

# APPENDIX IX

## SEXUAL ORIENTATION EXECUTIVE ORDER No. 28

Ours is a unique government. It was created and has been preserved by people from all over the world who came here seeking one thing above all others: freedom--freedom to believe and to act on those beliefs; freedom that says that so long as an individual's conduct and actions remain a matter of personal expression and do not deprive others of their rights, they should be neither restrained nor punished by government.

Our nation values freedom so greatly, it has been written into our Constitution. We all prize that freedom and millions have fought to protect and to extend it.

Each generation has come to understand the basic wisdom of our Constitution: that only by protecting the freedom of others can we ensure it for ourselves; that to encourage or allow government to discriminate against any belief or creed or private way of life would threaten us all. This is so because we could never be sure which particular value would dominate government at any particular point in time. Only neutrality by government was deemed safe and that is what our Constitution assures.

This freedom makes us strong. It is essential to our pluralism. It protects religious believers, and agnostics, and atheists, and political dissenters, and conservatives and liberals, creating a nation and a state where the right to live as conscience dictates is enshrined as law. Because of such freedom we enjoy a cultural and religious diversity unmatched by any other nation.

The freedom our Constitution grants, however, requires that government exercise a degree of tolerance unthinkable in societies less open or diverse than ours. It demands a tolerance for the privacy of each individual, a refusal to use the state as an instrument of coercion of belief or thought, however desirable the majority regards a particular belief or thought to be.

Even when this freedom is unchallenged, it is so precious to us all that our commitment to preserve it from encroachment by government deserves constant reaffirmation and reiteration. But when this freedom is questioned or when evidence of unfair discrimination exists, then our reaffirmation is not an option--it is a simple necessity.

I have seen evidence of such encroachment. As Secretary of State, I was required to issue special regulations to prohibit discrimination against individuals seeking licenses for certain occupations or corporate privileges. Up to that time such licenses were denied on the basis of sexual orientation or even presumed sexual orientation. There is no reason to believe that the discrimination apparent in the part of government was confined there.

No one argued then against my change in the State's regulations. No one was heard to say that government had no place in fighting unfair discrimination. In fact, in recognition of this, a personnel directive against discrimination in hiring was issued during the prior administration.

I suggest, respectfully, that what was right then is right now. And I believe that there is no justification for the failure to announce freedom from discrimination as the policy, not just of the Department of State but of this entire State government.

Indeed, the most persistent argument that has been offered in opposition to my stating the views contained in this Order does not really contradict any of them. Rather it says, in effect, we ought not to state this constitutional truth because it may be misrepresented to be something else. Specifically, it is suggested that the argument against discrimination will be distorted into an argument promoting homosexuality.

The argument is beside the mark. There is no perfect protection against distortion. Indeed one could as easily argue that silence on this issue could be distorted into an argument promoting discrimination against homosexuals.

In this case, this statement and Executive Order are clear. Their essence is that our government cannot promote any religion, creed, belief or life-style without thereby threatening all others.

This is an argument for securing freedom by insisting on neutrality. It is a proposition that is at the very foundation of our nation's strength. We ought never be embarrassed nor afraid to repeat it.

Accordingly, for all the above reasons, I am this day reiterating the law set down by the Constitution of the United States and the Constitution of the State of New York as the policy of this Administration.

#### A. Statement of Policy

1. No state agency or department shall discriminate on the basis of sexual orientation against any individual in the provision of any services or benefits by such State agency or department.
2. All State agencies and departments shall prohibit discrimination based on sexual orientation in any matter pertaining to employment by the State including, but not limited to, hiring, job appointment, promotion, tenure, recruitment and compensation.
3. The Office of Employee Relations is hereby directed to promulgate clear and consistent guidelines prohibiting discrimination based on sexual orientation to maintain an environment where only job-related criteria are used to assess employees or prospective employees of the State. The Office shall also implement a procedure to ensure the swift and thorough investigation of complaints of discrimination based on

sexual orientation. Particular effort should be made to conduct investigations with due regard for confidentiality.

4. In order to assure that we understand fully the extent and nature of any discrimination that exists, I will appoint a Task Force, including the Commissioners of the Departments of Correctional Services, Health, Mental Health, Labor, Social Services and the Division of Human Rights, the Superintendent of State Police, the President of the Civil Service Commission, the Directors of the Women's Division, the Office of Employee Relations, the Division for Youth and the Office for the Aging, the Chairman of the State Liquor Authority and seven private citizens whom I shall designate. The Task Force shall submit such reports and recommendations as it sees fit, dealing with individuals' rights to the benefit of government services and opportunity for government service regardless of sexual orientation.

I shall designate a Chairperson and Vice-Chairperson of the Task Force. Its members shall receive no compensation, but shall be entitled to reimbursement for any necessary expenses incurred directly in connection with the performance of their duties.

GIVEN under my hand and the Privy Seal of the State in the City of New York this 18th day of November in the year one thousand nine hundred eighty-three.

BY THE GOVERNOR

/s/Mario M. Cuomo

/s/Michael J. Del Giudice

Secretary to the Governor