

Not unrelated to the issue of hate crimes is the issue of school bullying of LGBT students. This issue became a part of public consciousness and public debate when four GLBT-identified students took their lives in September of 2010. “Among them was Sean Walsh, a 13-year-old-middle school student in Tehachapi, Calif., who was on life support for nine days after hanging himself after being the victim of relentless bullying.”\* While the suicides of four students from the GLBT community in the same month may be unusual, at least the public recognition of it, it reflects a more widespread problem. According the California Educator, “The suicide rate of GLBT students continues to be three to four times higher than that of their straight counterparts.” The 2009 National School Climate Survey, a survey done by the Gay, Lesbian and Straight Education Network of 7,621 middle and high-school students, shows that school bullying is a wide ranging social phenomenon and that there are serious consequences for the victims. According to the survey, 85% of LGBT students reported being verbally harassed, 40% reported being physically harassed, and 19% reported being physically assaulted. The consequences, not unexpectedly, are extremely serious. “Nearly two-thirds (61.1%) of the GLBT students reported that they felt unsafe at school,” “increased levels of victimization were related to increased levels of depression and anxiety and decreased levels of self-esteem,” the students who were more frequently harassed had lower grade averages than those less frequently harassed, and “coming out at school was related to higher levels of victimization.”\*

President Obama, saying he was emotionally moved by the suicides of LGBT students, held a conference in the White House on March 10th 2011. The conference was “dedicated to discussing bullying prevention and sharing ideas and strategies for combating the crisis.” The emphasis of the conference was on what individuals could do, as Obama said, “As parents and students, as teachers and members of the community, we can take steps-all of us-to help prevent bullying and create a climate in our schools in which all of our children can feel safe; a climate in which they all can feel like they belong.” Obama, himself, made a you tube film for Dan Savage’s “It Gets Better”(?) program.

What was absent, however, from the conference was the leadership that Obama promised in his letter. Obama never mentioned in his remarks, nor were there workshops that addressed the role of, federal legislation in stopping school bullying of LGBT students. And at no point in the conference did he or anyone from the administration focus on what the Obama administration and the federal government could do. In fact two legislative acts have been introduced already. They are the Safe Schools Improvement Act (SSIA) and the School Non-Discrimination Act(SNDA). “The SSIA would amend the Safe and Drug-Free Schools and Communities Act to include bullying- and harassment-prevention programs, including ones based on sexual orientation or gender identity. The SNDA, modeled after Title IX, would add sexual orientation and gender identity to federal education nondiscrimination law.” The Obama administration has claimed to support the legislation but so far has “failed to endorse either bill and have rarely even mentioned the bills except in response to specific questions about them.” The typical response is that the administration looks forward to addressing the issue when the Elementary and Secondary Education Act is being considered next year. Conferences, photo ops, videos, and a “stop bullying” website are much less than could be done either through legislation and/or the “bully pulpit.

(from “Awaiting Endorsement”, The Metro Weekly, Chris Geidner, March 16,2011.

Progressive Legislation: Employment Non-Discrimination Act and Uniting American Families Act

Single mother **Jacinda Meyer** worked as a licensed insurance agent in Southern California. During her first nine months on the job, the company gave her positive feedback about her performance and a raise. But soon after her boss learned that she was a lesbian, she was fired. She later applied for a job with a “sister company” and after several interviews and personality and placement testing, they made her a verbal offer. The next day, she received a call rescinding the offer.

Before transitioning from male to female, **Diane Schroer** was a decorated U.S. Army Special Forces officer who completed 450 parachute jumps into some of the world’s most dangerous places during her 25 years of service. She was handpicked to head up a classified national security operation and briefed Vice President Cheney. After retiring from the military, she wanted to capitalize on her experience fighting terrorism and applied for a job with a large federal agency library in Washington, D.C., as a senior terrorism research analyst. She received an offer shortly after the interview and accepted the position. Prior to starting work, Schroer invited her new boss to lunch to explain that she was transgender and would like to begin the job as a woman. The next day, the director called Schroer and rescinded the offer because she wasn’t a "good fit."

**Thomas Bryant** worked for a temporary staffing agency in Indiana where he was viewed as a good employee and was responsible for training 50 new workers. Bryant, who was honest about the fact that he was gay when asked, had a co-worker who repeatedly made comments about “fags” in front of him. After complaints to his supervisor were ignored, Bryant complained to human resources. After a meeting with HR and the other employee, Bryant thought the problem was resolved. The next day, Bryant was fired.

The above stories are three of those that are documented in the American Civil Liberties Union report entitled “Working in the Shadows.” The report concludes that there is widespread discrimination in the workplace directed at members of the LGBT community. The discrimination ranges from workplace harassment, to being denied job opportunity, to being denied promotion, to being fired. The LGBT community is not protected from workplace discrimination by federal statue. LGBT workers can be legally fired or denied employment in 30 states, and transgender workers can be legally fired or denied employment in 39 states. Legislation has again been introduced in Congress that would guarantee the same rights to LGBT workers that are guaranteed for all other workers. This legislation is called the Employment Non-discrimination Act (ENDA).\* According to the Human Rights Campaign, ENDA “would provide basic protections against workplace discrimination on the basis of sexual orientation or gender identity.  ENDA simply affords to all Americans basic employment protection from discrimination based on irrational prejudice.  The bill is closely modeled on existing civil rights laws, including Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act.”

ENDA was first introduced in 1994 and has been introduced subsequently in almost every session of Congress. The Congressman who introduced it most recently in the current session of Congress (2011), Barney Frank (D-MA), admits that it has little or no chance of passing now that the Republican party has the majority in the House of Representatives. He says

It's an organizing tool. Obviously, with the Republicans in power, you're not going to get the bill even considered. But, we have work still to do and we have overwhelming – over 90 percent – support on the Democratic side for ENDA based on sexual orientation and we had, in the last Congress, about 30 Republicans that way. Unfortunately, there's a drop-off from that number to transgender, and this is a chance to work hard to sway those who are committed to ENDA to support the full transgender inclusion as well.

The legislation was introduced in the last session of Congress when the Democratic Party had control of both houses of Congress. However, as Equality Matters reports, it “was never brought to the floor.” Obama had his best opportunity to fulfill his commitment to the LGBT community in this earlier session. He used neither his “bully pulpit,” the power of his office, nor the leadership he promised to get the bill even brought to the floor. In fact Obama and his administration are behind even corporations and quite a few of the states in demanding the rights for the LGBT workers. The Human Rights Campaign notes that companies have already begun to protect LGBT workers by establishing their own anti-discrimination policies. As they say, “As of March 2011, 433 (87 percent) of the Fortune 500 companies had implemented non-discrimination policies that include sexual orientation, and 229 (46 percent) had policies that include gender identity.” States have also begun to pass anti-LBGT discrimination legislation. As many as twenty-one states have passed legislation which protects workers from discrimination based on sexual orientation, and thirteen states have passed legislation which protects workers from discrimination based on gender identity.

Obama’s commitment to support the strengthening of the Uniting American Families Act is even more tenuous. The Obama administration, despite its reversal on the Defense of Marriage Act, continues to enforce the Defense of Marriage Act in immigration cases. The Uniting American Families Act allows U.S. citizens and legal residents to bring their spouses to the United States through specific immigration procedures. However, DOMA’s definition of marriage and spouse excludes gays and lesbians from being able to use the same means to bring their partners, married or ciivil union. Many believed that with the Administration’s determination that the DOMA was unconstitutional, the Administration’s immigration policy would change. Citizenship and Immigration Services spokesman Christopher Bentley said the CIS “has not implemented any change in policy and intends to follow the president’s directive to continue enforcing the law.” And he continued, “the agency would continue to deny immigration status to foreigners based on those marriages.”\*

It is somewhat ironic to be evaluating Obama as a progressive President in relation to the LGBT community because the issues raised by the mainstream LGBT community and identified by Obama as the issues to which he is commitment are only marginally progressive, if progressive at all. The goals of the LGBT community are classically liberal. The LGBT community wants to be fully enfranchised politically, they want the same opportunities and protections in the workplace that others are granted, and they want full social and cultural rights. Being denied these rights, protections and opportunities are self-evidently wrong; wrong morally and wrong legally. The denial of these rights violates the equal protection clauses of the Constitution (5th and 14th Amendments), the Universal Delcaration of Human Rights, the Convention on Political and Civil Rights.

All Americans should join the struggle to change this. However, such a change would not be progressive, unless the term is deprived of all of its radical content; it would not change an economic structure that is unfair, unjust and unequal. It would not change a political system that is only in place because it guarantees that there will be no significant changes to the status quo. In other words, the LGBT movement is much like the Civil Rights Movement and the Liberal Feminist Movement. It accepts the social order and demands its rightful place within it. Obama even finds this politically threatening.

What is the progressive element in this struggle?

Obama is clearly not progressive, and he is ambivalent at best in keeping his commitment to the community. He knows LGBT community will vote for him anyway as Bulworth said about Democrats failure to help African Americans “What are you going to do, vote Republican?