

118TH CONGRESS
2D SESSION

S. RES. 740

Acknowledging and apologizing for the mistreatment of, and discrimination against, lesbian, gay, bisexual, and transgender individuals who served the United States in the uniformed services, the Foreign Service, and the Federal civil service.

IN THE SENATE OF THE UNITED STATES

JUNE 18, 2024

Mr. KAINE (for himself, Ms. BALDWIN, Mr. COONS, Mr. MERKLEY, Mr. FETTERMAN, Mrs. MURRAY, Mr. SCHATZ, Mrs. SHAHEEN, Mr. CASEY, Mr. DURBIN, Mr. MARKEY, Mr. BLUMENTHAL, Mr. CARDIN, Mr. WHITEHOUSE, Mrs. GILLIBRAND, Mr. BENNET, Mr. WYDEN, Mr. BROWN, and Mr. WARNER) submitted the following resolution; which was referred to the Committee on Homeland Security and Governmental Affairs

RESOLUTION

Acknowledging and apologizing for the mistreatment of, and discrimination against, lesbian, gay, bisexual, and transgender individuals who served the United States in the uniformed services, the Foreign Service, and the Federal civil service.

Whereas the Federal Government discriminated against and terminated hundreds of thousands of lesbian, gay, bisexual, and transgender (referred to in this preamble as “LGBT”) individuals who served the United States in the uniformed services, the Foreign Service, and the Federal civil service (referred to in this preamble as “civilian

employees”) for decades, causing untold harm to those individuals professionally, financially, socially, and medically, among other harms;

Whereas Congress enacted legislation, led oversight hearings, and issued reports and public pronouncements against LGBT military service members, Foreign Service members, and civilian employees;

Whereas the policy that led to the discharge and systematic screening of gay, lesbian, and bisexual military service members was codified in a 1949 decree by the newly consolidated Department of Defense, which mandated that “homosexual personnel, irrespective of sex, should not be permitted to serve in any branch of the Armed Forces in any capacity and prompt separation of known homosexuals from the Armed Forces is mandatory”;

Whereas the Federal Government maintained policies to drive hundreds of thousands of LGBT military service members, who honorably served the United States in uniform, including many who were fighting in wars around the world, from its military ranks;

Whereas, in 1993, Congress enacted the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1547), which contained the so-called “Don’t Ask, Don’t Tell” policy that prohibited lesbian, gay, and bisexual military service members from disclosing their sexual orientation while they served in the Armed Forces;

Whereas, despite the “Don’t Ask, Don’t Tell” policy, LGBT military service members continued to be investigated and discharged solely on the basis of the sexual orientation of those military service members;

Whereas historians have estimated that at least 100,000 military service members were forced out of the uniformed services between World War II and 2011 simply for being LGBT, while countless others were forced to hide their identities and live in fear while serving, with many being denied access to the benefits granted to honorably discharged veterans;

Whereas, although the “Don’t Ask, Don’t Tell” policy was intended to allow qualified citizens to serve in the Armed Forces regardless of their sexual orientation, the policy was inherently discriminatory against LGBT military service members because it prohibited those service members from disclosing their sexual orientation;

Whereas, with the enactment of the Don’t Ask, Don’t Tell Repeal Act of 2010 (10 U.S.C. 654 note; Public Law 111321), Congress joined military leaders in acknowledging that lesbian, gay, and bisexual military service members serve the United States just as bravely and well as other military service members;

Whereas the Don’t Ask, Don’t Tell Repeal Act of 2010 (10 U.S.C. 654 note; Public Law 111321) and the 2016 policy shift of the Department of Defense, which permitted transgender individuals to enlist and openly serve in the Armed Forces, have made the Armed Forces stronger and more effective;

Whereas, in 2023, 12 years after the repeal of the “Don’t Ask, Don’t Tell” policy, the Department of Defense announced a proactive review initiative to identify veterans discharged due to their sexual orientation and assess whether an upgrade in discharge is warranted;

Whereas military leaders have likewise acknowledged that, in addition to lesbian, gay, and bisexual military service members, transgender service members also serve the United States just as bravely and well as other service members;

Whereas, under the pressures of the Cold War, and at the instigation and lead of Congress, the Federal Government also pursued anti-LGBT policies, which resulted in tens of thousands of LGBT civilian employees being terminated;

Whereas the Department of State began investigations into employees for alleged homosexual activity as early as the 1940s;

Whereas following the targeting of gay employees in the Department of State by Senator Joseph McCarthy in 1950, the Senate held hearings on “The Employment of Homosexuals and other Sex Perverts in the Government”, which—

(1) led to the issuance of a widely read report that falsely asserted that gay people posed a security risk because they could be easily blackmailed; and

(2) found that gay people were unsuitable employees because “one homosexual can pollute a Government office”;

Whereas, in response to allegations against gay people made by Senator McCarthy, the Department of State increased its persecution of lesbian, gay, and bisexual employees;

Whereas more than 1,000 Department of State employees were dismissed due to their sexual orientation, and many more individuals were prevented from joining the Department of State due to discriminatory hiring practices;

Whereas thousands of lesbian, gay, and bisexual individuals served honorably in the Department of State as Foreign Service officers, Foreign Service specialists, civil servants, and contractors, upholding the values, and advancing the interests, of the United States even as the country discriminated against them;

Whereas the effort to purge gay and lesbian employees from the Federal Government was codified in 1953 when President Dwight D. Eisenhower issued Executive Order 10450 (18 Fed. Reg. 2489; relating to security requirements for Government employment), which—

- (1) defined “perversion” as a security threat; and
- (2) mandated that every civilian employee and contractor pass a security clearance;

Whereas, over many decades, the Federal Government, led by security officials in the Federal Bureau of Investigation, the Civil Service Commission (referred to in this preamble as the “CSC”), and nearly every other agency of the Federal Government, investigated, harassed, interrogated, and terminated thousands of lesbian, gay, and bisexual civilian employees for no other reason than the sexual orientation of those employees;

Whereas these discriminatory policies by the Federal Government, the largest employer in the United States, encouraged similar efforts at the State and local level, particularly in higher education and the private sector;

Whereas, in 1969, the United States Court of Appeals for the District of Columbia Circuit ruled in *Norton v. Macy*, 417 F.2d 1161 (1969) that—

- (1) “homosexual conduct” may never be the sole cause for dismissal of a protected civilian employee; and

(2) the potential embarrassment stemming from the private conduct of a civilian employee may not affect the efficiency of the Federal civil service;

Whereas, despite the decision in *Norton v. Macy*, the CSC continued its efforts to rid the Federal Government of gay, lesbian, and bisexual employees until 1973, when the United States District Court for the Northern District of California ruled in *Society for Individual Rights, Inc. v. Hampton*, 63 F.R.D. 399 (1973) that the exclusion or discharge from Federal civil service of any lesbian, gay, or bisexual person because of prejudice was prohibited;

Whereas many Federal Government agencies, including the National Security Agency, the Central Intelligence Agency, and the Department of State, none of which were subject to the rules of the CSC, continued to harass and seek to exclude lesbian, gay, and bisexual individuals from their ranks until 1995, when President Bill Clinton issued Executive Order 12968 (50 U.S.C. 3161 note; relating to access to classified information), which barred the practice of denying a Federal Government security clearance solely on the basis of sexual orientation;

Whereas transgender military service members, Foreign Service members, and civilian employees continued to be harassed and excluded from Federal civil service until 2014, when President Barack Obama issued Executive Order 13672 (79 Fed. Reg. 42971; relating to further amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity), which prohibited the Federal Government and Federal contractors from discriminating on the basis of sexual orientation or gender identity;

Whereas, on January 9, 2017, Secretary of State John Kerry issued a formal apology for the pattern of discrimination against LGBT Foreign Service members and civilian employees at the Department of State;

Whereas, despite persecution and systematic mistreatment by the Federal Government beginning in the early 1940s through the 1990s, including what historians have labeled as the “Lavender Scare”, LGBT individuals have never stopped honorably serving the United States;

Whereas LGBT individuals continued to make significant contributions to the United States through their work as clerks and lawyers, surgeons and nurses, Purple Heart recipients and Navy Seals, translators and air traffic controllers, engineers and astronomers, teachers and diplomats, rangers and Postal Service workers, and advisors and policy makers;

Whereas other countries throughout the world, including some of the closest allies of the United States, have apologized for similarly discriminating against LGBT military service members, Foreign Service members, and civilian employees; and

Whereas, in order for the United States to heal and move forward, the Federal Government must accord all LGBT individuals who were discriminated against by, wrongfully terminated by, and excluded from serving in the uniformed services, the Foreign Service, and the Federal civil service the same acknowledgment and apology: Now, therefore, be it

1 *Resolved,*

2 **SECTION 1. ACKNOWLEDGMENT.**

3 The Senate—

1 (1) acknowledges and condemns the discrimina-
2 tion against, wrongful termination of, and exclusion
3 from the Federal civil service, the Foreign Service,
4 and the uniformed services of the thousands of les-
5 bian, gay, bisexual, and transgender (referred to in
6 this section as “LGBT”) individuals who were af-
7 fected by the anti-LGBT policies of the Federal
8 Government;

9 (2) on behalf of the United States, apologizes
10 to—

11 (A) the affected LGBT military service
12 members, Foreign Service members, veterans,
13 and Federal civil service employees; and

14 (B) the families of those service members,
15 veterans, and Federal civil service employees;
16 and

17 (3) reaffirms the commitment of the Federal
18 Government to treat all military service members,
19 Foreign Service members, veterans, and Federal civil
20 service employees and retirees, including LGBT indi-
21 viduals, with equal respect and fairness.

22 **SEC. 2. DISCLAIMER.**

23 Nothing in this resolution—

24 (1) authorizes or supports any claim against
25 the United States; or

1 (2) serves as a settlement of any claim against
2 the United States.

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