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THE WHITE HOUSE
WASHINGTON

September 11, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: George Stephanopoulos 456-7128
Richard Socarides 456-6247

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RE: Update on Recent Senate Action on the Anti-Gay Marriage Bill,
The Employment Non-Discrimination Act and Related Issues.

As you know, on Tuesday the Senate passed the so-called Defense of Marriage Act ("DOMA") by a vote of 85-14. The House had passed the same bill on July 11, 1996, by a vote of 342-67. Also on Tuesday, the Senate narrowly defeated the Employment Non-Discrimination Act ("ENDA"), by a vote of 50-49. The House is not scheduled to take action on ENDA in this Congress.

On May 22, 1996 the Administration indicated that given your previously stated position against gay-marriage, if this legislation was presented to you, you would sign it. We were careful to point out that you were against discrimination directed towards gays, that you had accomplished much for gay Americans, and that the timing of the legislation seemed calculated to divide Americans and was an attempt to use gay rights as a "wedge issue" in the campaign. Still, your position -- combined with some of the rhetoric used by others in describing Administration policy -- caused a storm of protest in the gay and lesbian civil rights community. Many of your strongest supporters in the community believe that the legislation is blatantly discriminatory and have vigorously lobbied against it.

You have said that "the only legal effect of the bill is to make it clear that states can deny recognition of gay marriages that occurred in other states. And if that's all it does, then I will sign it." Actually, that analysis covers only the first substantive provision of the bill, which provides that no state shall be forced to recognize a same sex marriage recognized by any other state. A second provision, however, provides that for purposes of federal law, marriage is defined as only a legal union between one man and one woman, thus denying to same-sex married couples the federal benefits available to opposite sex married couples, even when the state the same-sex couple resides in may recognize their union. You should be aware that some may argue that the bill, in fact, does more than you suggested when you announced your intention to sign it.

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The Employment Non-Discrimination Act would outlaw discrimination against gays and lesbians in the workplace. You endorsed this legislation on October 19, 1995 (see attached letter to Senator Kennedy) and have worked aggressively for its passage since then.

The Administration was actively involved in the effort this week to gain Senate passage of this legislation. We worked closely with and were in daily communication over a month long period with Senator Kennedy's staff and representatives of the Human Rights Campaign. You and the Vice-President personally contacted a number of Senators with respect to the vote; the Vice-President was on the phone asking Senators to support the bill even during the actual vote. Indeed the ENDA vote would have been tied if Senator Pryor, who had committed to vote "yes," was present. The Vice-President had plans to return immediately to Washington to break a tie, if it was necessary.

The effort to pass ENDA (and its near success) has somewhat deflected attention away from the anti gay-marriage bill. The reaction in the gay and lesbian community to your speech at the Chicago convention and its inclusion of gay and lesbian Americans was extremely positive. And this community universally recognizes that you have been the most supportive president in history. Thus, generally speaking, the relationship with your gay and lesbian supporters is fairly strong. There remain, however, strong feelings about the marriage bill and there will likely be some negative comments when it becomes law.