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In this chapter, we draw from the 50 state reports to provide a sample of comments made by state legislators, governors, judges, and other state and local policy makers and officials which show animus toward LGBT people. Such statements likely both deter LGBT people from seeking state and local government employment and cause them to be closeted if they are employed by public agencies. In addition, these statements often serve as indicia of why laws extending legal protections to LGBT people are opposed or repealed.

As the United States Supreme Court has recognized, irrational discrimination is often signaled by indicators of bias, and bias is unacceptable as a substitute for legitimate governmental interests.[1] "[N]egative attitudes or fear, unsubstantiated by factors which are properly cognizable…are not permissible bases" for governmental decision-making.[2] This concern has special applicability to widespread and persistent negative attitudes toward gay and transgender minorities. As Justice O'Connor stated in her concurring opinion in *Lawrence v. Texas*, 539 U.S. 558, 580-82 (2003):

> We have consistently held…that some objectives, such as "a bare...desire to harm a politically unpopular group," are not legitimate state interests. …
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> Moral disapproval of this group [homosexuals] desire to harm the group, is an interest that is in satisfy rational basis review under the Equa Clause.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case number: 3:09-cv-02292-VRW

PLTF EXHIBIT NO. PX0619

Date admitted: _____

By: _____

[1] *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356,
[2] *Id.* (quoting *Cleburne v Cleburne Living Center*, 473 U.S. 432, 448 (1985)

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> Moral disapproval of this group [homosexuals], like a bare desire to harm the group, is an interest that is insufficient to satisfy rational basis review under the Equal Protection Clause.

[1] *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356, 367 (2001).
[2] *Id*. (quoting *Cleburne v Cleburne Living Center*, 473 U.S. 432, 448 (1985)).

The 50 state reports, upon which this chapter is based, contain countless examples of statements made by state legislators, judges, governors, and other state and local policy makers that LGBT people are mentally ill, pedophiles, wealthy, terrorists, Nazis, condemned by God, immoral, and unhealthy. Often, these statements are made while the speakers are opposing state or local laws that would prohibit discrimination on the bases of sexual orientation and gender identity or endorsing laws to repeal or prevent the enactment of such protections.

Some of the examples below include statements that prohibitions of employment discrimination will confer "special rights" on LGBT people. This "special rights" argument animated much of the support for the passage of Colorado's Amendment 2, which would have repealed anti-discrimination protections for LGBT people in the state and erected new and unique barriers to enacting protections in the future. The United States Supreme Court struck Amendment 2 down as unconstitutional, finding that it was "a denial of equal protection of the laws in the most literal sense."[3] Writing for the Court, Justice Kennedy stated that the amendment's "sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class that it affects; it lacks a rational relationship to legitimate state interests."[4] The Court also specifically rejected the "special rights" logic behind Amendment 2, stating: "We find nothing special in the protections Amendment 2 withholds. These are protections taken for granted by most people either because they already have them or do not need them; these are protections against exclusion from an

[3] *Romer v. Evans,* 517 U.S. 620, 633 (1996).
[4] *Id*. at 632.

almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society."[5]

While comments like those listed below occur frequently in policy discussions about prohibiting employment discrimination on the basis of sexual orientation and gender identity, we did not document any assertions made during the time frame of our study that sexual orientation and gender identity diminish an individual's ability to perform in the workplace, except for claims based on false stereotypes or the discriminatory reactions of others. This is not surprising. Courts, individual judges, and legal scholars have found, time and again, that sexual orientation and gender identity are not related to a person's ability to contribute in society or in the workplace.[6] As a justice on the Montana Supreme Court wrote in 2004:

> „We the people' rarely pass up an opportunity to bash and condemn gays and lesbians despite the fact that these citizens are our neighbors and that they work, pay taxes, vote, hold public office, own businesses, provide professional services, worship, raise their families and serve their communities in the same manner as heterosexuals.[7]

The following examples, drawn from the 50 state reports, come from every geographic region of the nation. They repeatedly invoke rationales (such as morality or sectarian beliefs) that have been rejected under the U.S. Constitution as acceptable bases for unfavorable treatment of a group of persons by arms of the state. They reinforce false and stigmatizing stereotypes about LGBT people.

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[5] *Id*. at 631.

[6] See, e.g., *Hernandez v. Robles*, 7 N.Y.3d 338, 388 (2006) (Kaye, C.J., dissenting) ("[o]bviously, sexual orientation is irrelevant to one's ability to perform or contribute"); *Jantz v. Muci*, 759 F. Supp. 1543, 1548 (D. Kan. 1991) (homosexuality "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities" (internal citations omitted)), *cert. denied*, 508 U.S. 952 (1993); L. TRIBE, AMERICAN CONSTITUTIONAL LAW (2nd Ed. 1988) § 16-33, at 1616 ("homosexuality bears no relation at all to [an] individual's ability to contribute fully to society").

[7] *Snetsinger v. Mont. Univ. Sys.*, 325 Mont. 148, 455-56 (Mont. 2004) (concurring opinion).

The examples begin in 1980, but some are as current as this year and even this month. Earlier this year, for example, a Utah State Senator claimed in an interview to have killed every gay rights bill in the legislature for the last eight years, because he believes that homosexuality "will always be a sexual perversion." He continued, "[W]hat is [sic] the morals of a gay person? You can't answer that because anything goes."[8] This month in Ohio, in discussion of a bill to prohibit sexual orientation and gender identity discrimination in the workplace and other arenas, one member of the state legislature said he opposed the bill because LGBT people should "keep your immoral beliefs to yourself." Another member said the anti-discrimination bill was about "forcing acceptance of a lifestyle that many people disagree with."[9]

These examples are important facts for Congress to include as part of its record supporting the abrogation of states' sovereign immunity for claims of employment discrimination. When expressed by state officials or others involved in the activities of state and local government, such animus and hostility can have a direct effect on the ability of LGBT Americans to earn a livelihood, because applicants are understandably deterred from applying for public sector jobs and, if employed, chilled from interacting honestly with their supervisors and coworkers. In addition, the sheer frequency with which these views are expressed taints the process by which state legislatures consider anti-discrimination laws.

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[8] Queerty, *Utah State Senator Chris Buttars on the Gays: "They're the Meanest Buggers I Have Ever Seen,"* http://www.queerty.com/utah-state-senator-chris-buttars-on-the-gays-theyre-the-meanest-buggers-i-have-ever-seen-20090218/ (last accessed on September 18, 2009).

[9] *Gay-rights bill passes Ohio House,* Columbus Ohio Dispatch September 15, 2009, http://www.dispatch.com/live/content/local_news/stories/2009/09/15/gay_discriminate.html?type=rss&cat=&sid=101 (last accessed on September 18, 2009).

## Alabama

- As of 2009, Alabama's education code continues to require that sex education in public schools include "[a]n emphasis…that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under the laws of the state."[10]

- In August of 2008, the mayor of Birmingham was sued for discriminating against LGBT city employees by refusing to let them hang Gay Pride Week banners on city property, although no similar prohibitions were enacted to bar banners from other types of employees.[11] The mayor also refused to sign a parade permit for the annual Gay Pride Celebration Parade, and publicly stated that he did not condone the "lifestyle choice" represented by the parade.[12] In early December 2008, a federal judge denied the mayor's motion to dismiss the lawsuit.[13]

- In 1996, Alabama's governor issued an Executive Order that included the statement that "God's law prohibits members of the same sex from having sexual relations with each other."[14]

## Alaska

- In 2009, Anchorage Mayor Dan Sullivan vetoed an anti-discrimination ordinance that would have prohibited discrimination on the basis of sexual orientation. He argued that there was a "lack of quantifiable evidence necessitating the

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[10] ALA. CODE §16-40A-2(C)(8) (2008).
[11] *Central Alabama Pride, Inc. v. Langford*. No. 2:2008cv01533 (N.D. Ala. filed Aug 27, 2008).
[12] *See id.* and Plaintiff's Complaint associated therewith.
[13] James Hipps, *Federal Judge Denies Mayor's Request,* GAYAGENDA, Dec. 15, 2008, http://www.gayagenda.com/tag/central-pride-alabama.
[14] ALA. CODE §16-40A-2(C)(8) (2008).

ordinance."[15] In response, one Assembly member expressed disappointment with the mayor's use of "circular logic" regarding this statement, particularly since no method for filing complaints even existed.[16]

- In 2006, when the Alaska Supreme Court ruled that it was unconstitutional for the state to deny benefits to same-sex partners that were afforded to spouses, Governor Frank Murkowski called the decision "shameful."[17]

- In a 1998 debate on a state constitutional provision to limit marriage to heterosexual couples, one of the bill's supporters, State Senator Jerry Ward, said the amendment was designed to answer the question: "Do you believe that one man and one woman should be married, or do you believe a goat and a cow, or two homosexuals should be?"[18]

- In 1995, two members of the Anchorage Municipal Assembly proposed a broad ordinance proscribing advertisement for "any political candidate, political or public issue, religious issue or subject, or any sex or sexual orientation" and defined "sexual orientation" as including "any human or animal sexual orientation including asexual, heterosexual, homosexual and bisexual orientations."[19] When asked for an example of animal sexual orientation, Assemblyman Bob Bell said, "Well, what's the definition of sexual orientation? You can interpret sexual

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[15] Editorial, *Our View: Gay Rights Veto*, ANCHORAGE DAILY NEWS, Aug. 18, 2009, *available at* http://bit.ly/ZWJsC.
[16] William Yardley, *Anchorage Gay Rights Measure is Set Back by Mayor's Veto*, N.Y. TIMES, Aug. 18, 2009.
[17] Anne Sutton, *Measure Denying Benefits to Gay Couples Sputters in Legislature*, A.P., Apr. 7, 2006.
[18] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 65-66 (1999 ed.).

orientation as anything -- sex with animals, sex with children, sex with dead people."[20]

Arkansas

- As reported in a 2009 court decision, parents brought suit against a public school on behalf of their child who had been bullied and harassed at school based on his perceived sexual orientation. The parents reported to the vice principal that children in the school had created a Facebook group with the description, "There is no reason anyone should like Billy he's a little bitch [sic]. And a homosexual that NO ONE LIKES." The vice principal's response was to ask, "Well, is he a homosexual?"[21]

- In 1998, opponents of a county ordinance prohibiting discrimination on the basis of sexual orientation were successful in getting it repealed, arguing that it validated "repugnant" and "immoral" sexual behaviors.[22]

Arizona

- In 1999, State Representative Karen Johnson introduced a bill that would have prohibited state municipalities from offering domestic partnership benefits to their employees. According to Johnson, gay men and lesbians do not need health or life insurance because "[t]hey can afford it," referring to the myth that all gay men and lesbians have high incomes. Defending her attempt to exclude gay men and lesbians from state benefits, she claimed that "[h]omosexuality is the lower end of

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[21] *Wolfe v. Fayetteville, Ark. Sch. Dist.*, 600 F.Supp.2d. 1011, 1017 (W.D. Ark 2009).
[22] Michael Rowett, *Orientation on Sex Out as JPs Trim Bias Shield*, ARK. DEMOCRAT GAZETTE, July 12, 1998, at B1.

the behavioral spectrum." Johnson linked gay men and lesbians to diseases such as AIDS, gonorrhea, anal carcinoma and something she called "gay bowel disease."[23]

- The bill's co-sponsor, Barbara Blewster, went further. In a letter to a constituent, she compared homosexuality to "bestiality, human sacrifice and cannibalism." Blewster claimed that ancient civilizations that embraced homosexuals also practiced sex acts with animals and human sacrifice. She wrote that homosexuality "is a high sign of the downfall of the nation."[24]

<u>California</u>

- In 1999, the California Legislature added sexual orientation to the anti-discrimination provisions of the Fair Employment and Housing Act.[25] During the legislature's consideration of the bill, State Senator Richard Mountjoy claimed that being gay "is a sickness…an uncontrolled passion similar to that which would cause someone to rape."[26]

- In 1998, Governor Pete Wilson characterized as "unnecessary" a bill that would have moved sexual orientation protection from the California Labor Code to Fair Employment and Housing Act. The governor returned the bill, unsigned, to the legislature. State Senator Richard Mountjoy denounced the bill for giving

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[23] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 78-79 (2000 ed.).
[24] *Id*.
[25] *California Gay Rights Timeline*, PINK NEWS, http://www.pinknews.co.uk/aroundtheworld/tag/vetoes.
[26] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: A STATE BY STATE REPORT ON ANTI-GAY ACTIVITY 89 (2000 ed.).

"special rights" to gay men and lesbians and threatened to promote a public referendum to overturn the law if the governor failed to veto the legislation.[27]

- In 1995, California Deputy Attorney General Andrew Loomis, representing the state in the firing of a gay California National Guardsman, filed a brief containing several anti-gay comments: "Undisputably homosexual acts are despised by a great proportion of the voters," he wrote. "It is still OK to be prejudiced or biased against criminals, such as molesters and pederasts, and to fire them for it." He argued that "the Constitution does not recognize anything special about [the Guardsman's] own favorite nasty habits" and that "soldiers are still entitled to despise [homosexuality] as they choose." Attorney General Dan Lundgren removed Loomis from the case, but did not dismiss him, and a letter of apology for "inappropriate language" went to the presiding judge.[28]

- In the early 1990's, Mitchell Grobeson, a former officer of the Los Angeles Police Department, brought suit against the City of Los Angeles for the harassment and discrimination he faced while a member of the Department. Officers who testified in his case disclosed the existence of informal anti-gay policies and practices adopted by the police force. Their comments included, "The Department requires that police officers adopt a "macho" attitude, and an essential part of that "macho" attitude is the hatred of homosexuals. The Department's

[27] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: A STATE BY STATE REPORT ON ANTI-GAY ACTIVITY 30 (1998 ed.).
[28] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: A STATE BY STATE REPORT ON ANTI-GAY ACTIVITY 32 (1995 ed.)

extreme bias against homosexuals is bred into every new generation of officers"[29] and, "It was common to hear officers taking about „faggots' and „bull dykes.' These offensive remarks were made by both the cadets and the training officers, and other supervisory personnel responsible for instructing the cadets in proper police conduct."[30]

Colorado

- In 1999, El Paso County Commissioner Betty Beedy claimed on ABC's *The View* that since you cannot "see" sexual orientation, gay men and lesbians cannot be discriminated against and therefore do not need legal protections against discrimination.[31]

Connecticut

- In 2009, State Representative Richard Belden voiced his reservations about a state bill prohibiting discrimination on the basis of gender identity by declaring: "[W]hat people do on their private time in their private lives is one thing. But when we get to the norm, and what we do collectively in society, be it employment, I think it's slightly different…."[32] The bill died in the Connecticut House of Representatives.[33]

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[29] Declaration of John Roe-1 (Nov. 21, 1989), *Grobeson v. City of Los Angeles*, LASC Case No. C 700134, 70-71.
[30] Declaration of John Doe-2 (Nov. 21, 1989), *Grobeson v. City of Los Angeles*, *id.,* ¶¶ 2,6-8.
[31] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 98 (1999 ed.).
[32] CT H.R. Tran., June 4, 2007 (statement of State Rep. Kevin Witkos).
[33] *See* Daniela Altimari, *Connecticut to Consider Transgender Anti-Discrimination Proposal*, HARTFORD COURANT, Jan. 6, 2009, at A1.

- In 2000, when a rainbow flag was flown over the state Capitol to commemorate a week of lobbying for gay and lesbian rights, several state legislators objected. "Many state residents have strong moral objections to the homosexual lifestyle, and these citizens have a right to expect that the Capitol flagpole will not be used to further the gay agenda," State Representative T.R. Rowe said, also comparing gay and lesbian rights groups to the Ku Klux Klan.[34]

Delaware

- In 2000, according to one gay rights activist, Representative Charles West of Delaware told a group of citizens lobbying in support of adding sexual orientation to the state anti-discrimination statute, "I'm not going to vote for it because I don't like the way you [gay people] recruit children to your lifestyle. … It was one thing when you people were quiet, but now that you're coming forward, wanting your rights, that's hard to take."[35]

- In 1997, a complaint was filed against a judge in Delaware who dismissed a domestic abuse case involving two lesbians, whom the judge threatened to send to jail because he wanted nothing to do with "funny relationships." The entire courtroom erupted into laughter after hearing the judge state, "You all have these funny relationships – that's fine – I have nothing to do with it, but don't bring it in here for me to try to decide, I don't know how to handle it. Now take this stuff out of here, I'm dismissing the case, you all control your business another way,

[34] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 133 (2000 ed.).
[35] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 133 (2000 ed.).

get out of here. It's too much for me. Don't bring it back – the next time you come back, I'll put somebody in jail."[36]

Florida

- In 2007, Florida Representative D. Alan Hays has been quoted as saying that he believes gay men and lesbians "need psychological treatment" and on a different occasion stated: "I had a cousin who died of AIDS; he was queer as a three-dollar bill. He had that homosexual lifestyle and deserved what he got."[37]

- Susan Stanton worked for the City of Largo as an assistant city manager and city manager for a combined 17 years.[38] In early 2007, Stanton informed her superiors that she planned to begin living as a woman in preparation for a sex-change operation. News of Stanton's decision was leaked to the local media, leading the City Commissioners to vote 5-2 to suspend Stanton pending their final vote. During the suspension meeting, one of the Commissioners who voted in favor of the suspension stated: "His brain is the same today as it was last week. He may be even able to be a better city manager. But I sense that he's lost his standing as a leader among the employees of the city."[39] A citizen stated in the meeting: "I don't want that man in office. I don't think we should be paying him $150,000 a year when he's not been truthful. We have to speak up. Of course, we don't believe in sex changes or lesbianism."

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[36] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 48-49 (1997 ed.).
[37] Kevin Jennings, *What the Hays? Florida Legislator Proves Need for a Real Safe Schools Bill*, HUFFINGTON POST, Mar. 17, 2007; http://www.dispatch.com/live/content/local_news/stories/2009/09/15/gay_discriminate.html?type=rss&cat=&sid=101 (last accessed September 18, 2009).
[38] Jillian Todd Weiss, *The Law Covering Steve (Susan) Stanton, City Manager Dismissed In Largo, Florida,* STANTON LEGAL, http://bit.ly/186I3m.
[39] Lorri Helfand, *Commission Moves to Fire Stanton*, ST. PETERSBURG TIMES, Feb. 27, 2007.

- The proposal to add sexual orientation protection to the employment anti-discrimination policy at the University of Florida encountered strong opposition. In 1999, during a faculty meeting debate described as "hostile" by the chair of the University of Florida Committee for Gay, Lesbian, and Bisexual Concerns, "some of the speakers associated gay people with pedophiles."[40]

- In January 1998, the Miami Shores City Council rejected Vice-Mayor Mike Broyle's proposal to urge Miami-Dade County to add sexual orientation to the county's Human Rights Ordinance. Councilmember Cesar Sastre, who voted against the measure, compared homosexuality to alcoholism and said, "Why should gay people be treated different than me? What is sexual orientation? Where do we draw the line?" Sastre defended his comments by claiming that he is a recovering alcoholic who wants gay men and lesbians to "recover" from their sexual orientation.[41]

- In 1997, a state transportation official responded to a request for a donation to the Florida AIDS Ride by expressing the view that AIDS "was created as a punishment to the gay and lesbian communities across the world." The official, a planner in the Department of Transportation's safety office, wrote that she was sorry that "innocent [heterosexual] people have also had to suffer." But, she

[40] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 109-110 (1999 ed.).
[41] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 116 (1999 ed.).

added, "[A]s far as the gay[s] and lesbians of this world...let them suffer their consequences!" The letter was composed on official state stationery.[42]

Georgia

- In February, 2009, an openly gay University of Georgia, Athens, professor was accused by two Georgia state representatives of recruiting "young teenage gays" to accompany him on international trips, despite the fact that he is not involved with study abroad programs and teaches graduate level classes. The professor was cleared of any misconduct after an investigation. The state representatives also said they would pressure the University of Georgia, Athens, Georgia State University, and Kennesaw State University to terminate any professors who teach "queer theory" courses. The University of Georgia defended its course offerings and the professors. The legislators also called on three other professors into the State Senate to defend their research on sexuality and the outbreak of HIV and AIDS.[43]

Idaho

- In a hearing on a bill that would have added sexual orientation to the state's Human Rights Act in 2009, State Senator Russ Fulcher told the committee: "I'm not interested in giving special rights."[44]

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[42] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 52 (1997 ed.).

[43] *Pulpit Power: Does the Religious Right Still Control Georgia?*, SOUTHERN VOICE, Mar. 13, 2009; *Georgia Lawmakers Clash Over Queer Theory, Academic Freedom*, SOUTHERN VOICE, Feb. 11, 2009; *Sex Research Puts University of Georgia Professors in Hot Seat*, DIGITAL J., Febr. 23, 2009; *Professor cleared of allegations*, RED & BLACK, Feb. 17, 2009.

[44] *Idaho LGBT Bill Dies in Committee*, Feb. 25, 2009, http://rainbowzine.com/news-from-your-state/59-idaho-news/346-idaho-lgnt-bill-dies-in-committee (last visited Oct. 5, 2009).

Illinois

- In 1999, the Illinois legislature rejected a bill[45] that would have prohibited employment discrimination based on sexual orientation. State Representative Cal Skinner, who voted against the bill, told a reporter that to pass it "would be enabling an addiction" that kills people by transmitting AIDS.[46]

Indiana

- In 1998, one member of the Indiana state legislature repeatedly tried to prevent adoption by same-sex couples, invoking the myth that they are more likely to molest children.[47]

- In 1997, the East Allen County School Board passed a resolution that stated, "This is a denunciation of activities such as drug use, premarital sex, violence, or gay and lesbian behavior, or the support of such activities." The board member who raised the issue commented, "I think...this type of behavior in our classroom is contrary to our values in our community and that we should say we don't approve of that. Homosexuality is contrary to the laws of nature, it's morally unacceptable to our community, and we should teach our children as much."[48]

Iowa

- During a debate on a bill to prohibit discrimination on the basis of sexual orientation in 2009, State Senator Nancy Boettger stated, "I think we are opening

[45] H. 474, 91st Gen. Assemb., Reg. Sess. (Il. 1999).
[46] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 164 (2000 ed.).
[47] Steve Sanders, *Hate Speech Can Stir Up Hateful Acts*, BALTIMORE SUN, Oct. 18, 1998 at 1C.
[48] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 62 (1997 ed.).

the door to some very serious, unintended consequences with this bill… I, for one, do not want a cross-dresser teaching in our public or private schools."[49]

Kansas

- In 2005, a proposed amendment to add sexual orientation to the Kansas Act Against Discrimination was introduced in the Committee on Federal and State Affairs, but failed.[50] During a hearing on the bill, SB 285, an opponent stated that "homosexuals want SB 285 as government validation of their sins and to intimidate employers, landlords and the populace." Other opponents stated "homosexuality is an atrocious sin, along with the acceptance of it," asserting the following "dangers" of homosexuality: 1) homosexuals have vastly more sexually transmitted diseases; 2) have lower life expectancy; and 3) have a greater tendency to commit suicide and abuse drugs. Another opponent argued that homosexuals account for 20 to 33 percent of pedophiles.[51]

- In 1995, in *Case v. Unified School District*, [52] a federal district court held that a Kansas school board had improperly removed a book from a junior and high school library because of their disapproval of the ideas in the book, violating the First Amendment and due process rights of students and their parents. In reaching this finding, the court reviewed the reasons that board members gave for removing the book. Olathe school board president Robert Drummond, who voted

[49] Todd Dorman, *Iowa Senate OKs Gay Rights*, WCF COURIER, Mar. 27, 2007, *available at* http://www.wcfcourier.com/news/politics/article_eade0789-a2b9-5d26-b994-ae47e62b8888.html.
[50] Telephone Interview of Kim Horp, Reference Librarian, State Library of Kan. (Jan. 23, 2009) (hereinafter "Telephone Interview").
[51] Scott Rothschild, *Bill Would Include Sexual Orientation and Gender Identity in State Anti-Discrimination Laws.,* LAWRENCE J. WORLD, Jan. 29, 2009, *available at* http://bit.ly/zNh3w (last visited Sept. 6, 2009); SB 169 (Kan. 2009), *available at* http://www.kslegislature.org/bills/2010/169.pdf.
[52] 908 F. Supp. 864 (D. Kan. 1995).

to remove the book, stated that "homosexuality is a mental disorder similar to schizophrenia or depression" and a "sin."[53] Another board member testified that it is not acceptable to be gay "[b]ecause engaging in a gay lifestyle can lead to death, destruction, disease, emotional problems."[54] Another testified that homosexuality was "unnatural" and the only books about homosexuality that she would find educationally suitable would be ones that say homosexuality is unhealthy.[55]

Kentucky

- In 2006, State Senator Dick Roeding, speaking about domestic partner benefits at state universities, said, "I find this very repulsive. I don't want to entice any of those people into our state. Those are the wrong kind of people."[56]

- In 2004, a Kentucky state representative commented that homosexuals could "obviously" change their orientation and did not deserve special civil rights protections.[57]

- On October 5, 1999, the City of Henderson amended its ordinances to prohibit discrimination in employment, housing, and public accommodation on the basis of sexual orientation. The ordinance passed in spite of a strong showing of opponents that appeared at public hearings.[58] One opponent told city

[53] *Id.*
[54] *Id.* at 871.
[55] *Id.*
[56] Brandon Ortiz, *Benfits Expansion at U of L Criticized*, LEXINGTON HERALD-LEADER, July 15, 2006.
[57] Kevin Eigelbach, *Representative Fischer's (R) Statement Upsets Gays*, KENTUCKY POST, Oct. 25, 2006, *available at* http://bit.ly/JVWNA.
[58] A thousand people attended two public hearings held in Henderson in September 1999. *Anti-bias Ordinances Fuel Debate*, AP STATE & LOCAL WIRE, Oct. 19, 1999.

commissioners that anyone voting for the ordinance should be thrown into the Ohio River with "a rope tied around your neck with a rock at the other end."[59]

- Two years later, the ordinance was repealed. Opponents believed that Henderson's adoption of such an ordinance was a legitimatization of an "immoral lifestyle."[60] Defending his vote to repeal the ordinance, Commissioner Robby Mills stated, "I believe this is a moral course of action and this is what the public would have us do."[61]

Louisiana

- The Louisiana Commission on Marriage and Family, recently reorganized by Governor Jindal, has several appointees who have a well-documented history of inflammatory, anti-LGBT rhetoric. For example, one member is Gene Mills, executive director of the conservative Louisiana Family Forum. While heterosexual relationships can result in children, Mills has said, "[Y]ou don't get the equivalent in a homosexual relationship…you get disease."[62]

- In 2008, when allowing an executive order prohibiting employment discrimination on the basis of sexual orientation in state government to lapse,

[59] *Id.*
[60] *Fairness Ordinance Expected to Be Repealed in Henderson*, AP STATE & LOCAL WIRE, Nov. 10, 2000.
[61] *Anti-discrimination Repeal May Pass*, LEXINGTON HERALD-LEADER (Kentucky), Feb. 15, 2001, at B3.
[62] Scott Gold, *Louisiana Judge Throws Out State Ban on Gay and Lesbian Marriages*, L.A.TIMES, Oct. 6, 2004, *available at* http://bit.ly/1FEdNl.

Governor Jindal stated, "The reason for allowing the order to lapse is that I don't think it is necessary to create additional special categories or special rights."[63]

- In 2000, Baton Rouge City Councilmembers Mike Tassin and Jim Benham walked out of a council meeting during which a gay and lesbian group gave a presentation on discrimination. Tassin tried to block the presentation but was overruled by his fellow council members. Tassin said he objected to having the group's literature placed at his desk, calling the pamphlets "crap."[64]

Maryland

- In 1999, Rev. Emmett Burns, a state legislator and minister, said of Maryland's anti-discrimination bill, "I don't want to improve the chances for someone who is of the gay persuasion to ply their behavior." [65]
- In 1994, the Montgomery County Council voted 6-1 to repeal a section of the county's Human Relations Law, known as the Hanna amendment, that allowed employers to refuse a job applicant "on the basis of advocacy of homosexuality or bisexuality" when the job requires "work with minors of the same gender." The amendment, which was sponsored by County Council President William E. Hanna, Jr., was passed in 1984. Hanna objected to the move to repeal the amendment claiming, "I thought then and I still think [homosexuality] is a perversion." Hanna stated that he believes there is a direct correlation between

[63] *Louisiana Gov. Drops Gay Anti-Discrimination Order*, Aug. 21, 2008, http://www.365gay.com/news/louisiana-gov-drops-gay-anti-discrimination-order/ (last visited Oct. 5, 2009).
[64] Allison Kilkenny, *Bobby Jindal Stocks Marriage Commission With Anti-Gay Crusaders*, DAILY NEWS & OPINION, Jan. 6, 2009, http://allisonkilkenny.wordpress.com/2009/01/06/bobby-jindal-stocks-marriage-commission-with-anti-gay-crusaders.
[65] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 200 (2000 ed.).

homosexuality and pedophilia, and justified his vote against the repeal explaining, "I just feel an obligation to protect children."[66]

Maine

- During discussion of a state law prohibiting sexual orientation discrimination in 1981, one Maine legislator called gay people "creepy crawlers," and another said of lesbians that if any of them slept with him, they'd never sleep with another woman again.[67]

Massachusetts

- In 1989, the Massachusetts legislature amended its anti-discrimination law to include sexual orientation as a protected class.[68] The bill was originally introduced to the House in 1973, but faced insurmountable opposition in the Legislature for 16 years.[69] Legislators opposed to adding sexual orientation as a protected class under the anti-discrimination statute argued that the "homosexual way of life" spreads AIDS,[70] that gay people have sex with animals[71] and that homosexuality was illegal based on Massachusetts' sodomy laws.[72]

- In 1987, during the Massachusetts Senate floor discussion of the bill, legislators opposing the bill read aloud from a book that depicted gay people as promiscuous,

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[66] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: A STATE BY STATE REPORT ON ANTI-GAY ACTIVITY 42 (1994 ed.).
[67] *See Chronology of Maine's Gay-Rights Legislation*, MAINE SUN. TELEGRAM, Feb. 18, 2001 and Susan Kinzie, *Gay Rights: Evolution of a Debate Once Rarely Discussed Publicly, Subject now out of the Closet*, BANGOR DAILY NEWS, Jan. 3, 1998
[68] *See* MASS. GEN. LAWS ch. 151B, § 4.
[69] *Massachusetts Second State to Enact Gay Rights Law,* L.A. TIMES, Nov. 16, 1989, at 21 (hereinafter "L.A. Times article").
[70] Jane Meredith Adams, *Anger Toward Gays is Out of the Closet with Visibility Comes Abuse, Observers Say*, BOSTON GLOBE, Nov. 19, 1987, at 33.
[71] *Id*.
[72] *Senate Votes in Favor of Gay Rights*, BOSTON GLOBE, Oct. 31, 1989, at 22.

alleging that most were involved in orgies and that one-fifth of them had sex with animals.[73]

Minnesota

- Opponents of the 1993 amendment that added sexual orientation and gender identity to the Minnesota Human Rights Act (the MHRA) have tried to strike them from the law several times, most recently in 2004.[74] Former State Representative Arlon Lindner, one of the chief proponents of stripping these provisions from the MHRA, contended that the MHRA as written promoted teaching gay and lesbian sex in school, which in turn would cause HIV transmission.[75] Therefore, he argued, failing to amend the MHRA put Minnesota at risk of ending up like "the African continent."[76] He also questioned whether the LGBT community was targeted by the Nazis during the Holocaust, and went so far as to propose state legislation that would require the state of Minnesota to no longer recognize the LGBT community as victims of the Holocaust. He also suggested that gay guards in the Nazi concentration camps were the real perpetrators of the horrors of the Holocaust.[77]

Mississippi

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[73] Jane Meredith Adams, *Anger Toward Gays is Out of the Closet with Visibility Comes Abuse, Observers Say*, BOSTON GLOBE, Nov. 19, 1987, at 33.
[74] ACLU, ANNUAL UPDATE OF THE ACLU'S NATIONWIDE WORK ON LGBT RIGHTS AND HIV/AIDS (2004).
[75] *Committee Leader Lindner Sullies Party, House Name*, DULUTH NEWS TRIBUNE, Mar. 12, 2003. *See also*, Conrad de Feibre, *Effort to Repeal Rights Protections for Gays Dropped in Senate*, STAR TRIBUNE, Mar. 22, 2003.
[76] Patricia Lopez & Conrad de Fiebre, *House DFL Files Ethics Complaint Against Lindner: Critics Grow in Number*, STAR TRIBUNE, Mar. 12, 2003. John Welsh, *Senator Withdraws Rights Bill*, ST. PAUL PIONEER PRESS, Mar. 22, 2003. *See also* Conrad de Feibre, *Effort to Repeal Rights Protections for Gays Dropped in Senate*, STAR TRIBUNE, Mar. 22, 2003.
[77] John Welsh, *Senator Withdraws Rights Bill*, ST. PAUL PIONEER PRESS, Mar. 22, 2003.

- In July 2003, in response to the Supreme Court's ruling in *Lawrence v. Texas*, Mississippi Gulfport City Councilman Billy Hewes initiated a resolution condemning the Court's ruling.[78] He called the ruling "the worst thing to happen since they took prayer out of school," and proclaimed Gulfport to be a "straight town."[79]

- In March 2002, in response to a newspaper article on the expansion of rights to gay couples in other states, George County Judge Connie Glen Wilkerson wrote a letter to *The George County Times* stating in part: "[I]n my opinion, gays and lesbians should be put in some type of mental institute instead of having a law like this passed for them."[80] The judge later repeated these views in a telephone interview stating: "[H]omosexuality is an „illness' which merited treatment, rather than punishment."[81]

<u>Missouri</u>

- In 1995, Missouri State University President John Keiser wrote that homosexuality is a "biological perversion" and gay or lesbian acts are "intrinsically disordered, contrary to natural law, and cannot be approved." In 2006, Missouri State University added "sexual orientation" to its list of protected

[78] Samantha Santa Maria, *I'm Gay…I Carry My Gun*, CLARION-LEDGER, Aug. 13, 2003, at 1E (*quoting* Jody Renaldo, Executive Director, Equality Mississippi: "Unless [homosexuals] are willing to risk being kicked out of their rented homes or their jobs, [they] have to hide").
[79] *Id*.
[80] *See, e.g.*, *Miss. Comm'n on Jud. Performance v. Wilkerson*, 876 So. 2d 1006, 1008 (Miss. 2004).
[81] *Id*.

classes over the repeated objections of President Keiser and his letter was re-printed in a Missouri paper. [82]

- In reaction to that addition to Missouri State University's anti-discrimination law, Governor Matt Blunt issued a statement saying the change was "unnecessary and bad." [83]

- In a case which occurred *after* the U.S. Supreme Court's 2003 decision in *Lawrence v. Texas* declaring sodomy laws to be unconstitutional, the state Department of Social Services relied on a Missouri law criminalizing same-sex sexual conduct as a basis to deny a foster care license to a lesbian couple.[84] The Director of the Missouri Department of Social Services stated that "but for her sexual orientation, it was agreed by all parties that Applicant and her partner have exceptional qualifications to be foster parents."[85]

Montana

- State Senator Dan McGee of Laurel said during the 2005 state legislative session, "I'll never be able to support bills which try to overturn centuries of moral ideology...Homosexuality is wrong."[86]

- Despite the Montana Supreme Court's ruling striking down the "deviate sexual conduct" law, the law remains part of the Montana Code. When legislation was introduced in the 2001 legislative session to remove it from the Montana

[82] Inside HigherEd News, *Long-Fought Win for Gay Rights*, September 18, 2006.
[83] *Id*.
[84] *Johnston v. Mo. Dep't of Social Serv*., 2005 WL 3465711 (Mo. Cir. 2005).
[85] *Id*.
[86] *AP Alert - Political*, A.P., Apr. 18, 2005.

statutes,[87] lawmakers successfully opposed the effort, with state Representative Verdell Jackson of Kalispell going so far as to offer that the law "protects me from propositions on the street"[88] and stated that he had an aversion to being touched by a homosexual."[89]

- In 1995, the Montana Senate voted 41-8 to pass a sex-offender registry bill that included an amendment requiring anyone convicted of violating Montana's "deviate sexual conduct" law to register with the police. The bill defined "deviate sexual conduct" to include homosexual sex between consenting adults. Though no one has ever been convicted of violating the law, the amendment was seen as an unnecessary affront to gay men and lesbians. State Senator Al Bishop, a supporter of the anti-gay amendment, reportedly stated that gay sex is "even worse than a violent sexual act."[90]

Nebraska

- A bill introduced in January 2007, which would have prohibited employers (including the State of Nebraska) from discriminating based on sexual orientation, was debated briefly and then postponed indefinitely. Former State Senator Ernie Chambers, who had introduced the bill, characterized the debate over the bill as

[87] H.B. 323, 57th Leg. Sess. (Mont. 2001). What appears to be the most recent bill that would have removed the statutory provision also failed to secure passage. *See* H.B. 294, 58th Leg. Sess. (Mont. 2003).
[88] *Out in Montana: After a Winter of Fear and Defeat, Advocates Renew Their Fights for Same-Sex Rights*, MISSOULA INDEP., June 7, 2001.
[89] *Conservatives Back Unconstitutional Law*, Montana Human Rights Network News, Feb. 2001, http://www.mhrn.org/newsarchive/0201gayrights.html.
[90] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: A STATE BY STATE REPORT ON ANTI-GAY ACTIVITY 75 (1995 ed.). *See, e.g.*, David W. Dunlap, *Montana Cuts Homosexual Acts from List of Registered Crimes*, N.Y. TIMES, Mar. 24, 1995 (quoting state senator Al Bishop of Billings, who made a statement on the Montana Senate floor that homosexual sex was "even worse than a violent sexual act").

"unsatisfactory, even silly."[91] Opponents of the bill questioned whether it would protect pedophiles or transvestites who want to be teachers; said it was not needed, based on their false belief that gay households have higher incomes; and argued that the bill was unnecessary as long as people "keep private what goes on in their bedrooms."[92] A state senator opposing the bill said, "I don't think we should unleash such things on the unsuspecting public....We're talking here about values. We're talking here about behavior. We're talking here about ethics."[93]

Nevada

- In 1999, during legislative consideration of AB 311 prohibiting discrimination on the basis of sexual orientation, oral and written testimony entered into the record included (i) arguments that protection should not be granted to persons who engage in deviant sexual conduct,[94] (ii) an article submitted as evidence that homosexuals were more likely to molest children than others,[95] (iii) evidence that homosexuals have higher incomes than heterosexuals,[96] and (iv) testimony that the statute would force employers to hire individuals who may not be "trustworthy" or who are "perhaps infected with the AIDS virus."[97] Extensive debate over AB 311 also took place during committee-level hearings in the

[91] JoAnne Young, *Senators Shoot Down Bill To Protect Gays*, LINCOLN J. STAR, May 22, 2007, *available at* http://www.journalstar.com/articles/2007/05/23/news/politics/doc46537b7ef3703942207604.txt.
[92] Martha Stoddard, *Gay Discrimination Ban Again Fails To Become Nebraska Law*, OMAHA WORLD-HERALD, May 23, 2007, *available at* http://www.omaha.com/index.php?u_page=2798&u_sid =238883.
[93] *Id.*
[94] *See* Minutes of Nev. Assem. Comm. (Mar. 10, 1999).
[95] *See* Minutes of Nev. Assem. Comm. (Mar. 10, 1999).
[96] *See* Minutes of Nev. Sen. Comm. (May 6, 1999).
[97] *See* Minutes of Nev. Assem. Comm. (Mar. 10, 1999).

Assembly and Senate.[98] Reflecting the tenor of the hearings on AB 311, during a work session of the Nevada Assembly Committee on Commerce and Labor, Chairman Barbara Buckley noted that "there were strong feelings both of support and concern." Some of the concerns made in the hearing were "very hateful" in her opinion and she did not think those statements were shared by everyone who opposed the bill."[99]

New Mexico

- When a bill prohibiting sexual orientation discrimination was introduced in 2001, State Senator Rod Adair described it as "radical legislation" that would force a social value on the people of New Mexico that they do not embrace.[100] To attract support for their position, some members of the Senate conjured scenarios of: "state prisons having to pay for sex-change operations for inmates, bearded transvestites in dresses teaching school children and religious bookstores forced to hire gay clerks."[101] At one point, Senator Tim Jennings attempted to amend the bill to exempt the New Mexico Military Institute, stating that his constituents feared that students could be molested by gay teachers.[102]

- When an earlier version of the bill was introduced in 1999, Representative Daniel Foley argued that it would protect people who are gay because they choose to be

[98] *See* Minutes of Nev. Assem. Comm. (Mar. 10, 1999); Minutes of Nev. Assem. Comm. (May 6, 1999). The legislative history does not indicate any significant debate held on the floor of the Assembly or Senate. *Id.*
[99] *See* Minutes of Nev. Assem. Comm. (Mar. 22, 1999).
[100] Deborah Baker, *Senate Endorses Gay Rights Legislation*, A.P., Feb. 26, 2003.
[101] Steve Terrell, *Gay-Rights Bill Passes Senate*, SANTA FE NEW MEXICAN, Feb. 27, 2003, at A1.
[102] Kate Nelson, *Stop-and-Go Senate Slogs Through Gay Rights Bills*, ALBUQUERQUE TRIB., Feb. 27, 2003, at A7.

– a lifestyle that he said is "wrong." Foley also insisted that the bill was unnecessary because "gays are among the most prosperous citizens."[103]

- In the early to mid-1990s, efforts to pass a bill adding sexual orientation and gender identity protection to the state's anti-discrimination bill were stymied by a number of members of the House, as well as Governor Gary Johnson, who opposed it.[104] One opponent of the legislation in the House, Rep. Jerry Alwin, argued that "[g]ays get fair housing right now if they don't flaunt their sexual orientation."[105]

North Dakota

- Representative Wes Belter said in opposition to adding protections for LGBT people to North Dakota's existing anti-discrimination law "…I certainly do not approve of the gay movement, because I do think it really violates what God meant for man…. It does violate what God wanted for this world."[106]

Ohio

- In 2009, during a discussion of a bill to prohibit sexual orientation and gender identity discrimination in the workplace and other arenas, one member of the state legislature said he opposed the bill because LGBT people should "keep your

[103] Deborah Baker, *House Kills Gay Rights Bill*, A.P., Mar. 8, 1999.
[104] Thom Cole, *Gay-Rights Bill May Be Shelved*, ALBUQUERQUE J., Jan 14, 1995, at D3.
[105] Thom Cole, *Gay-Rights Bill May Be Shelved*, ALBUQUERQUE J., Jan 14, 1995, at D3.
[106] Jessica Green, *North Dakota Lawmakers Deem Sexual Orientation a Choice*, Apr. 6, 2009, *available at* http://www.pinknews.co.uk/2009/04/06/north-dakota-lawmakers-deem-sexual-orientation-a-lifestyle-choice/ (last visited Oct. 5, 2009); Janell Cole, *Gay Rights Bill Defeated*, JAMESTOWN SUN, Apr. 4, 2009, *available at* http://www.ndhrc.org/wp-publish/wp-content/uploads/2009/05/sb2278-pressroundup.pdf (last visited Oct. 5, 2009).

immoral beliefs to yourself." Another member said the anti-discrimination bill was about "forcing acceptance of a lifestyle that many people disagree with."[107]

- In 1982, the Attorney General of Ohio opined that the Department of Youth Services was entitled to dismiss an employee because of his sexual orientation. The opinion was issued in response to a request from the state prompted by its concern that if an employee was known or suspected to be gay, it might result cause "homosexual panic" in the workplace.[108]

Oklahoma

- In July of 2008, a State House candidate said on his campaign website: "It seems to me much more rational and normal to legalize polygamous marriage or marriage between first cousins before we even thinking of legalizing marriage between two people of the same sex."[109]

- In March of 2008, Oklahoma State Representative Sally Kern of the Oklahoma Legislature made headlines after an audio clip of her comments berating the gay community was released on YouTube. Aside from claiming that homosexuality is a lifestyle choice unsupported by God, Kern also said the homosexual agenda is

[107] *Gay-rights bill passes Ohio House,* Columbus Ohio Dispatch September 15, 2009, http://www.dispatch.com/live/content/local_news/stories/2009/09/15/gay_discriminate.html?type=rss&cat=&sid=101 (last accessed on September 18, 2009).
[108] Ohio Op. Att'y Gen. 2-213 (1982), 1982 WL 187410 (Ohio A.G.).
[109] Jay K. Ramey Website, http://www.jayramey.com (last visited Sept. 6, 2009).

destroying the nation and poses a bigger threat to the U.S. than terrorism or Islam.[110]

- In 1999, the Oklahoma House of Representatives passed SB 1394, a bill to bar "known homosexuals" from working in schools. The bill had originated in the Senate as a measure prohibiting sex offenders from working in the public school system, and was amended in the House by Representative Bill Graves to include gay men and lesbians as well. Graves claimed that homosexuals were sexual criminals guilty of "consensual sodomy," which was prohibited by state law. He also said that many homosexuals are pedophiles who use schools as a "breeding ground" to "recruit young people" to become gay or lesbian. Graves told a local newspaper that his goal was to "drive [gays] back into the closet like the way they were."[111]

Pennsylvania

- When a marriage bill came to a vote in 1997, one representative commented after the hearing, "I just thank God I'm going back to Oakdale, where men are men and women are women, and believe me boys, there's one hell of a difference."[112]

Rhode Island

- In 1995, Rhode Island's General Assembly added protection from discrimination based on sexual orientation to the state civil rights law, initially passed in 1949.[113]

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[110] Tim Talley, *Oklahoma Legislator's Anti-Gay Comments Stir Hostile Reaction*, TULSA WORLD, Mar. 10, 2008, *available at* http://bit.ly/1KOAXQ.
[111] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 190-191 (1999 ed.).
[112] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 97 (1997 ed.).

A proponent of the legislation described the antipathy toward the gay community in the Rhode Island legislature in the mid 1980s: "In the last session you had the extreme of [Senator Robert Motherway] saying that if such a bill passed you could potentially have a rescue worker with gonorrhea of the throat giving you mouth-to-mouth resuscitation, the implication being that we are dirty people and are going to spread disease."[114]

- In the debate on the House Floor in 1995, Representative Metts used such phrases as "mankind shall not lie with mankind," and "immoral sexual behavior is an abomination to God" in stating his opposition to the bill.[115]

- In the Senate debate in 1995, Senator Graziano argued that the bill would be construed to protect those with a "sexual orientation toward children."[116]

- In the 1995 legislative session, Senator Lawrence invoked the state's sodomy laws as a reason for why discrimination based on sexual orientation should not be prohibited.[117]

South Carolina

- In 1998, the mayor of Myrtle Beach joined local business and religious leaders in attacking a statewide group and its plans for a gay pride festival. In voting against closing city streets to accommodate the pride festival, he expressed concern that allowing gay men and lesbians to parade through the streets would set a

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[113] R.I. GEN .LAWS. § 28-5.1-5.2 (1949).
[114] Thomas Morgan, *Gay Alliance Champions the Silent 10%,* PROVIDENCE J., Jul. 24, 1985, at 06
[115] Rep. Metts, Floor Statement, Rhode Island House of Representatives, Mar. 29, 1995
[116] Senator Graziano, Floor Statement, Rhode Island Senate, Fri. May 19, 1995.
[117] Senator Lawrence, Floor Statement, Rhode Island Senate, June 28, 1995.

dangerous precedent and would encourage Black Panthers, white supremacist skinheads and other extremist groups to stage similar marches.[118]

- In 1997, the Greenville County Council passed a resolution that condemned "homosexuality" as "incompatible" with community standards. The three-hour discussion of the resolution was marked by assertions that gay men and lesbians would go to hell, and that the devil brought gay men and lesbians to Greenville.[119]

- In 1993, a gay restaurant and bar sought a license for beer and wine sales and consumption.[120] At a hearing for the license, state Senator Mike Fair testified against granting the license, stating: "homosexuality is a public health problem."[121] Despite that and other protests, the administrative law judge determined that club could be issued the license.[122]

South Dakota

- In 2001, the Sioux Empire Gay and Lesbian Coalition ("Coalition") volunteered to adopt two miles of highway through the state's Adopt-A-Highway program. The South Dakota Department of Transportation, however, refused their request, based on the fact that the Coalition was an "advocacy" group. At that time, several other advocacy groups already were participants in the program, including College Republicans, the Yankton County Democrats, and the Animal Rights

[118] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 130 (1998 ed.).
[119] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 99 (1997 ed.).
[120] *The Treehouse Club v. S.C. Dep't of Revenue*, 2003 WL 24004603, at *1. (S.C. Admin. Law. Judge. Div., 2003).
[121] *Id*. at *2.
[122] *Id*. at *5.

Advocates of South Dakota. The Coalition then filed a lawsuit alleging violations of its rights to free speech and equal protection. Governor Bill Janklow temporarily allowed the group to post their Adopt-A-Highway sign – but also simultaneously announced he was terminating the program altogether.[123]

- In 1992, a South Dakota Supreme Court justice wrote a concurring opinion in a case limiting visitation for a lesbian mother, in which he stated: "Until such time that she can establish, after years of therapy and demonstrated conduct, that she is no longer a lesbian living a life of abomination (*see* Leviticus 18:22), she should be totally estopped from contaminating these children. After years of treatment, she could then petition for rights of visitation. My point is: she is not fit for visitation at this time. Her conduct is presently harmful to these children. Thus, she should have no visitation. There appears to be a transitory phenomenon on the American scene that homosexuality is okay. Not so. The Bible decries it. Even the pagan „Egyptian Book of the Dead' bespoke against it. Kings could not become heavenly beings if they had lain with men. In other words, even the pagans, centuries ago, before the birth of Jesus Christ, looked upon it as total defilement."[124]

<u>Tennessee</u>

- In August 2009, the Metro Council, the legislative body of Nashville and Davidson County, voted 23-16 to pass an ordinance prohibiting sexual orientation

[123] Andrew Gumbel, *Adopt-A-Highway Dispute Pits Gay Coalition Against Governor*, INDEPENDENT (U.K.), Aug. 17, 2001, *available at* http://www.independent.co.uk/news/world/americas/adoptahighway-dispute-pits-gay-coalition-against-governor-665882.html; *S. Dakota Gay Group Gets Highway Sign, For A While*, L.A. TIMES, Aug. 18, 2001, at 18, *available at* http://articles.latimes.com/2001/aug/18/news/mn-35549.
[124] *Chicoine v. Chicoine*, 479 N.W.2d 891 (1992).

discrimination against city workers. One council member who voted against the ordinance, Jim Hodge, made the following remarks during the debate:

> As a Christian I cannot endorse a lifestyle that is condemned in both the Old Testament and New…It doesn't make sense to me…I cannot support or endorse a lifestyle that is unhealthy. We as a government make many suggestions and recommendations to folks to live a better lifestyle whether it's menu labeling, whether it's exercising, whether it's recycling, because it's good for the individual or it's good for the community…We ask folks to leave their cigarettes outside…It's not easy to make a lifestyle change but it can be done. When I look at the information on this lifestyle, it's not something that we should endorse. Individuals here are eight times more likely to have to seek professional mental health treatment for all manner of reasons. Those in a committed relationship, four times more likely to have multiple partners. That's not stable. Significantly higher rate of STDs, about 60 percent, and shorter lifespan of 14 years. I would think that we as a government should be encouraging our folks to make better lifestyle choices than this.[125]

- Tennessee asserted five state interests, reflecting anti-gay animus, that were promoted by the Homosexual Practices Act, a law that made it a misdemeanor to engage in consensual sexual penetration with someone of the same gender: (1) discouraging non-procreative sexual activities; (2) discouraging residents from "choosing a lifestyle that is socially stigmatized and leads to higher rates of suicide, depression, and drug and alcohol abuse;" (3) discouraging gay relationships which are "„short-lived,' shallow, and initiated for the purpose of

[125] Posting of Jeff Woods to Pith in the Wind, *Metro Council Votes to Ban Discrimination Against Gay Workers*, http://blogs.nashvillescene.com/pitw/ (Aug. 18, 2009, 19:58 CST).

sexual gratification; (4) preventing the spread of sexually transmitted diseases; and (5) promoting "the moral values of Tennesseans."[126]

Texas

- In 2005, Texas Representative Robert Talton introduced a measure to prohibit gay, lesbian and bisexual individuals from being foster parents in Texas. While promoting this bill, which ultimately did not pass, Representative Talton stated, "We do not believe that homosexuals or bisexuals should be raising our children. Some of us believe they would be better off in orphanages than in homosexual or bisexual households because that's a learned behavior."[127]

- Another Texas state representative opposed adding sexual orientation to the definition of what constitutes a hate crime on the ground that gay people bring violence upon themselves by their behavior. State Representative Warren Chisum stated that they "put themselves in harm's way. They go to parks and pick up men, and they don't know if someone is gay or not."[128]

- In 1995, three Dallas County Commissioners - Jim Jackson, Kenneth Mayfield and Mike Cantrell - sent a letter to local doctors urging them to support the county's ban on condom distribution because homosexuality, like prostitution and drug abuse, is unacceptable. Their letter stated that "[w]e don't want anyone,

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[126] *Campbell v. Sundquist*, 926 S.W.2d 250, 253 n.1 (Court of Appeals of Tennessee, 1996); Sabine Koji, *Campbell v. Sundquist: Tennessee's Homosexual Practices Act Violates the Right to Privacy*, 28 U. MEM. L. REV 311, 331-32 (1997).

[127] *See* Press Release, Lambda Legal, *Proposed Antigay Texas Law is Unconstitutional and Harmful to Children in Foster Care, Lambda Legal Says*, http://www.lambdalegal.org/news/pr/proposed-antigay-texas-law-is.html (last visited Sept. 3, 2009).

[128] *See* Louisa C. Brinsmade, *Bloody Murders: Gay Rights Lobby's Quiet Fight for Hate Crimes Bill*, AUSTIN CHRON., Jan. 23, 1997, *available at* http://www.austinchronicle.com/gyrobase/Issue/column?oid=oid%3A527262 (last visited, Sept. 3, 2009).

especially anyone in authority, telling our children or future grandchildren that it's an approved or acceptable lifestyle to be a homosexual, a prostitute or a drug user." [129]

- In 1990, the Texas Attorney General opined that a conviction for "homosexual conduct," which was classified in the penal code as a Class C misdemeanor, provided an acceptable basis for automatically barring an applicant or dismissing an employee from working in certain facilities within the state Department of Health, even though the penal code stated that a Class C misdemeanor did not impose any legal disability or disadvantage.[130]

Utah

- In 2009, Utah State Senator Chris Buttars claimed that he had "killed" every gay rights bill in the legislature for the last eight years because he believes: "Homosexuality will always be a sexual perversion. And you say that around here now and everybody goes nuts. But I don't care…They're mean. They want to talk about being nice. They're the meanest buggers I have ever seen…It's just like the Muslims. Muslims are good people and their religion is anti-war. But it's been taken over by the radical side…What is [sic] the morals of a gay person? You can't answer that because anything goes."[131]

Virginia

[129] *See* John Wright, *Dallas County Overturns Condom Ban*, DALLAS VOICE, Jan. 13, 2009, *available at* http://www.dallasvoice.com/instant-tea/2009/01/13/commissioners-court-overturns-condom-ban/.
[130] Tex. Op. Att'y Gen. JM-1237 (Oct. 22, 1990), 1990 WL 508355 (Tex. A.G.).
[131] Queerty, *Utah State Senator Chris Buttars on the Gays: "They're the Meanest Buggers I Have Ever Seen,* http://www.queerty.com/utah-state-senator-chris-buttars-on-the-gays-theyre-the-meanest-buggers-i-have-ever-seen-20090218/ (last accessed on September 18, 2009)

- In debates in the state legislature on unsuccessful bills that would have prohibited discrimination on the basis of sexual orientation in state employment, one Virginia delegate stated in 2006, "[S]exual orientation is a broad term…There are eight different sexual orientations, including pedophilia and bestiality. I think we'd be opening up Pandora's box and allowing judges to interpret what that means."[132]

- Another Virginia delegate stated in 2009 that such protection "may not be in the best interest of our society."[133]

Washington

- Opposition in the Washington Senate to the 2006 anti-discrimination bill took a particularly negative tone. Two Washington Senators introduced an amendment, which they later withdrew, to clarify that "sexual orientation" does not include "bestiality, necrophilia, incest, adultery, pedophilia, or sadomasochism."[134] One co-sponsor of the amendment used the term "labyrinth of perversion" to describe LGBT people."[135] Senator Weinstein responded that the amendment was designed to "smear gays and lesbians" by implying that they participate in these types of behavior.[136]

- Senator Benson expressed opposition to the bill on the ground that that "homosexuals don't need protection" because they have "better education, nicer

[132] *Virginia Senate to Weigh Gay Workers' Protections*, WASH. POST, Feb. 6, 2006, at B5.
[133] Va. Assembly Access Website, http://assemblyaccess.wordpress.com (last visited Sept. 4, 2009).
[134] Wash. S.H.B. 2661 - Sen. Amend. 20 (2006) (introduced by Sens. Stevens & Hargrove, but later withdrawn).
[135] Statement of Wash. Sen. Stevens, Wash. Sen. Fl. (Jan. 25, 2006).
[136] Statement of Wash. Sen.Weinstein, Wash. Sen. Fl., (Jan. 25, 2006).

cars, and nicer homes" than most people.[137] He also opposed the bill on the ground that it would advance a "political agenda," and argued that protecting behavior was a big mistake because, "[W]ho knows what other kinds of behavior the rest of society will be forced to tolerate."[138]

- Senator Oke said that he could not support the bill because it "endorses homosexuality" which he viewed as an "abomination to God."[139]

- Senator Mulliken expressed concern that homosexuality would be taught in schools, stating that kindergartners would be subjected to the "promotion of a lifestyle not even preferred by those who live it."[140]

- Senator Ed Murray, the bill's sponsor, tried to encourage support by highlighting derogatory comments made in 2005 by Lou Novak, the former president of the Puget Sound Rental Housing Association. While in the state House office building, Novak remarked, "[L]ooks like it's anal-sex week" as a group from the Lifelong AIDS Alliance walked by.[141]

- In 1999, Washington State University officials cancelled a June conference on issues facing gay and lesbian youth because they said they could not "provide a safe and supportive environment" for the attendees. One e-mail announcement for the event that said organizers were hoping for a large turnout was used by

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[137] Statement of Wash. Sen. Benson, Wash. Sen. Financial Inst., Housing & Cons. Protection Comm. Statement (Jan. 24, 2006).
[138] Statement of Wash. Sen. Benton, Wash. Sen. Financial Inst., Housing & Cons. Protection Comm. (Jan 24, 2006).
[139] Statement of Wash. Sen. Oke, Wash. Sen. Fl. (Jan 27, 2006).
[140] Statement of Wash. Sen. Mulliken, Wash. Sen. Fl. (Jan 27, 2006).
[141] Rebecca Cook, *Official Quits Over Anti-Gay Remarks*, SEATTLE TIMES, Mar. 4, 2005, at B3

conservative state legislators, including Senator Val Stevens, as evidence "that recruitment of children into the lifestyle was central to the homosexual agenda."

- Representative Marc Boldt asked of the WSU event, "What will the university's position be if an AIDS-free child goes there, only to return HIV-infected?"

- Senator Harold Hochstatter said he considered it to be WSU's official promotion of a "lethal lifestyle."

- Representative Bob Sump chided WSU for "inviting children to the university for a public celebration of immorality," saying he anticipated the "opportunity next legislative session to trim away" WSU's budget. Sump also said he planned to use his powers in the State House to defund WSU's Gay/Lesbian/Bisexual/Alliance because it helped organize the event and was a "recruitment center" for gay youth.[142]

West Virginia

- In 1983, the West Virginia Attorney General issued an opinion[143] that gay and lesbian teachers could be fired by their districts under a state law that authorized school districts to fire teachers for "immorality."[144] The Attorney General opined that homosexuality was immoral in West Virginia even though the state had de-

[142] PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 224 (1999 ed.).
[143] 60 W. Va. Op. Atty. Gen. 46, 1983 WL 180826 (W.Va.A.G.), Office of the Attorney General State of West Virginia, *1 February 24, 1983(Sexual Offenses: *A county board of education may dismiss a teacher who engages in sexually deviant conduct if the teacher's conduct substantially adversely affects his fitness to teach.)*
[144] Chapter 18A, Article 2, Section 8 of the Code of West Virginia of 1931.

criminalized same-sex sexual behavior in 1976. While the Attorney General said homosexuality must be shown to affect the person's fitness to teach, that could be shown if the teacher was "publicly known to be homosexual" as opposed to "private, discreet, homosexuality." He also noted that there were some jobs where "even such publicized sexual deviation" might not interfere with employment in the public sector, such "university drama teacher(s)" and "custodians."