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SENATOR

JOHN McCAIN

A RECORD OF OPPOSING
THE INTERESTS OF
GLBT AMERICANS

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SENATOR JOHN McCAIN

As the general election kicks off, Senator John McCain will tout his reputation as a maverick, an independent, a moderate who will work with both parties to get things done. In fact, in 1998, Senator McCain touted his support of GLBT issues:

The Log Cabin Party – Republican Party – should be part of our – of our party. I don't believe that we should discriminate against anyone. And with that – and that includes because of their sexual orientation.¹

However, a look at Senator McCain's record paints a very different picture. Like President Bush, Senator McCain opposes equal benefits for same-sex couples. Like President Bush, Senator McCain opposes the Employment Non-Discrimination Act to prohibit discrimination against GLBT Americans in the workplace. Like President Bush, Senator McCain opposes expanding the hate crimes act to include sexual orientation and gender identity. Like President Bush, Senator McCain supports the military's discriminatory "Don't Ask, Don't Tell" policy.

What we have seen over the last seven years has been President Bush – despite his promise to be a “uniter, not a divider” – repeatedly siding with ultra-conservatives and the religious right at the expense of protections for GLBT Americans. A McCain presidency would be another four years of more of the same.

OPPONENT OF EQUALITY FOR SAME-SEX COUPLES

LEFT DOOR OPEN TO SUPPORTING A CONSTITUTIONAL AMENDMENT BANNING SAME-SEX MARRIAGE

As a United States senator, Senator McCain voted against the Federal Marriage Amendment. However, his position on equality for same-sex couples is no different than that of President Bush and the conservative right. It is important to look at Senator McCain's rationale in opposing the FMA and his active role opposing same-

sex marriage to understand his true position – and what he will likely do if he is elected president of the United States.

When Senator McCain voted against the Federal Marriage Amendment, which would have, for the first time in U.S. history, rewritten the Constitution to treat one group of Americans differently from each other, he said:

The constitutional amendment we're debating today strikes me as antithetical in every way to the core philosophy of Republicans. It usurps from the states a fundamental authority they have always possessed and imposes a federal remedy for a problem that most states do not believe confronts them.²

Senator McCain later reiterated that his reason for voting against a constitutional amendment banning same-sex marriage was that he thinks states should decide – not because he supports marriage equality. He also was open about his right to change his position on the issue – and support the amendment – if courts say it is unconstitutional to ban same-sex marriage at the state level. Senator McCain said:

If the Supreme Court of the United States rejects the Defense of Marriage Act as unconstitutional; if state legislatures are frustrated by the decisions of jurists in more states than one, and if state remedies to such judicial activism fail; and finally, if a large majority of Americans come to perceive that their communities' values are being ignored and other standards concerning marriage are being imposed on them against their will, and that elections and state legislatures can provide no remedy, then, and only then, should we consider, quite appropriately, amending the Constitution of the United States.³

My position has always been that I will vote against a constitutional amendment, which will come before the Senate on, on this issue, because I think the states

¹ Hardball, June 15, 1998

² CNN.com, July 14, 2004

³ Concord Monitor, March 30, 2006

*should decide. That's the essence of federalism. In my state of Arizona, we have a ballot initiative on this issue, which I am supporting. And so – but if the courts, if the, if through the court process, they say that that's not constitutional, then I would support a constitutional amendment.*⁴

California has now joined Massachusetts to become the second state to recognize civil marriage for same-sex couples. While Republican Governor Arnold Schwarzenegger said he would respect the court's decision, Senator McCain's campaign issued a statement saying he “doesn't believe judges should be making these decisions.”⁵ As states begin to move forward on marriage equality, it is worrisome that a President McCain would support a federal constitutional ban.

ACTIVELY SUPPORTED STATE BANS ON SAME-SEX MARRIAGE AND CIVIL UNIONS

While saying that decisions on marriage equality should be left to the states to decide,⁶ Senator McCain has taken an active role in trying to influence decisions on the state level to ban equal rights for same-sex couples and has said he personally opposes same-sex marriage and civil unions.⁷ On his presidential campaign website, he lists protecting marriage from same-sex couples alongside protecting children from Internet pornography and online predators and overturning *Roe v. Wade*.

In the same year he voted against an amendment to the U.S. Constitution defining marriage as an agreement between one man and one woman, Senator McCain worked to oppose equal rights in his home state of Arizona – including banning civil unions and domestic partnerships. In 2006, voters in Arizona were faced with a vote on Proposition 107 – an amendment to the Arizona Constitution that prohibited any form of relationship recognition. It would have changed Arizona's Constitution to ban gay marriages and deny government benefits to unmarried couples. The ballot initiative stated:

To preserve and protect marriage in this state, only a union between one man and one woman shall be valid or recognized as a marriage by this state or its political subdivisions and no legal status for unmarried persons shall be created or recognized by this state or its political subdivisions that is similar to that of marriage.

Senator McCain publicly expressed support of the initiative.⁸ He appeared in television ads in support of the amendment.⁹ The referendum was defeated. If voters had not rejected this measure, civil unions and domestic partner registries would have been banned, and the authority of state universities and localities to provide domestic partnership benefits would even have been cast into doubt.

This wasn't the first time he tried to influence a state ban on marriage equality. In 2000, while he was running for the Republican presidential nomination against President Bush, Senator McCain endorsed a California ballot measure that blocked the recognition of same-sex marriages.¹⁰

SUPPORTED THE DEFENSE OF MARRIAGE ACT

A growing number of states are providing relationship recognition to same-sex couples. Two states recognize civil marriage for same-sex couples; five states provide same-sex couples with access to all the state level benefits and responsibilities of marriage, either through civil unions or domestic partnerships; and three other states and Washington, D.C., provide same-sex couples with at least some of the basic benefits and protections made available to married heterosexual couples. However, because of the so-called Defense of Marriage Act – for which McCain voted¹¹ and which he still supports – same-sex couples do not receive federal rights and benefits in any state. For instance, they don't receive the Social Security survivors' benefits for which they pay just like all workers. A gay federal employee doesn't receive the family health benefits that his co-workers receive. Same-sex couples are taxed on family health benefits.

OPPOSES ADOPTION BY SAME-SEX COUPLES

Senator McCain opposes adoption by same-sex couples, putting his conservative agenda ahead of what is in the best interest of children and families. “[I] just don't believe it's appropriate,”¹² he said.

OPPONENT OF PROTECTING GLBT AMERICANS IN THE WORKPLACE

All Americans deserve a fair shake at working hard to get ahead without discrimination or bias. Nevertheless, current federal law provides legal protections against employment discrimination on

⁴ Meet the Press, NBC, April 2, 2006

⁵ Statement, May 15, 2008

⁶ Concord Monitor, June 1, 2007

⁷ Concord Monitor, June 1, 2007

⁸ Arizona Republic, August 26, 2005

⁹ New York Sun, February 1, 2008 – <http://www.youtube.com/watch?v=j7DHscURg3E>

¹⁰ New York Sun, February 1, 2008

¹¹ Vote #280, 9/10/96

¹² San Francisco Examiner, March 1, 2000

the basis of race, gender, religion, national origin and disability –but not sexual orientation or gender identity. Today, in 30 states, it is still legal to fire someone who is otherwise qualified simply because of his or her sexual orientation. The same is true in 38 states based on gender identity.

Senator McCain opposes passage of the federal Employment Non-Discrimination Act.¹³ When the vote came up in the Senate, he cast a deciding vote against it. The measure failed by a 49-50 vote, with Senator McCain voting no.¹⁴

OPPONENT OF PROTECTING GLBT AMERICANS FROM HATE CRIMES

According to the FBI, somewhere in this country a hate crime is committed every hour and one in six of those crimes are because of the victim's sexual orientation. Under current federal law, the government has the authority to help investigate and prosecute bias motivated attacks based on race, color, national origin, religion and because the victim was attempting to exercise a federally protected activity. However, the federal government's hands are tied in cases where female, gay, transgender or disabled Americans are victims of bias-motivated crimes for who they are or where the crime is not a federally protected activity. Senator McCain opposed strengthening the law to allow all Americans to be protected.

Senator McCain voted three times against expanding the federal hate crimes law to include sexual orientation – in 2000, 2002 and 2004.¹⁵ His position is the same position held by the ultra-conservative groups and the religious right who opposed the bill as well as that held by President Bush. The White House, in a veto threat, called the Local Law Enforcement Hate Crimes Prevention Act – which would have added sexual orientation to the federal hate crimes law – “unnecessary.”

OPPONENT OF REPEALING THE MILITARY'S 'DON'T ASK, DON'T TELL' POLICY

Senator McCain voted against preventing codification of the discriminatory “Don't Ask, Don't Tell” policy on gays and lesbians in the U.S. military.¹⁶ He continues to say that “the policy is working,”¹⁷ that it is “successful and should be maintained,”¹⁸ and that “the current ‘Don't Ask, Don't Tell’ policy is the most appropriate

way to conduct the military.”¹⁹ Senator McCain said:

I believe polarization of personnel and breakdown of unit effectiveness is too high a price to pay for well-intentioned but misguided efforts to elevate the interests of a minority of homosexual service members above those of their units. Most importantly, the national security of the United States, not to mention the lives of our men and women in uniform, are put at grave risk by policies detrimental to the good order and discipline which so distinguish America's Armed Services.²⁰

Senator McCain has put the conservative agenda ahead of the military's needs. At a time when our military faces critical shortages, Senator McCain has been an advocate for a policy that has led to 12,000 servicemembers being discharged, including more than 50 language experts fluent in Arabic. Yet he says:

My view is that in the case of the military, the “Don't Ask, Don't Tell” policy was appropriate. And I also believe that – that gays should not be in the military.²¹

One of Senator McCain's rationales for supporting the policy has been “all of the military leaders that I respect and admire came up with this policy.”²² However, many military officials, including Gen. John Shalikashvili, chairman of the Joint Chiefs of Staff under President Clinton, now believe that gays should be allowed to serve openly.

SUPPORTED A DISCRIMINATORY HIV/AIDS POLICY

Senator McCain voted for a Jesse Helms strategy to cut off funding for prevention efforts aimed at the gay community.²³ He has also voted to bar foreign nationals with HIV from immigrating to the United States.²⁴

ADVOCATE FOR ULTRA-CONSERVATIVE JUDGES

Although a U.S. presidency lasts no more than eight years, and executive-branch appointees' tenure ends with the president's term, a president's judicial nominees serve lifetime appointments, often issuing decisions decades after their

¹³ Washington Post, Oct. 1, 2007

¹⁴ Vote #281, Sept. 10, 1996

¹⁵ Vote #136, June 20, 2000; Vote #147, June 11, 2002; Vote #114, June 15, 2004

¹⁶ Vote #250, Sept. 9, 1993

¹⁷ CNN, The Situation Room, June 27, 2007

4 appointing president leaves office. The oldest sitting U.S. Supreme Court justice, John Paul Stevens, 88, was appointed by President Gerald Ford. Justice Stevens, and as many as three other justices, are likely to retire during the next president's term, and hundreds of lower-court seats will also likely be filled. Right-wing activists care deeply about judicial nominations, focusing their time and fund-raising efforts, for decades, on stacking the Supreme Court to overturn *Roe v. Wade*. They complain about "judicial activism," which is code for judicial decisions that support choice, GLBT rights or the separation of church and state.

President Bush fulfilled his campaign promises to appoint anti-choice, anti-GLBT equality judges to the Supreme Court and lower federal courts. And Senator McCain did not vote to oppose any of their confirmations. He voted for a judge who used his state's website to post links to anti-gay organizations and one who had written several articles opposing employment protections for GLBT people.

According to his campaign website, he will to appoint judges in the mold of those appointed by President George W. Bush.

John McCain believes that shaping the judiciary through the appointment power is one of the most important and solemn responsibilities a President has, and certainly one that has a profound and lasting impact. When he was running for President in 1999, he promised that, in appointing judges, he would not only insist on persons who were faithful to the Constitution, but persons who had a record that demonstrated that fidelity. A President should have confidence in the judicial philosophy of those he is appointing to the bench. That is why he strongly supported John Roberts and Samuel Alito for the Supreme Court and that is why he would seek men and women like them as his judicial appointees.

OUT OF TOUCH WITH THE GLBT COMMUNITY

Senator McCain says he would be ready to lead on the first day in office. However, his comments on the campaign trail have shown that he is out of touch with the needs of the GLBT community.

- During his 2000 campaign for the presidency, Senator McCain told reporters he could spot gay people just by the way they act. When asked how he could spot colleagues who were gay in the days when he was a Navy pilot, he replied, "I think we know by behavior and attitudes. I think that it's clear to some of us when people have that lifestyle."²⁵
- In 2007, Senator McCain refused to give a straightforward answer to a reporter's question about whether condoms help prevent infection. Senator McCain told the reporter that he "thinks" he supports whatever the president's position is, then stated "you've stumped me" and that "I've never gotten into these issues before."²⁶
- Asked by a student what he would do on "LGBT" issues and on "workers' rights," Senator McCain paused, seemingly confused by the question. Someone in the crowd shouted out "lesbian, gay, bisexual and transgender." "I had not heard that phrase before," said Senator McCain of the abbreviation.²⁷
- Senator McCain seems distinctly uninterested when asked questions concerning abortion and gay equality. While campaigning in South Carolina, he told reporters riding with him on his bus that he was comfortable pledging to appoint judges who would strictly interpret the U.S. Constitution in part because it would reassure conservatives who might otherwise distrust him. "It's not social issues I care about," he explained.²⁸

THE COMPANY HE KEEPS

You can tell a lot about a candidate by the company he or she keeps. In his 2008 presidential campaign so far, Senator McCain has accepted endorsements by President George W. Bush, former presidential candidate Mike Huckabee and Gary Bauer, former director of the Family Research Council.

The support Senator McCain has received raises the questions of what positions he has taken to cause these conservatives to support him and what promises he has made about policies he would put forth if elected president. Will a President McCain be beholden to the same conservative activists that President George W. Bush listens to on policies affecting GLBT Americans?

¹⁸ Washington Times, March 14, 2007

¹⁹ Interview with Chris Matthews, Iowa State University, University Wire, Oct. 19, 2006

²⁰ Letter to Servicemembers Legal Defense Network, April 16, 2007

²¹ Hardball, June 15, 1998

²² Boston Herald, Dec. 18, 1999

²³ Vote #333, July 27, 1995, Village Voice, Sept. 14, 1999

²⁴ Vote #13, Feb. 18, 1993

WHY IT MATTERS

The scope of presidential powers ensures that the next president will either threaten and reverse protections for GLBT Americans or move the country further in the direction of full equality. As president, Senator McCain will have a platform to continue fighting against equality for GLBT Americans by vetoing pro-equality legislation and appointing ultra-conservative judges. In addition, the executive branch wields enormous power and employs a vast workforce.

The president can issue executive orders, nominate Cabinet secretaries, such as the U.S. Attorney General, the Secretary of Health and Human Services and the Surgeon General, and send budget priorities to Congress for HIV/AIDS and sexuality education.

In a supportive administration, hate crimes are vigorously investigated and existing laws enforced to the fullest possible extent. A fair-minded president can ensure that our government's HIV/AIDS education programs are scientifically accurate and apply to GLBT people. He or she can ensure that Treasury does not label transgender medical services as medically unnecessary, rendering them unaffordable to most people, and that U.S. Foreign Service officers can evacuate their partners in times of crisis. Given that Senator McCain opposes funding for scientifically accurate health education, opposes legal recognition for same-sex couples, opposes employment protections and has consistently voted against hate crimes laws, it is unlikely that as president he would exercise his authority to help the GLBT community.

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²⁵ New York Post, Jan. 19, 2000

²⁶ <http://thecaucus.blogs.nytimes.com/2007/03/16/mccain-stumbles-on-hiv-prevention/>

²⁷ Washington Post, Sept. 5, 2007

²⁸ Washington Post, Feb. 3, 2008