



OFFICE OF THE  
VICE CHAIRMAN

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
WASHINGTON, D.C. 20506

January 30, 1976

Dr. Arthur C. Warner  
Co-Chairman  
National Committee for  
Sexual Civil Liberties  
18 Ober Road  
Princeton, New Jersey 08540

Dear Dr. Warner:

Thank you for your letter of January 23.

As the Equal Employment Opportunity Commission has stated in at least two decisions, "The applicable provision of Title VII ... in the area of sexual preference ... is Section 703(a), which provides in pertinent part: It shall be an unlawful employment practice for an employer to fail or refuse to hire...any individual..because of such individual's...sex..."

Finding no definition of the term "sex" in the language of Title VII, we turned to the statute's legislative history for guidance. It is important to note that the congressional debates relative to the prohibition against employment discrimination based on sex which preceded the enactment of Title VII focused almost exclusively on disparities in employment opportunities between males and females.

There being no support in either the language or the legislative history of the statute for the proposition that in enacting Title VII Congress intended to include a person's

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sexual practices within the meaning of the term sex, the Commission has concluded that it is without substantive jurisdiction to decide the issue.

As you probably know, the Honorable Bella Abzug has introduced a bill (H.R. 5452; March 25, 1975) which amends the entire Civil Rights Act of 1964 to include sexual preference. This bill has been referred to the House Committee on the Judiciary. If enacted into law, it would appear that this Agency may assume jurisdiction of charges filed on the basis of sexual preference.

Sincerely,



Ethel Bent Walsh  
Vice Chairman

THOMAS F. COLEMAN  
ATTORNEY AT LAW  
Ahmanson Center East  
Seventh Floor Law Suite  
3701 Wilshire Boulevard  
Los Angeles, California 90010  
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January 12, 1976

Mr. Arthur C. Warner  
Co-Chairman  
National Committee for Sexual  
Civil Liberties  
18 Ober Road  
Princeton, New Jersey 08540

Re: Proposed ruling by the Equal Employment Opportunity  
Commission that the Commission lacks jurisdiction  
to entertain complaints based on sexual preference.

Dear Arthur,

It has been brought to my attention that a document is  
now circulating among the Commissioners of the E.E.O.C.  
This document is a proposed ruling that "sexual preference"  
is not a protected classification for purposes of E.E.O.C.  
jurisdiction.

The Commissioners will vote on this in the near future.  
Please write to each Commissioner registering your disapproval  
of the proposed action. Then please contact friendly  
Congress Representatives, State Representatives, and local  
officials and ask them to write to each Commissioner  
asking that this ruling not be made. If enough complaints  
flood the E.E.O.C. this could have an impact on their  
decision.

Attached is a list of Commissioners. Please remember to  
write to each one individually.



THOMAS F. COLEMAN

TC:wa

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Suite 5222  
2401 E Street, N.W.  
Washington, D.C. 20506

Lowell Perry, Chairperson

Colston A. Lewis, Commissioner

Ethel Walsh, Commissioner

Raymond L. Telles, Commissioner

*Gary Aldridge*

*Decision nos 7667  
7675*

*refusal to hire  
other involved a discharge*

*handed down 10 November*

# NATIONAL COMMITTEE

FOR

## SEXUAL CIVIL LIBERTIES

*Co-Chairmen:*  
Prof. Walter B. Barnett  
Albuquerque, New Mexico

Dr. Arthur C. Warner  
Princeton, New Jersey

18 OBER ROAD  
PRINCETON, NEW JERSEY 08540  
(609) WA4-1950

23 January 1976

Mr. Lowell Perry, Chairman  
Equal Employment Opportunity Commission  
2401 "E" Street, N. W., Suite 2401  
Washington, D. C. 20506

Dear Mr. Perry:

This Committee has only recently learned of your Commission's decisions numbered 7667 and 7675, handed down on 10 November last, in which your Commission concluded that "sexual preference" or "sexual orientation" is not a protected classification for the purposes of your E.E.O.C. jurisdiction.

The purpose of this letter is respectfully to request that your Commission reconsider these two rulings, which this Committee feels were unwarranted and arbitrary. This Committee does not contend that the statute under which your Commission presently operates specifically includes homosexuals within the ambit of its protection. But, conversely, it is equally true that the same statute does not specifically bar them. Where there is such statutory silence or ambivalence, the usual practice is to allow the courts to rule definitively on the subject. This not only permits the class affected to be heard in an appropriate forum, but it assures the public that the administrative body which is involved -- in this instance, your own Commission -- has acted fairly and equitably.

In the absence of exclusionary language, for your Commission to have decided ex parte that homosexuals are not protected by the statute you administer verges on the capricious. There are presently no definitive legal rulings on the subject from the Federal courts, but this Committee would point out that, in interpreting similar statutes, the Supreme Court of California has declared that the classes or categories which are specifically included in such statutes are to be considered illustrative only, and that it is not to be inferred from such a listing that other classes or categories are outside the law's purview. [See In Re Cox, 3 Cal. 3d. (1970), at p. 205.] In short, the state of the law is presently such that there is as much legal warrant for including homosexuals within the protection of the statute which your Commission administers as to exclude them. In the absence of definitive decisions by the courts, for your Commission gratuitously to refuse to entertain complaints of discrimination based on sexual orientation is not only arbitrary, but demonstrates a woeful lack of humanity and feeling for what constitutes -- after the black minority -- the largest minority in this country subject to discrimination.

This Committee strongly urges that your Commission reconsider its regrettable rulings in the two cases instanced above, and that you affirmatively accept cases involving questions of sexual orientation in order that the courts may make a definitive determination. This would not only demonstrate your Commission's bona fides in ending discrimination, but would place the burden of seeking a judicial determination upon the discriminating employer, where it belongs, rather than upon a victim who has been discriminated against.

By copy of this letter to the other Commissioners, I am asking that they also reconsider these two decisions. After this has been done, I would respectfully ask that you inform this Committee as to the ultimate decision of your Commission in this matter.

Very truly yours,

*Arthur C. Warner*

Arthur C. Warner  
Co-Chairman

cc: Commissioner Colston A. Lewis  
Commissioner Ethel Walsh  
Commissioner Raymond L. Telles

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PRINCETON, NEW JERSEY 08540  
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