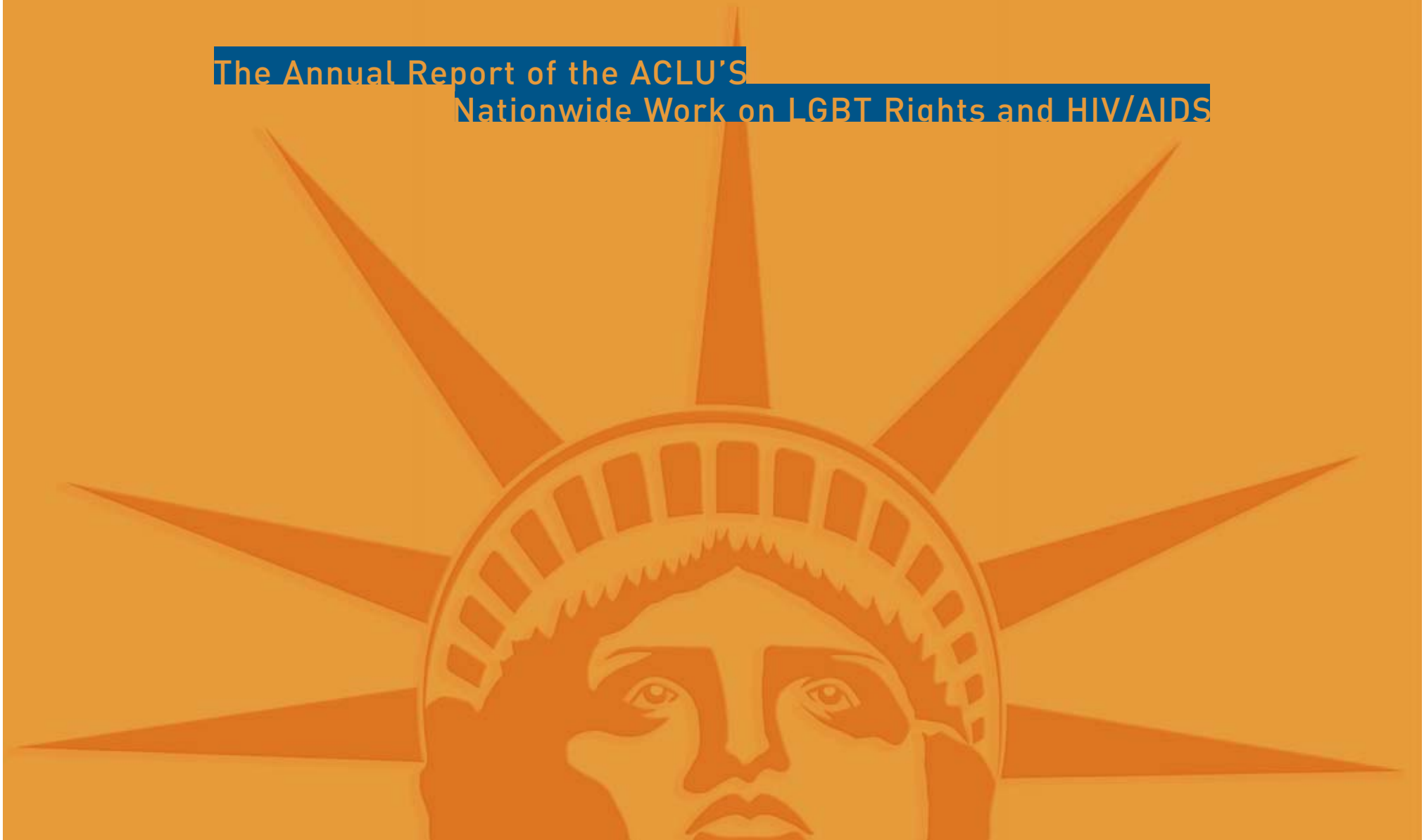


# Where We Are 2004

The Annual Report of the ACLU'S  
Nationwide Work on LGBT Rights and HIV/AIDS





# Where We Are 2004

## The Annual Report of the ACLU'S Nationwide Work on LGBT Rights and HIV/AIDS

How It All Works . . . . .	1
Better Late Than Never . . . . .	3
Docket: Relationships . . . . .	7
The "Science" of Hate . . . . .	13
Docket: Parenting . . . . .	15
Docket: Transgender . . . . .	21
Our Schools Work: Beyond the "Golden Lawsuit" . . . . .	25
Docket: Youth/Schools . . . . .	27
Docket: HIV/AIDS . . . . .	35
Docket: Discrimination . . . . .	39
The Stories We Should Tell . . . . .	49
Lesbian & Gay Rights and AIDS Projects Staff . . . . .	51
Projects Contributors . . . . .	53

Edited by:  
Paul Cates, Chris Hampton, James Esseks  
Design, cover illustration and production by:  
Carol Grobe Design  
Docket compiled and written by:  
Stacie Hendrix, Rachel Simons, Naomi Sunshine,  
Darren Teshima, and Genevieve Vose  
Print Production by:  
Derek Gullino



LESBIAN & GAY  
RIGHTS PROJECT  
AIDS PROJECT

125 Broad Street, 18th Floor  
New York, NY 10004-2400  
212.549.2627  
[lgbthiv@aclu.org](mailto:lgbthiv@aclu.org)  
[www.aclu.org](http://www.aclu.org)

# HOW IT ALL WORKS

## The ACLU

The American Civil Liberties Union isn't really one organization at all; it's 50. There is a national organization headquartered in New York and at least one ACLU affiliate in 47 of the states (California has three affiliates, one in San Francisco, one in Los Angeles, and one in San Diego) and in the District of Columbia. The national ACLU has chapter offices in the Dakotas, Wyoming, and Puerto Rico so that just about every U.S. jurisdiction is covered.

The affiliates are very much independent organizations. Each has its own Board of Directors and staff, each sets its own civil liberties priorities, and each decides for itself what cases to take, what state and local bills to work on, and what kind of public education campaigns to run.

The state affiliates and the national ACLU are joined in three ways. The affiliates elect the governing board of the national ACLU. The national organization and the affiliates share financial support. When you join the ACLU, you become a member of the national ACLU and your state affiliate; when you donate, you give both to the affiliate in your state and to national. But most important, the affiliates and the national ACLU share the same commitment to defend the basic rights guaranteed to all by the federal constitution, and especially the Bill of Rights.

Most of the direct civil liberties work of the ACLU is handled by the ACLU's affiliates. The job of the national office is to coordinate. On some national issues, this means taking the lead. More often, it means working with affiliates – consulting with large affiliates on priorities and strategy, working together with medium-sized affiliates, and doing cases and campaigns for small affiliates.

## The Lesbian & Gay Rights and AIDS Projects

The national ACLU has a division called the Lesbian & Gay Rights and AIDS Projects. It has a Director, Litigation Director, five lawyers, a Public Education

Director, a Federal Legislation and Policy Director, and a Development Director, along with supporting staff.

Five affiliates (Illinois, Georgia, Michigan, Northern California, and Southern California) also have staffed projects that focus on LGBT rights, and at least four more have activist member/volunteer groups working on LGBT rights and/or AIDS (Delaware, Eastern Missouri, Ohio, and Southern and Northern California).

But the heart of the Projects exists less in formal structure than in what the ACLU does. As the docket printed in this report shows, virtually every affiliate either lobbies or litigates on these issues, and most do a considerable amount of both. The national Projects set overall priorities, develop strategies, help affiliates decide what to do and how to do it and, particularly in the small states, provide the staff power. The ACLU Lesbian & Gay Rights and AIDS Projects are the collective effort of all the affiliates and the national office working together.

## You

The structure of the ACLU Lesbian & Gay Rights and AIDS Projects is complicated, but helping us isn't. If you want to make a contribution to the ACLU's LGBT rights and HIV/AIDS work in your state and across the country, please send it to:

ACLU Foundation – LGRP  
125 Broad Street, 18th Floor  
New York, NY 10004  
212.549.2627  
lgbthiv@aclu.org

You can also send contributions to your local affiliate, but be sure to tell them it's for the ACLU's LGBT rights and AIDS work.



# BETTER LATE THAN NEVER

By Matthew A. Coles, Project Director

This annual report is late, very late. When it became clear that there were going to be significant developments around marriage and same-sex couples, we decided to hold the report back so I could say a little bit about how the landscape was changing and what lay ahead.

And were there ever “significant developments.” As of February 1, there were two important marriage cases, GLAD’s Massachusetts case (in which the court had already ordered recognition of marriage for same-sex couples) and Lambda’s case in New Jersey. Today, there are important cases in California, Oregon, New York, and Washington, with a few soon to come.

Marriage equality isn’t a new issue, but until recently, it didn’t look like a very promising one in the near term either. The ACLU’s Minnesota affiliate brought the first case demanding marriage for same-sex couples in 1972. We lost, as did other cases brought in the 70’s and early 80’s. In the early 90’s, there were what first looked like promising new cases in Hawaii and Alaska. But both of those provoked drastic reactions: voters approved amendments to state constitutions effectively denying marriage to same-sex couples.

But at least four things have changed. First, some courts finally broke through the ice. It began with the Vermont Supreme Court decision that brought

about civil unions, then the Canadian appeals courts’ decisions that opened up marriage in British Columbia and Ontario. Those were followed by the Massachusetts Supreme Court decision in the *Goodridge* case, which finally brought marriage for same-sex couples to the U.S.



Second, public understanding of gay relationships keeps getting better. When the first case was brought in 1972, most people didn’t even know gay people had relationships. The AIDS epidemic probably did more than any other single thing to change that. And every year, more and more Americans realize that gay people do have relationships, relationships that are as complicated and deeply significant as their own.

Third, the Supreme Court’s decision last year in *Lawrence v. Texas* made marriage the primary lesbian, gay, bisexual, and transgender issue. Sex and relationships have always been at the core of the movement for LGBT equality. It is sex and relationships that make us different, and so sex and relationships have always been at the heart of discrimination against us. Before *Lawrence*, Americans could always say that our sex and relationships could be – and in some places were – a crime.

*Lawrence* didn’t just take that argument away. With a vehemence unusual in Supreme Court decisions, the Court said gay people have the very same right

---

CAMILLE CARACAPPA (LEFT) AND EVA KADREY WITH THEIR SON NICOLAJ AT HIS CHRISTENING. WHEN CAMILLE DIED IN 2000, NICOLAJ WAS DENIED SURVIVOR BENEFITS, BECAUSE THE FEDERAL GOVERNMENT REFUSED TO CONSIDER HER A PARENT.

to sex and relationships that heterosexuals have. And that begged the marriage question; if gay people have the same right to relationships that straight people have, can society deny them marriage?

Gavin Newsom, and then Jason West in New Paltz and the county commissioners in Portland finished the job by transforming the issue from an abstract question about social policy into a very tangible question about real people's lives. The stories and images that came out of those cities captured the attention of the country. Perhaps more important, they formed eloquent answers to our opponents. It is hard to argue that lesbian and gay relationships are transitory in the face of couples that have been together 20, 30, even 50 years. There is no better answer to the claim that a critical purpose of marriage is creating a place to raise children than same-sex couples taking their vows along with the children they are raising. And perhaps most eloquent of all, the lines of people waiting in the rain to get a chance to marry in San Francisco proved that it's a lie when our opponents charge that gay people aren't really interested in committing to one another.

But if marriage is the right issue, and this increasingly looks like the right time, it is not a sure thing, at least not in the immediate future. The politics of marriage make it clear that even if we succeed in heading off widespread public opposition to marriage for same-sex couples, we are still going to have to rely on courts, at least at the start, to make any progress. The constitutional law of marriage makes it clear that we have to be careful about how we use the courts.

In-depth research shows the public is divided roughly into thirds: 30% generally support us, 36% are strongly opposed, and about a third are unsure. That middle third is moveable. But more important here, that middle third doesn't care very much about the issue at all. No matter how the folks in it feel, the issue is not going to influence how they vote. And among those who are committed, our opponents have many more people who feel much more strongly, who will vote and donate to politicians on the issue. That means that political institutions, at least for the time being, are much more likely to get in the way of marriage for same-sex couples than they are to help it along.

American constitutional law is dominated by the idea that courts, because they are not democratically chosen, should be hesitant to use their power to overrule legislatures, presidents, and governors. Typically, they abandon that general attitude of restraint only when a law appears to discriminate against a traditionally disadvantaged minority or the government appears to be violating one of the explicit rights set out in a constitution.

The difficulty with marriage is that American courts haven't decided whether they believe gay people are a traditionally disadvantaged minority. There is enough room in the doctrine about what a disadvantaged minority is to fight about it. And marriage isn't mentioned in the federal or most state constitutions in so many words. If it is nonetheless part of a constitutional right, it has to be because it is implicitly protected by due process. But getting courts to be tough about implicit rights isn't so easy. The rules are notoriously slippery, and slippery rules are exactly what you don't need when you ask courts to wade into politically controversial issues.

The Supreme Court's decision in *Lawrence v. Texas* should have gone a long way toward resolving questions about both discrimination against gay people and the protection of intimate relationships. But like most Supreme Court decisions, *Lawrence* didn't go far beyond the question in front of it – which was the constitutionality of laws that made same-sex intimacy a crime. And the Court made a point of saying it was not deciding the marriage question.

Since so much is still unresolved about what the Constitution really says about marriage, courts that are hostile to gay people are unlikely to be helpful, and courts that are uncertain about marriage are likely to be unpredictable. This means we have to be choosy about where we bring cases. There are serious downsides to bringing cases and losing, especially at this early stage. Courts don't readily reverse themselves. It will take longer to get marriage for same-sex couples in states that have a court decision on the books saying the constitution doesn't require it. Decisions like that also make it harder for us to use state constitutions to protect gay students and gay parents. And to keep the marriage fight moving ahead, we want to win as many early cases as we can. If there is a clear trend, that will be helpful with



uncertain courts. A string of losses will make the job much harder, and make it take longer.

We want to go to courts that already have a history of protecting lesbian, gay, bisexual, and transgender people. We want to go to courts where judges have relatively more experience working with constitutional questions. The more a court studies the issue in depth, the better our chances. But most state courts are populated with commercial lawyers who rarely see a constitutional law issue after they leave law school.

And we have to stay out of federal court, at least for the time being. Any case that raises a federal issue can potentially go to the U.S. Supreme Court. Four members of the current Court told us in the *Lawrence* opinion that they do not think the Constitution requires states to let same-sex couples marry. That means we would have to get the votes of all five of those who have yet to say what they think. And a bad decision... well, it took 17 years to undo *Bowers v. Hardwick*, the 1986 decision that upheld laws making same-sex intimacy a crime. And that was record time for a turnaround at the U.S. Supreme court. To make matters worse, most of the lower federal courts these days are far more conservative than the Supreme Court.

The course seems fairly clear. We should bring cases in six to 10 states, in state courts on state grounds, where the history and makeup of the high courts give us a decent chance of winning. That process is under way. As I said above, there are cases in progress in New Jersey, Oregon, California, New York, and Washington, with a few more being prepared. If we succeed in getting most of those states – particularly economically important states – to rule that same-sex couples cannot be excluded from marriage, we can begin



using those decisions to start asking other states, through courts and eventually legislatures, to do the same.

But the court strategy will fail if it is not accompanied by a political strategy. Hawaii and Alaska were not singular; one way or another, the constitution of any state can be amended to overrule a court or to take away its power to decide an issue. Good court decisions must be politically sustainable. In some states, that may mean defeating attempts to have the voters amend their state constitutions; in others it may mean preventing a judge from being recalled, or supporting office holders who refuse to back constitutional amendments.

That brings us back to the great truism of American law: no court victory ever makes lasting change unless the public is convinced, at a minimum, that the principle on which it stands is right even if some of them don't much like the outcome. The good news here is that the public can be convinced.

Much of that middle third I wrote about earlier consists of Americans who are uncomfortable with same-sex couples, but whose bedrock belief in fairness will overcome that discomfort if they believe we make the same commitments they do, but are then treated unfairly.

---

ALTHOUGH DIANE GALLAGHER (LEFT) AND SYLVIA SAMUELS (RIGHT) OF MOUNT VERNON, NEW YORK, SEEN HERE AT THEIR DAUGHTER'S WEDDING, HAVE BEEN TOGETHER FOR 24 YEARS, DIANE WAS ONCE KEPT FROM SYLVIA'S SIDE IN AN EMERGENCY ROOM. NOW THAT SYLVIA IS SUFFERING FROM LIVER CANCER AND MUST HAVE A TRANSPLANT TO SURVIVE, THEY ARE MORE CONCERNED THAN EVER ABOUT PROTECTING THEIR RELATIONSHIP. THEY ARE ONE OF 13 COUPLES THE PROJECT IS REPRESENTING IN ITS LAWSUIT FOR MARRIAGE EQUALITY IN NEW YORK STATE.

That case – the case for fair treatment based on commitment and discrimination – is one that has to be made to the public as a whole by the same-sex couples of America. They have to show America that the commitment is there, and that the consequences of treating people like legal strangers are dreadful.

Some people won't be careful about choosing their battles. Cases will get filed in courts where there is really no reason to think we can win, and cases will raise federal issues long before the federal courts are ready to deal with them. If we are lucky, those cases won't do too much harm.

But nothing will help us if we fail to lay the groundwork we need to make decisions ending discrimination against same-sex couples politically sustainable. That means this civil rights battle, like every great civil rights battle, will not be won by visionaries and lawyers, important though they may be. It will be won by ordinary people convincing their neighbors to do the right thing.

## DOCKET: RELATIONSHIPS

The Project and ACLU affiliates continued to work for greater protections and recognition of LGBT relationships. We participated in 12 lawsuits fighting for equal treatment of LGBT relationships. We lobbied in 11 state legislatures both in support of legislation favoring greater protections for LGBT relationships and against legislation opposed to LGBT relationships. We also lobbied for local domestic partnership ordinances, spoke at town hall meetings, and provided other support for marriage equality.

---

### ACLU and Lambda Legal Challenge Nebraska Anti-Gay Family Amendment

---

In *Citizens for Equal Protection, Inc. v. Bruning*, the Project, ACLU Nebraska, and Lambda Legal brought a challenge to an amendment to the Nebraska constitution that prohibits any type of legal protection for same-sex relationships.

The amendment was passed in November 2000 in a heavily debated election that received the second highest turnout in the state's history. Promoted to voters simply as protection of traditional marriage, the law goes far beyond restricting the right to marry to heterosexual couples. The law specifically voids the uniting of two persons of the same sex in a civil union, domestic partnership, or other similar same-sex relationship.

The lawsuit, filed in federal court on behalf of Citizens for Equal Protection, Nebraska Advocates For Justice and Equality, and ACLU Nebraska, charges that the amendment violates the equal protection guarantees of the U.S. Constitution.



Members of the advocacy organizations bringing suit include Judy Gibson and Barbara DiBernard of Lincoln, who have been living together as a couple for over 14 years and have made commitments to care for one another for the rest of their lives. Gibson suffers from a degenerative disease that requires her to use a wheelchair. Because of Nebraska's law, DiBernard, who works for the state university, does not have the option of obtaining coverage for Gibson on her university health plan. DiBernard is also prevented from advocating for a policy authorizing her to take time off from work to take Gibson to her regular medical appointments.

---

DONNA COLLEY (LEFT) AND MARGAUX TOWNE-COLLEY ARE TWO OF THE PLAINTIFFS IN THE PROJECT'S CHALLENGE TO NEBRASKA'S "SUPER-DOMA" LAW BANNING ANY RECOGNITION OF SAME-SEX RELATIONSHIPS. THIS LAW PREVENTS THEM FROM BOTH BEING LEGAL PARENTS TO THEIR SON GRAYSON.

Donna Colley and Margaux Towne-Colley of Omaha have been in a committed, loving relationship for over six years and are the proud parents of a two-year-old son. With a child's needs to consider, Nebraska's law has made the couple especially concerned about what would happen if either of them dies or should become incapacitated. The amendment makes it futile for these people to even lobby their legislators for laws addressing these problems – the amendment would prohibit them all.

A federal judge recently issued a very encouraging opinion denying the state's motion to dismiss the case and allowing the case to proceed to trial. Still in the early stages of litigation, the case is not expected to be resolved soon.

---

### ACLU Seeks Social Security Benefits for Child of Deceased Lesbian Mother

---

The Project filed a friend-of-the-court brief urging the Social Security Administration to provide survivor benefits to the child of Camille Caracappa, who died unexpectedly at 38.

Early in their seven-year relationship together, Caracappa and her partner Eva Kadrey talked about having a child. Caracappa was the main breadwinner in the family, so they decided that Kadrey would carry their child. In March 1998, Kadrey gave birth to Nicolaj Sikes Caracappa. Caracappa continued to work full time as a freelance oncology nurse while Kadrey stayed at home with Nicolaj and helped out part time keeping the books for Caracappa's business. Shortly after Nicolaj was born, Caracappa made plans to adopt him and even contacted a lawyer to start the process, but she died suddenly of an undiagnosed brain aneurysm, before the paperwork for Nicolaj's adoption was completed.

At the urging of Caracappa's mother, Kadrey filed for Social Security survivorship benefits for Nicolaj in November 2000. Less than a month later, the Social Security Administration denied Nicolaj's claim because Caracappa and Kadrey weren't married and because Caracappa wasn't Nicolaj's biological mother.



CAMILLE CARACAPPA WAS A MOTHER TO NICOLAJ SIKES CARACAPPA IN EVERY WAY BUT ONE – HER PARTNER EVA KADREY (NOT PICTURED) GAVE BIRTH TO HIM. THE COUPLE RAISED HIM TOGETHER UNTIL CARACAPPA'S UNEXPECTED DEATH IN 2000. NOW THE FEDERAL GOVERNMENT IS TREATING NICOLAJ AS A LEGAL STRANGER TO HER.

The case is now up for review by an administrative law judge in Voorhees, New Jersey. If the couple had been allowed to marry, Nicolaj would be entitled to Caracappa's benefits. The administration even allows stepchildren to receive survivor benefits. Because Caracappa's and Kadrey's relationship is not recognized, Nicolaj is forced to rely on legal arguments that children of straight parents would not have to bother with.

In the brief to the administrative law judge, the ACLU pointed out that under New Jersey law, Nicolaj is Caracappa's heir, even though his two mothers were not married. The New Jersey Supreme Court has recognized that people with no biological or formal adoptive tie to a child, but who have functioned as a parent, should be treated as parents for all purposes – which would entitle Nicolaj to inherit from Caracappa. A decision in the case, *In re Claim of Benefits by Nicolaj Caracappa*, is expected soon.

## Alaska

The ACLU presented arguments in December 2002 in *Alaska Civil Liberties Union v. Alaska and Anchorage*, a suit challenging the "Catch-22" of state law that denies same-sex couples the right to marry but provides health insurance and other benefits to the partners of state employees who are married. One Alaskan affected by this is stay-at-home lesbian mom Mari Billington, who found herself without health insurance – she couldn't be insured by her partner's government employer because they aren't married, but was denied Medicaid because she lives with her partner. The ACLU initially filed the lawsuit in state court in 1999, shortly after Alaska's voters passed a Constitutional amendment barring state recognition of marriage for same-sex couples. The ACLU argues that because of the amendment, using marriage as the litmus test for benefits discriminates based on sexual orientation and gender, thus violating the state Constitution. The Alaska Constitution guarantees "that all persons are entitled to equal rights, opportunities and protections under the law." Project Attorney Ken Choe is handling the case along with cooperating attorneys Allison Mendel and Tobias Wolff. Mari Billington filed a friend-of-the-court brief to tell the court her story.

## Colorado

The ACLU of Colorado testified in support of a civil union bill that would give same-sex couples all the privileges and responsibilities of civil marriage; the bill did not reach the floor for a vote.

## Connecticut

In partnership with other statewide organizations, the Connecticut Civil Liberties Union continues to lobby the state legislature to pass a comprehensive domestic partnership bill that would give lesbian and gay couples the opportunity to enjoy all of the rights and responsibilities of marriage under state law. The affiliate also helped defeat a bill that would have defined marriage as a union between only a man and a woman, and denied all

of the benefits of marriage to same-sex couples. In conjunction with these efforts, the CCLU and its partners published "Our Stories, Our Lives," a widely distributed collection of testimonies about the detrimental effects of discriminatory marriage laws on lesbian and gay couples and their families.

## Idaho

The ACLU of Idaho helped fight a bill before the state legislature that would have expanded the state's law banning same-sex marriage to also preclude recognition of domestic partnerships and civil unions. The bill failed.

## Massachusetts

The ACLU of Massachusetts and the Project filed a friend-of-the-court brief in the state's highest court supporting civil marriage for same-sex couples. In a landmark ruling in *Goodridge v. Department of Public Health*, the Massachusetts high court ruled that excluding same-sex couples from marriage was unconstitutional. The ACLU brief argued that denying marriage to lesbians and gay men violated constitutional equal protection principles. Later on, after the state Senate asked the court for clarification about whether a new measure banning marriage for same-sex couples but allowing them to join in civil unions would pass muster under the state Constitution, the court issued an advisory opinion stating that its decision requires nothing less than full, equal civil marriage rights. On May 17, 2004 the Supreme Judicial Court decision in *Goodridge* took effect and same-sex couples began marrying.

The affiliate also lobbied against a proposed amendment to the state constitution that would bar any form of state recognition of same-sex relationships, whether called marriage, civil unions, or domestic partnerships.

## Michigan

The ACLU of Michigan is representing Kikue Liedigk in her claim for Social Security spousal benefits. Her benefits were revoked by the Social Security



Administration (SSA) after her spouse of 39 years had sex-reassignment surgery and changed her gender designation on her birth certificate from male to female. At the ACLU's request, an administrative hearing was held in *Liedigk v. Social Security Administration* in October challenging the SSA's authority to invalidate a legal marriage.

## Minnesota

In 2001, the Minnesota Civil Liberties Union helped state employees obtain domestic partner benefits through a collective bargaining agreement. During the next two years, the legislature delayed implementation of the agreement by refusing to ratify it. Despite the affiliate's lobbying efforts, the 2003 legislature cut the domestic partner benefits provision from the agreement.

## Missouri

The ACLU of Eastern Missouri fought a proposed resolution in the state legislature encouraging Congress to enact a constitutional amendment banning marriage for same-sex couples. The resolution was passed in the Senate but died in the House.

## Montana

The ACLU of Montana and the Project have brought suit against the University of Montana System to require it to provide lesbian and gay employees an equal opportunity to purchase health insurance and other employee benefits for their partners. The University System currently provides such benefits to married employees and to heterosexual employees who sign an affidavit of common law marriage. The case, *Snetsinger v. Montana University System*, is now before the Montana Supreme Court.

The affiliate also lobbied the state legislature for health insurance benefits for the domestic partners of state employees, and for a bill that would remove the state's prohibition on marriage for same-sex couples. Unfortunately, neither bill passed.

## New Jersey

The ACLU of New Jersey filed a friend-of-the-court brief in *Lewis v. Harris*, a lawsuit filed by Lambda Legal seeking marriage for same-sex couples. In the brief, the ACLU argued that marriage discrimination is a violation of the plaintiffs' constitutional rights, and thus should be addressed by the courts, countering the state's argument that the court should defer to the legislature. In conjunction with the lawsuit, the ACLU has been assisting with town meetings across New Jersey designed to show support for marriage equality.

The affiliate is also lobbying in support of the Family Equality Act, which was introduced in the New Jersey Assembly last year. This bill would provide certain health and pension benefits, now available only to married couples, to gay couples and others in significant personal, emotional, and economically committed relationships.

## Ohio

Students in the ACLU of Ohio's internship program canvassed door-to-door for the Cleveland Heights Families for Equality campaign for a referendum to create a domestic partnership registry in the city of Cleveland Heights. The issue passed in the November election, marking the first time such a system was adopted by voter referendum.

## Oklahoma

The Project submitted a friend-of-the-court brief to the Supreme Court of Oklahoma on behalf of Sam Beaumont, who could lose the home and ranch he and his partner, Earl Meadows, built over their 24 years together. After Meadows's death, his distant cousins made a claim for the property under the state's intestate succession laws, which don't recognize same-sex relationships. Though Meadows had drafted a will that would have transferred all his property to Beaumont, it lacked the required number of witnesses. The case, *In the Matter of the Estate of Earl Meadows*, is before the court awaiting decision.

SAM BEAUMONT  
(RIGHT), HERE WITH HIS  
SON, STANDS TO LOSE  
HIS RANCH AND  
POSSESSIONS BECAUSE  
HIS PARTNER OF 24  
YEARS LEFT AN  
UNWITNESSED WILL.



## Oregon

The ACLU of Oregon was instrumental in convincing the City of Eugene to adopt a domestic partner registry.

## Pennsylvania

The ACLU of Greater Pittsburgh settled *Rothert v. Fraternal Order of Police and City of Pittsburgh* after a labor arbitration panel awarded lesbian and gay police officers health benefits for their partners. The ACLU is now petitioning the arbitration panel to clarify whether the ruling covers retirees as well as current employees.

Litigation continues in *Henson v. University of Pittsburgh* over whether the University of Pittsburgh's refusal to provide domestic partner health insurance benefits for its employees violates Pittsburgh's anti-discrimination ordinance.

The University is asking a state trial court to dismiss the ACLU's suit against it, arguing that a special law the University procured from the legislature authorizes it to discriminate against its lesbian and gay employees.

## Texas

The ACLU of Texas testified before the state legislature in opposition to an anti-gay marriage bill. Despite its efforts, the bill was enacted into law.

## Utah

A Utah legislator sponsored a resolution that would have urged the federal Congress to pass a federal anti-gay marriage amendment defining marriage as a union between a man and a woman. The ACLU of Utah, together with other statewide coalitions, held strategy meetings and spoke at a town hall meeting, leading to media coverage and campaigning that succeeded in defeating the resolution.

## Washington

The ACLU of Washington fought a bill that sought to extend the anti-gay marriage statute adopted by the state legislature in 1998. The bill did not make it out of committee. The affiliate also worked on a bill that would expand the definition of a non-marital domestic relationship, including civil unions, domestic partnerships, or other similar relationships, to include relationships between people of the same sex, but this bill also stalled.





# THE "SCIENCE" OF HATE

By Leslie Cooper, Staff Attorney

The State of Arkansas says that lesbians and gay men have unstable families, spread disease to children, molest children, are violent, make children gay, are mentally ill, and are too busy with many sexual partners to take care of children. That, says the state, is why it prevents lesbians and gay men, as well as heterosexuals who live with gay people, from becoming foster parents.

What made the state say these awful things?

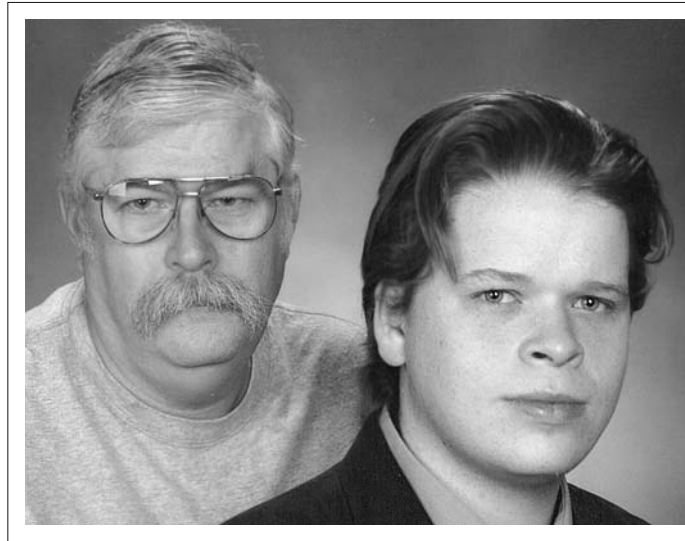
This coming October, we'll find out when the state defends its policy in *Howard v. Child Welfare Agency Review Board*, and its claims about gay parents are put to the test.

We are looking forward to that day, because we know that Arkansas will not have any real evidence that gay people are unfit. That's because there isn't any. The social science research conducted over the past two decades on children raised by gay parents consistently shows that the kids do fine. Dozens of studies published in scholarly journals have not identified a single harm to children's psychological or social development or well-being associated with having lesbian or gay parents. In fact, all of the major national health and children's welfare organizations agree that lesbians and gay men can be fine parents and

should not be categorically excluded from adopting, fostering, or having custody of children. Among these groups are the Child Welfare League of America, the American Academy of Pediatrics, the American Psychological Association, and the North American Council on Adoptable Children. That gay people can be as good (or as bad) at parenting as heterosexuals is firmly established and simply not disputed within social science.

The only "research" out there that purports to show that children are harmed by gay parents is the work of Paul Cameron. Cameron's articles, most of which he published himself through his "Family Research Institute," all focus on the ways in which gay people are loathsome at best ("Medical Consequences of what Homosexuals Do"), and the most depraved violent criminals at worst ("Violence and Homosexuality" and "Child Molestation and Homosexuality"). In these articles, Cameron suggests that gay people wallow in feces and asserts such "facts" as lesbians'

median age at death is 45 and 7% are murdered; 44% of mass murderers are gay or bisexual; and 29% of kids raised by gay parents are victims of sexual abuse by their parents.



---

ALTHOUGH BILL WAGNER (LEFT) AND HIS WIFE PROVIDE SHELTER AND CARE ON A REGULAR BASIS TO GAY YOUTH WHO HAVE BEEN KICKED OUT OF THEIR HOMES, HE'S NOT ALLOWED TO BECOME A FOSTER PARENT IN ARKANSAS BECAUSE HIS GAY SON WILLIAM (RIGHT) SOMETIMES STAYS AT THE FAMILY'S HOME.

Paul Cameron has been discredited and disgraced in his field for misrepresenting the scientific research on homosexuality. The American Psychological Association kicked him out and the Nebraska Psychological Association and American Sociological Association Society publicly chastised him for this conduct. And a federal court in Texas rejected Cameron's expert testimony about gay parents and child molestation, characterizing it as fraud and misrepresentation to the court. Paul Cameron has dedicated his career to maligning gay people and is willing to distort research to serve his goals. Fortunately, he's been caught at it and is completely discredited as a scientist.

For those looking to show that gay people endanger the welfare of children, there is plenty of other material out there, especially on the Internet, that purports to be evidence that lesbians and gay men pose every conceivable threat to children. And these materials include some polished looking articles packaged as scientific reports. But none of these are published by academic journals or subjected to the peer review process. They are all published by advocacy groups like the Family Research Council, which have political and religious agendas that expressly include opposition to gay equality. Moreover, the authors of these articles do not have credentials in the field of psychology or other relevant fields. For example, the author of the Family Research Council's articles espousing the dangers of gay parents is identified as Timothy J. Dailey, Ph.D. But when you look up Dailey's bio on the organization's website, you learn that his degree is in religion. Moreover, the authors of these materials routinely cite Paul Cameron's discredited work.

While one can find plenty of junk science claiming to show that gay parents pose a threat to children, they are nothing more than advocacy pieces dressed up as science. There is no scientific research showing that gay people endanger children because we don't.

It's shameful that in 2004, we still have to confront these insulting stereotypes about lesbians and gay men, and even more so that they are being uttered by a state government. Government should be working to eliminate discrimination; it should not be fanning the flames of prejudice and hatred by recklessly branding a group of its own citizens as pariahs, as Arkansas is doing.

Arkansas's characterization of gay people is groundless, and we are eager to reveal the junk science for the biased and meaningless paper it is. And we are hopeful that the trial and the expert testimony we will put on will generate a national dialogue, spurring people to think and talk about how baseless these damaging accusations against the gay community are and the fact that their fears about gay parents are unwarranted.

## DOCKET: PARENTING

Working with ACLU affiliates, the Project continued to work to protect the rights of LGBT parents and their children. We were involved in 14 lawsuits involving issues affecting LGBT parents. We opposed anti-gay parenting legislation in five statehouses, participated in public hearings against restrictions on adoption by LGBT people, and lobbied state leaders for better recognition of our families.

---

### North Dakota Overturns Bad LGBT Parenting Law

---

The Project succeeded in convincing the North Dakota Supreme Court to strike down a 1981 decision that has been used to deny lesbian and gay parents custody of their children solely because of their sexual orientation.

The Project represented Valerie Damron, who lives in Minot with her two children and her partner Ann. At the time of their divorce in 2001, Damron and her ex-husband agreed that she should have primary custody of the children and that he would have ample visitation rights. A year later, the ex-husband sued for primary custody. He argued that the children might suffer harassment due to Damron's relationship with her partner, although he was unable to produce any evidence of any such problems and offered no witnesses to back up his claims.

In January, the trial court, relying on the 1981 case *Jacobson v. Jacobson*, ruled that the 10-year-old and the four-year-old should be taken from their mother and sent to live with their father. In *Jacobson*, the North Dakota Supreme Court had ruled that having lesbian or gay parents was inherently harmful to



children because they may suffer "the slings and arrows of a disapproving society."

Damron filed an appeal, which the Project argued before the North Dakota Supreme Court in September. In a unanimous decision, the court overruled *Jacobson* and reversed the trial court, restoring full custody rights to Valerie Damron.

In a touching tribute to our work, one of Sandra Jacobson's children, now 31 years old, sent a letter to the editor of the *Bismarck Tribune* thanking Damron for helping to change the law that denied her the kind of relationship with her mother that she would have liked to have had growing up.

---

VALERIE DAMRON (LEFT), HERE WITH HER PARTNER ANN ELLIOT, WON BACK CUSTODY OF HER TWO CHILDREN IN A NORTH DAKOTA SUPREME COURT DECISION THAT COMPLETELY OVERTURNED AN INFLUENTIAL 1981 ANTI-GAY PARENTING RULING.

The decision in *Damron v. Damron* leaves only four states – Alabama, Mississippi, North Carolina, and Virginia – where courts still deny custody based on sexual orientation alone.

---

## Washington Appeals Court Considers Rights of Non-Biological Mom

---

The Project and the ACLU of Washington submitted a friend-of-the-court brief on behalf of a lesbian mother who is seeking visitation rights following a split with her partner.

Mian Carvin lived with her partner for 12 years. Six years into their relationship, they decided to have a child together, with her partner giving birth to the child. Carvin was a stay-at-home mom, serving as the baby's primary caregiver. Carvin, who her daughter called "Mama," bathed, dressed, and fed her little girl, disciplined and consoled her, and provided financial support. When the child was almost six years old, the couple separated. Her ex-partner eventually cut off all contact between Carvin and their daughter.

In order to restore contact with the child she had raised from birth, Carvin filed a petition for a declaration of parentage, or in the alternative for an order for third-party visitation. A King County Superior Court judge held that because Carvin was not married to her partner and was not the girl's biological mother, she had no standing to seek a declaration of parentage.

Carvin appealed the decision to the Washington Court of Appeals. In its brief, the ACLU urged the appeals court to allow Carvin a fair opportunity to prove that she is a parent of her child. State courts around the country have recognized the constitutional rights of lesbian and gay parents in similar situations, where the parent seeking visitation has, with the consent of a biological parent, taken on the role and responsibilities of a parent and developed a bonded relationship with a child.

The case, *In Re Parentage of L.B.*, is still pending before the court. A decision is expected sometime next year.



MIAN CARVIN HASN'T SEEN HER DAUGHTER IN 20 MONTHS, SINCE HER EX-PARTNER CUT OFF ALL VISITATION. BECAUSE CARVIN IS NOT THE BIOLOGICAL MOTHER TO THE CHILD WHO CALLS HER "MAMA," SHE IS FORCED TO PETITION FOR A DECLARATION OF PARENTAGE, WHICH HAS SO FAR BEEN DENIED TO HER.

PHOTO: KRISTAN KELLY

---

## Arkansas

Arkansas has a shortage of available foster homes for adolescents and groups of siblings, yet it bans lesbian and gay people from being foster parents. In *Howard v. Child Welfare Agency Review Board*, the Project represents four prospective foster parents, including a gay couple who have been in a committed relationship for 17 years and a heterosexual married man who is barred from foster parenting because his gay son lives at home. The lawsuit charges that the ban violates the prospective foster parents' rights to equal protection under the state and federal constitutions. A trial was held in March 2004.

---

## California

Olive Crest, a state-licensed adoption agency, refused to consider Shannon Rose and Jane Brooks as potential foster or adoptive parents, citing a new

policy of preferring “to place children with nuclear families.” A social worker at Olive Crest resigned in protest of the policy, which she said was intended to prevent lesbian and gay couples from becoming parents. The ACLU of San Diego and the ACLU of Southern California represent the couple in *Brooks and Rose v. Olive Crest Foster Family and Adoption Agency*.

The ACLU of Southern California filed a friend-of-the-court brief in the California Supreme Court in *Butler v. Harris*, a case challenging a law that allows California courts to require parents to have their children visit with grandparents. The challenge is based on the California constitution’s strong protection of familial privacy rights and is of special importance for gay and lesbian parents because homophobic grandparents or other relatives frequently seek visitation or even custody of the children of lesbians and gay men.

The Southern California affiliate also filed a friend-of-the-court brief in the state appellate court in *Kristine H. v. Lisa R.*, a case involving a lesbian couple who decided to have a child by donor insemination of Lisa. The couple entered into an agreement that both women were the child’s parents, but

when they separated two years later, Lisa refused to allow Kristine to visit the child, claiming she was not a legal parent. The ACLU argued that the statute governing who is a presumptive parent must be applied equally to same-sex couples and married, heterosexual couples.

The California affiliates filed a friend-of-the-court brief in the California Supreme Court in *Sharon S. v. Superior Court*, a case that led to a sweeping victory for lesbian and gay families by recognizing the validity of second parent adoptions under California law.

## Colorado

The ACLU of Colorado filed a friend-of-the-court brief in *In Re: Interest of ELMC* in support of a lesbian mother whose former partner wanted to deny her access to the child they had raised together. The trial court recognized both mothers’ bonds with the child and granted shared parental responsibilities and equal parenting time. The affiliate also testified in support of a bill that would allow domestic partners to adopt a child together; the bill did not come to a vote.

## Florida

In 1998, the Project and the ACLU of Florida, along with Children First Project, filed a lawsuit challenging a Florida law that bans lesbians and gay men from adopting children. The families fighting this law are Steven Lofton, Roger Croteau and their foster child, Bert, who has been part of their family nearly all of his 13 years; Doug Houghton and Oscar, 12, who Houghton has raised for the past six years; and Wayne LaRue Smith and Dan Skahen, who have together taken care of numerous Florida foster children. All these adults seek to adopt the children in their care to secure their family relationships. The plaintiffs argue that Florida’s adoption ban violates their rights to equal protection and family integrity. After the trial court dismissed the case, the plaintiffs appealed. Project Director Matt Coles argued the case, *Lofton v. Florida*, before a federal appeals court in March 2003. In January of 2004, the court upheld the law. The ACLU has asked the court to reconsider the case.

THE LOFTON V. FLORIDA  
LEGAL TEAM, WITH  
PLAINTIFFS WAYNE  
LARUE SMITH AND DAN  
SKAHEN, IN MARCH 2003  
ON THE DAY OF ORAL  
ARGUMENTS BEFORE  
THE 11TH CIRCUIT  
COURT OF APPEALS IN  
MIAMI. (LEFT TO RIGHT)  
BACK ROW: JAMES  
ESSEKS AND PAUL  
CATES; FRONT ROW:  
RANDALL MARSHALL,  
LESLIE COOPER, DAN  
SKAHEN, WAYNE LARUE  
SMITH, AND STEVEN  
KOZLOWSKI.







The Project and the ACLU of Florida represented Michael Hall in *Hall v. Beauchamp*, his appeal of a court order that prohibited him from allowing his partner and his partner's daughter to spend the night during Hall's visitation with his children. The divorce decree provided that only "close family members" may spend the night during visitation and the judge held that Hall's partner and his daughter did not qualify as family despite the fact that Hall and his partner had entered into a civil union in Vermont. The ACLU argued that this ruling violated Hall's rights to family integrity and equal protection because Hall's partner and daughter are not merely visitors or guests, but family. The state appeals court upheld the trial judge's ruling, so Hall's partner and his daughter are forced to leave the home whenever Hall's daughters visit him.

## Iowa

The Iowa affiliate worked against a bill in the state legislature that would have banned adoption or foster care by lesbian or gay people. The bill died in committee.

---

FIVE KIDS, TWO DADS, ONE FAMILY: STEVE LOFTON (SECOND FROM LEFT) AND ROGER CROTEAU (RIGHT), WITH THEIR CHILDREN ERNIE, BERT, TRACY, FRANK, AND WAYNE. AS LEAD PLAINTIFFS IN *LOFTON V. FLORIDA*, THIS FAMILY HAS SPENT YEARS AT THE FOREFRONT OF OUR FIGHT AGAINST FLORIDA'S ANTI-GAY ADOPTION BAN.

## Idaho

In *McGriff v. McGriff* a trial judge ruled that Theron McGriff is not allowed to live with his partner if he wants to continue to have visitation with his two daughters, who live with his ex-wife. The decision has been appealed to the Supreme Court of Idaho, which denied a request by the ACLU to submit a friend-of-the-court brief in the case on behalf of the father.

## Michigan

Second parent adoptions had been regularly approved in Ann Arbor, Michigan for over 10 years. But in June 2002, the chief judge of the county reassigned all such adoption petitions to himself in order to prevent any further second parent adoptions. The ACLU of Michigan filed a lawsuit in state court arguing that the judge lacked the authority to take these actions, had biases that prevent him from ruling impartially, and was incorrectly interpreting Michigan law. The chief judge rejected the ACLU's claims, as did a second judge who reviewed the chief judge's ruling in *In the Matters of Unmarried Couple Adoptions*.

The ACLU convinced the governor to change the birth certificate form used by the Michigan Registrar's office. The form only allowed parents to write the names of one mother and one father, creating problems for lesbian and gay couples with children, but after the ACLU sent a letter to the governor the forms were changed to recognize both parents of a child, with blanks for "parent" rather than "mother" and "father." And the affiliate published a brochure on LGBT families and the law, which discusses protecting LGBT relationships, custody, visitation, and transgender issues, and has been distributed widely throughout the state.

## North Dakota

The ACLU of the Dakotas opposed a bill that would allow state-licensed adoption and foster care agencies to discriminate against prospective parents based on the agency's moral or religious convictions. The ACLU argued that

the bill would permit discrimination based on sexual orientation and religion. Unfortunately, the bill passed and was signed into law in April 2003.

### New Jersey

The ACLU of New Jersey represented a non-biological mother in her efforts to secure visitation with the children she had raised with her former partner. In 1998, a court denied the non-biological mother's request for visitation in *A.B. v. S.E.W.* The ACLU tried to reopen her case based on a decision by the New Jersey Supreme Court in 2000 that established parental rights of "psychological parents," but the court denied the request.

### Oklahoma

The ACLU of Oklahoma helped defeat a bill in the state legislature that would have prohibited gay people from adopting and would have required lesbian, gay and bisexual parents to prove that their sexual orientation was not against the best interests of their children in child custody disputes.

### South Carolina

The affiliate helped defeat a bill before the state legislature that would have banned gay people from adopting.

### Texas

The ACLU of Texas testified before the state legislature in opposition to a bill that would have banned foster care by lesbian or gay people. The bill died in committee.

### Utah

Staff attorneys from the affiliate participated in public meetings to discuss Utah's discriminatory adoption laws, advising those who attended about the legal and social ramifications of gay adoption.

### Virginia

The Virginia Department of Vital Records refuses to issue new birth certificates for children who were born in Virginia but adopted out of state by same-sex couples – something that is regularly done when married couples adopt elsewhere. The ACLU of Virginia filed *Davenport v. Little-Bowser* in state court on behalf of the adoptive parents arguing that the Department's practice violates state law as well as the constitutional right to equal treatment. A trial judge ruled against the parents in February 2004; the affiliate plans to appeal.



THE TEXAS STATE CAPITOL, WHERE THE ACLU LOBBIED AGAINST A BILL THAT WOULD BAN GAY FOSTER PARENTING. TEXAS'S WAS JUST ONE OF MANY STATE LEGISLATURES FACED WITH ATTEMPTS TO LIMIT LGBT PARENTING THIS YEAR.





## DOCKET: TRANSGENDER

With support from ACLU affiliates, the Project continued its efforts to end discrimination against transgender people. We participated in seven lawsuits fighting transgender discrimination. In addition, we fought for policy changes on issues affecting transgender people, lobbied in support of local anti-discrimination ordinances, and advocated on behalf of transgender students.

---

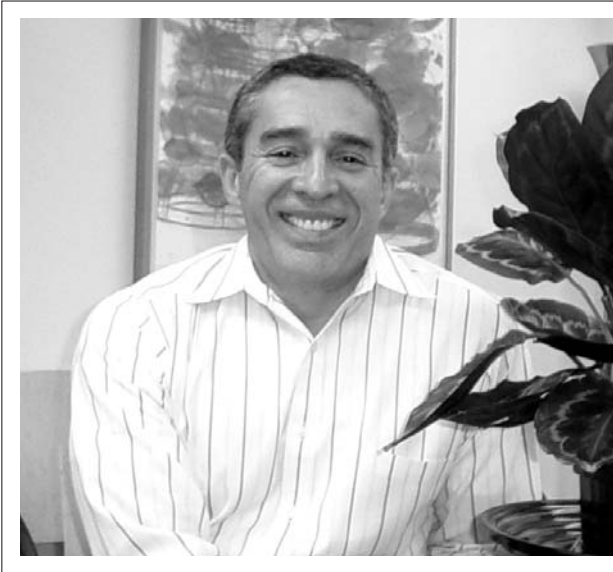
### Landlord Bans Transgender People from All Restrooms

---

In *Hispanic AIDS Forum v. Estate of Joseph Bruno*, the Project obtained an important ruling protecting transgender individuals from discrimination in New York State. The Project represents the Hispanic AIDS Forum (HAF) in a lawsuit against its former landlord for illegal eviction. The landlord refused to renew HAF's lease after other tenants complained that HAF's transgender clients were using the "wrong" bathrooms.

A New York trial judge recently sided with HAF in denying a motion to dismiss by the landlord, who claimed that transgender people are not protected by the state's civil rights laws. The trial judge joined other New York courts in interpreting the state's civil rights laws to include protections for transgender people in its provisions against sex discrimination. This is the first lawsuit under New York state and city civil rights law that has dealt with the issue of which bathrooms are appropriate for transgender people to use.

The ACLU brought suit on behalf of HAF in June 2001 after the agency was forced out of its home of 10 years in Jackson Heights, Queens – an epicenter of the AIDS epidemic in U.S. Latino communities. HAF repeatedly tried to negotiate with the landlord to reach an agreement that would be acceptable



HERIBERTO SANCHEZ SOTO, EXECUTIVE DIRECTOR OF THE HISPANIC AIDS FORUM (HAF), WORKS HARD TO PROVIDE HIV/AIDS SERVICES TO AT-RISK LATINO COMMUNITIES IN NEW YORK. THE ORGANIZATION FACED A CRITICAL LOSS WHEN HAF WAS FORCIBLY EVICTED FROM ITS QUEENS LOCATION BECAUSE OTHER TENANTS OBJECTED TO ITS TRANSGENDER CLIENTS.

to all parties over the use of the restrooms, but the landlord refused to renew the lease, saying he didn't even want the transgender clients in any of the common areas of the building.

After this lawsuit was filed, New York City amended its civil rights law to provide explicit coverage for transgender people.

The landlord has appealed the decision.

---

### Transgender Prisoner Entitled to Medical Treatment

---

In *De'lonta v. Angelone*, the Virginia Department of Corrections suspended hormone treatments for male-to-female transgender inmate Ophelia

De'Lonta. Even though this had caused De'Lonta severe emotional and physical distress, resulting in repeated attempts at self-castration, officials continued to deny her medical treatment. Initially, De'Lonta represented herself in a suit filed in federal district court, where her claims were dismissed. The ACLU of Virginia represented her on appeal, arguing that the DOC has a legal responsibility to treat her condition. The federal appeals court ruled in De'Lonta's favor, holding that her allegations that she was denied treatment for Gender Identity Disorder stated a violation of the 8th Amendment's ban on cruel and unusual punishment.

## Arizona

The ACLU of Arizona is working with a group of gay and transgender prisoners to bring a class action suit to reduce prison rapes. The affiliate has also helped a number of transgender prisoners ensure access to hormone treatments while serving their sentences. In addition, the affiliate worked with a female-to-male transgender prisoner to successfully change the sex classification on his birth certificate.

## California

The ACLU of San Diego helped to pass an amendment to the San Diego Human Dignity Ordinance that prohibits discrimination based on gender identity in housing, employment, education and public accommodations.

The ACLU of Northern California led high school students in a four-day field investigation about the safety and civil rights concerns of transgender youth. After the trip, students created a mobile photo and poetry display and spoke in classrooms across the state.

## Florida

High school senior Nikki Youngblood sued her high school for refusing to include her photo in the yearbook unless she wore the "drape" (a low-cut, off-the-shoulder top) assigned to girls to wear. Boys were expected to wear a

jacket and tie. A district court dismissed her case. The Project, the Women's Rights Project, the ACLU of Florida and NOW Legal Defense Fund submitted a friend-of-the-court brief to the federal court of appeals arguing that this treatment constitutes gender discrimination in violation of federal and state civil rights laws and the Constitution. A decision is pending in *Youngblood v. School Board of Hillsborough County*. Youngblood is represented by the National Center for Lesbian Rights.

## Hawaii

The ACLU of Hawaii and the Project filed a friend-of-the-court brief in *RGIS Inventory Specialist v. Hawaii Civil Rights Commission* urging the Court to support the Hawaii Civil Rights Commission's determination that state laws that prohibit sex discrimination include protection for transvestite people.

## Louisiana

The Project and the affiliate were unsuccessful in their attempt to have a federal court reconsider its unfavorable decision in *Oiler v. Winn-Dixie Louisiana, Inc.*, a case on behalf of a crossdressing truck driver who was fired by a grocery store chain because he did not conform to stereotypes about how men should look and act.

## Michigan

The ACLU of Michigan is representing Kikue Liedigk in her claim for social security spousal benefits. The Social Security Administration revoked Liedigk's benefits after her spouse of 39 years had sex-reassignment surgery and changed the gender designation on her birth certificate from male to female. The affiliate represented Liedigk at an administrative hearing in October and convinced the judge to reinstate the benefits in *Liedigk v Social Security Administration*.

After a high school senior was sent home from her prom because she wore pants instead of a dress, the ACLU of Michigan wrote a letter to the school

district, which responded by apologizing and agreeing to implement a non-discriminatory dress code for such activities.

## **Nevada**

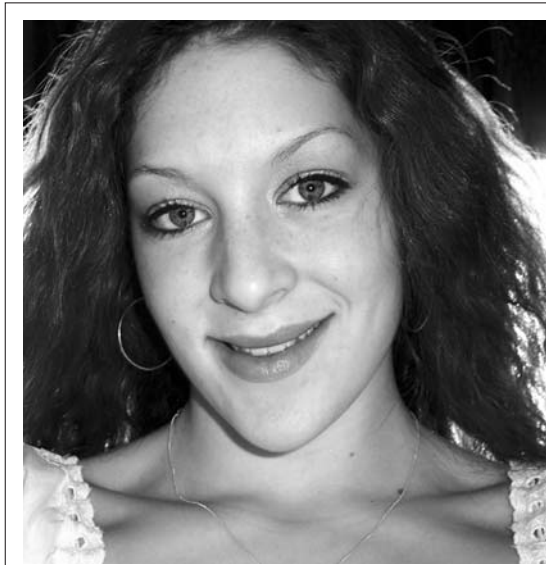
Darlene Jespersen had worked as a bartender at Harrah's Casino for over 20 years when she was fired for refusing to wear foundation, rouge, mascara and lipstick, "applied neatly in complimentary colors." After being fired, Jespersen sued the casino for sex discrimination, arguing that the casino's policy placed an onerous burden on female employees but placed no similar burden on male employees. The ACLU of Nevada and the Project filed a friend-of-the-court brief in *Jespersen v. Harrah's Operating Company, Inc.* with the federal appeals court, arguing that Harrah's dress code reinforces gender stereotypes in violation of federal and state law. Lambda Legal represents Jespersen.



# OUR SCHOOLS WORK: BEYOND THE "GOLDEN LAWSUIT"

By Chris Hampton, Public Education Associate

During a recent conference call with some safe schools organizers and youth group leaders from North Carolina, one of the call's participants was rattling off a laundry list of problems that had been faced by some of the gay-straight alliances she works with. They were all clear violations of the Equal Access Act – preventing GSAs from doing things other clubs at their schools are allowed to do, like making announcements on the school P.A. system, putting up flyers about their meetings when other clubs can do so, appearing in the yearbook, etc. When the Project representative on the call, who was shocked to hear how widespread these problems were, remarked that she wished the students in the GSAs would contact her about these issues, one of the local organizers responded, "I didn't think we could call the ACLU if we didn't have a golden lawsuit for you!"



This is a common misperception about what the Project does – that we don't help students unless there's a big lawsuit involved. That's probably because our lawsuits are what tend to garner the most public attention. Through its "Every Student, Every School" program, the Project hears from lesbian, gay, bisexual,

and transgender students all over the country who are dealing with a variety of problems. Only a handful of these contacts turn into high-profile cases. But the Project quietly handles hundreds of questions and requests from students, parents, and teachers every year, such as:

*"We asked our principal if we could start a GSA, and he said if he lets us do that then he'll have to start a KKK club too!"*

*"My son was suspended for going to school in a skirt. Can anything be done about it?"*

*"I want to take my boyfriend to prom, but my principal announced that no same-sex dates would be allowed. Is that legal?"*

Most of these interactions are never publicized at all. Often our involvement is as simple as explaining to a student his or her rights via email, or giving a

---

AMANDA BLAIR AND HER FEMALE DATE WERE ESCORTED AWAY FROM THEIR HOMECOMING DANCE IN BIG PINEY, WYOMING BY POLICE OFFICERS. WITH HELP FROM THE PROJECT'S "EVERY STUDENT, EVERY SCHOOL" INITIATIVE, SHE SUCCESSFULLY CHALLENGED HER SCHOOL'S POLICY BANNING SAME-SEX DATES AT DANCES.

student a legal memo or a brochure that he or she can give to a school to sway it on an issue. During this school year alone, we've helped out GSA's in Canton, Georgia; Marion, Illinois; River Rouge, Michigan; Hamilton, Montana; and Simi Valley, California, to name a few. We've assisted students working to add sexual orientation to school nondiscrimination policies in College Station, Pennsylvania and Hot Springs, Arkansas. And we offered a hand to a 15-year-old suspended for wearing a skirt in Asheville, North Carolina and a 16-year-old sent home for wearing a gay pride t-shirt in Jackson, Mississippi. All of these were handled through email correspondence and phone calls alone.

Even when the Project gets more deeply involved, it doesn't always turn into a headline-grabbing court battle. For example, last spring we got a phone call from a mother in rural Pennsylvania, whose son was being harassed by his high school band teacher because he perceived the boy to be gay. The teacher had unfairly and harshly punished the student over a very minor incident and suspended him from band. In meetings with the student and his mother, the teacher called the student "full of evil" and in class he made anti-gay remarks about him to other students in the band. And beyond his own shabby behavior, the teacher allowed other students to openly harass the young man and his little brother during class time. When the honor student felt he had no choice but to withdraw from band in the face of this treatment, his school gave him an F, severely damaging his chances at getting scholarships for college. The Project sent a letter to the school explaining several ways in which the teacher's actions were illegal and demanding that the F be dropped from the student's record. The school complied and he went on to graduate without further harassment. Because the student and his mother wanted to keep their identity out of the public eye, nothing about his situation was ever made public.

One Friday afternoon last May, we received an email from a concerned citizen in a small town in Texas. He forwarded us some stories from the local paper about how the school's principal had announced that same-sex dates would not be allowed at the prom, which was taking place the next day. With minutes to spare before the end of the school day, a Project attorney called

the school, explained how its ban was unlawful, and demanded that it get the word out to students before they left for the day. We heard the next week from a student who told us a panicked announcement from the principal went out over the P.A. system just before the final bell, telling the student body that the rule had been rescinded and that same-sex dates would be welcome the next night at prom.

Of course, not every request for help we get ends in a dramatic 11th-hour behind-the-scenes victory. Sometimes we write back asking for more information to help us figure out what we can do to assist students and they never get back in touch with us again, so we don't know how their problems worked out. Sometimes students are too fearful about being out at their schools to let us approach their schools. And sometimes students who aren't out to their own families are afraid to let us help them because their parents might find out. But despite these problems, the Project still manages to help a lot of young people get their schools to treat them more fairly.

We know that anti-gay discrimination is widespread in our nation's schools. But as the North Carolina call we mentioned earlier proves, even we are still sometimes shocked by how rampant these problems continue to be after working on these issues for years and making a great deal of progress in the courts. The lawsuits are hugely important, of course, but the little interactions we have with students are one way of chipping away at anti-gay discrimination in schools. If you are or know of an LGBT student who has been mistreated in school, or if you just have a question about students' rights, we hope you'll contact our "Every Student, Every School" program by phone at (212) 549-2673 or by email at [safeschools@aclu.org](mailto:safeschools@aclu.org). We're here to help, even if it's not the "golden lawsuit."

## DOCKET: YOUTH/SCHOOLS

Our "Every Student, Every School" initiative, protecting the rights of LGBT students, is at the core of the Project's mission. We were involved in nine lawsuits and lobbied in eight statehouses on legislation to protect the rights of LGBT youth. We fought school boards across the country over the rights of students to form Gay-Straight Alliances (GSAs) and bring same-sex dates to school functions. And we also provided education and training to prevent harassment of LGBT students and worked to protect students' free speech rights.

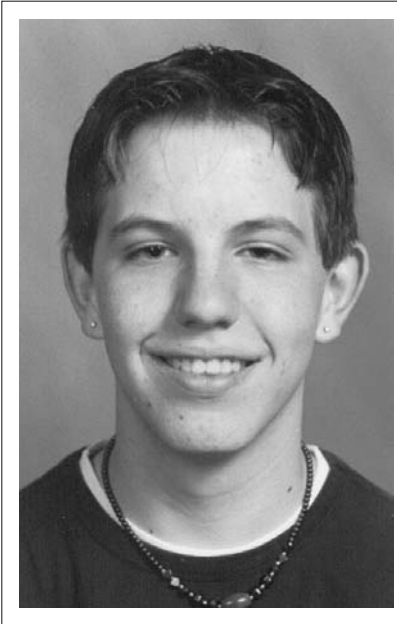
---

### Seven-Year-Old Punished for Telling Classmate His Mom Is Gay

---

When Sharon Huff's seven-year-old son came home from Ernest Gallet Elementary School in Lafayette, Louisiana with a note from his teacher saying he'd been disciplined for talking about his two mommies, she knew something was very, very wrong. Marcus McLaurin was waiting in line to go to recess on November 11 when a classmate asked him about his mother and father. He responded that he doesn't have a mother and father; instead he has two mothers. When the other child asked why, Marcus told him that it was because his mother is gay. The other child then asked what that meant, and Marcus explained, "Gay is when a girl likes another girl."

Marcus was sent to the principal's office instead of getting to go to recess. An assistant principal then called his mother to tell her that Marcus had used bad language at school and would be bringing home a disciplinary report form.



EIGHTH-GRADER  
THOMAS MCLAUGHLIN  
WAS FORCED TO READ  
THE BIBLE IN THE  
ASSISTANT PRINCIPAL'S  
OFFICE OF  
JACKSONVILLE JUNIOR  
HIGH IN ARKANSAS  
AFTER SCHOOL  
OFFICIALS OVERHEARD  
HIM TALKING ABOUT  
BEING GAY.

The following week the school required Marcus to attend a special behavioral clinic at 6:45 in the morning.

On a student behavior contract form that Marcus had to fill out and give to his mother about the incident, he wrote that the thing he did wrong was that he "sed bad wurds." A handwritten note at the top of the form from Marcus's teacher further explains: "He explained to another child that you are gay and what being gay means." On a behavior report form signed by the assistant principal, the teacher wrote, "Marcus decided to explain to another child in his group that his mom is gay. He told the other child that gay is when a girl likes a girl. This kind of discussion is not acceptable in my room. I feel that parents should explain things of this nature to their own children in their own way."



Pointing out that even second-graders have a constitutional right to free speech, the ACLU sent a letter demanding an apology and the removal of the matter from Marcus's school records, attracting international attention and outrage, but the school board dug in, insisting that what the school's own disciplinary forms say happened didn't take place and voting not to apologize. The ACLU and Huff are now deciding whether to sue the school district.

---

### Generous Settlement for Student Punished for Being Gay

---

The Project secured a settlement that included district-wide policy changes to ensure fair treatment of lesbian and gay students in a lawsuit on behalf of 14-year-old Thomas McLaughlin, who was punished for being out at school in Jacksonville, Arkansas.

McLaughlin's troubles with the school began when a school official called his mother to tell her that her son was gay. McLaughlin, who at that point had only come out to a handful of close friends at school, wasn't ready to tell his parents yet.

Fortunately, his parents were accepting, which gave McLaughlin the courage to be more open about being gay. However, the school came down hard on McLaughlin and made numerous attempts to punish him and censor him from being honest about his sexual orientation. McLaughlin and his parents were forced to attend a school conference where his teacher and principal both expressed their disapproval of his talking about being gay. A different teacher ordered McLaughlin not to discuss his sexual orientation, saying that she found it "sickening." School officials also preached their religious views on homosexuality and forced him to read aloud from the Bible. McLaughlin was eventually suspended for two days because he told other students about being forced to read the Bible.

After a federal judge made it clear in the initial conference in *McLaughlin v. Board of Education of the Pulaski County Special School District* that students have a constitutional right to speak openly about their sexual orientation, the school



board agreed to a settlement which included assurances that school officials would not disclose any student's sexual orientation, that students would not be punished for talking about their sexual orientation during non-instructional time, that school officials will not discriminate against students on the basis of sexual orientation in disciplinary matters, and that school officials will not preach to students. The school also agreed to pay \$25,000 in damages and attorney's fees.

---

### School to Perform Anti-Harassment Training and Permit GSA to Meet

---

The Project settled a year-long lawsuit on behalf of a group of students in Ashland, Kentucky who were denied the right to form a gay-straight alliance

---

STUDENT PLAINTIFFS IN BOYD COUNTY, KENTUCKY FOUGHT SUCCESSFULLY TO ESTABLISH A GAY/STRAIGHT ALLIANCE AT THEIR HIGH SCHOOL, DESPITE ATTEMPTS MADE BY THE SCHOOL TO SUSPEND ALL CLUBS RATHER THAN APPROVE THE GSA. THEY WERE SUPPORTED BY FACULTY ADVISOR KAYE KING (SECOND FROM LEFT), HERE WITH FORMER ACLU OF KENTUCKY EXECUTIVE DIRECTOR JEFF VESSELS (CENTER).



after the school received pressure from the community against the club. Before the case settled, the Project had already secured an important victory in the case.

In December 2002, the Boyd County Board of Education took the extraordinary step of suspending all clubs in all schools K-12 in an effort to prevent a group of approximately 30 students from forming a GSA at Boyd County High School. The students initially petitioned the school to form the GSA in March 2002, after two former students were kicked out of their homes for being gay. The school's Site-Based Decision Making Council approved the GSA only after the ACLU sent a letter explaining the students' rights under the federal Equal Access Act. Bowing to opposition from local ministers, the Board of Education reversed the council's decision and suspended all clubs.

The Project filed suit in federal court on behalf of potential GSA members charging that school officials had permitted many clubs, including the Beta Club, drama club, student council, cheerleading, and sports teams, to continue to meet since the school board's decision to suspend all clubs.

In April of 2003, after a hearing on the issue in which several of the students testified, the judge granted an injunction ordering the school to allow the students to meet pending the outcome of the case.

The case, *Boyd County High School Gay Straight Alliance v. Boyd County Board of Education*, settled in early February, with the district agreeing to treat the GSA no differently from other student clubs and adding an extensive anti-harassment training for all middle and high school students and all district employees.

## California

In *Flores v. Morgan Hill Unified School District*, the ACLU of Northern California, the Project and the National Center for Lesbian Rights represented six lesbian, gay, and bisexual students who were subjected to vicious and humiliating abuse in the Morgan Hill Unified School District. In a groundbreaking decision, a federal appeals court told school officials that



ALANA FLORES, FREDDIE FUENTES, AND FOUR OTHER FORMER STUDENTS OF THE MORGAN HILL UNIFIED SCHOOL DISTRICT FINALLY SAW THE SETTLEMENT OF THEIR YEARS-LONG HARASSMENT CASE EARLY THIS YEAR, AFTER A GROUNDBREAKING FEDERAL COURT DECISION MANDATING PROTECTIONS FOR LGBT STUDENTS.

they had a constitutional duty to take action to stop anti-gay harassment and violence and could not ignore the cruel treatment suffered by the plaintiffs. The case finally settled January 6, 2004 after five long years of resistance from the school, with the district paying damages to the plaintiffs and agreeing to implement an extensive anti-harassment policy and training.

The ACLU of Southern California helped Ashly Massey, an 8th grader in Banning, California who was forced to sit in the principal's office during P.E. class after the gym teacher heard that she is a lesbian. The court denied the school district's request to dismiss Massey's claims in *Massey v. Banning Unified School District* that excluding her from gym class violated both the federal constitution and a new California law that prohibits sexual-orientation discrimination in public schools. The case settled in November, with an amended anti-discrimination policy for the district, training for teachers and

ASHLY MASSEY WAS KICKED OUT OF GYM CLASS WHEN HER TEACHER FOUND OUT SHE WAS A LESBIAN – CLAIMING IT MADE THE OTHER STUDENTS UNCOMFORTABLE. WITH THE HELP OF THE ACLU OF SOUTHERN CALIFORNIA, ASHLY NOT ONLY STOOD UP TO HER SCHOOL, BUT WON A SETTLEMENT THAT WILL MAKE HER SCHOOL DISTRICT A BETTER PLACE FOR ALL LGBT STUDENTS.

PHOTO: DEBRA DI PAOLA



other school staff, educational programs on respecting diversity for students at all grade levels, and \$45,000 for Massey. The National Center for Lesbian Rights was co-counsel in the case.

A small group of anti-gay parents sued the Novato Unified School District for presenting *Cootie Shots: Theatrical Inoculations Against Bigotry*, which included a skit in which a girl told her friends not to be mean to gay people. The group dropped its lawsuit as soon as another group of parents, and the theatrical company that produces *Cootie Shots*, intervened in the lawsuit to defend the district's position. The interveners in *Citizens for Parental Rights v. Novato Unified School District* were represented by the ACLUs of Northern and Southern California, the Project, and the National Center for Lesbian Rights.

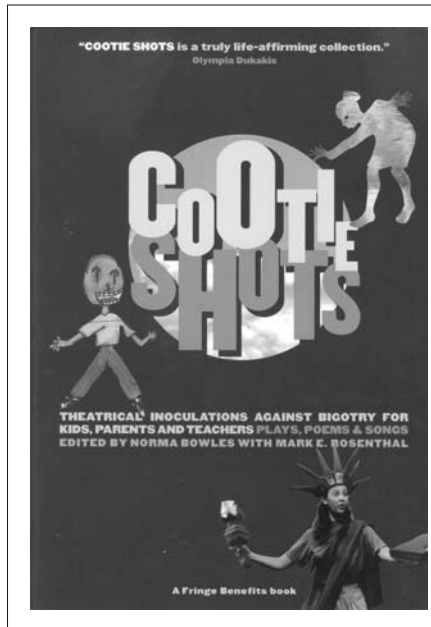
The ACLU of Northern California provides free on-site professional development trainings for school faculty and staff about how to create safer campus environments for lesbian, gay, bisexual, transgender, and questioning students. The program reaches more than 600 faculty and staff at schools across California. The ACLU also facilitates the Bay Area Safe Schools Coalition and leads a peer-to-peer education program designed to combat hate on campuses.

The California affiliates supported a new law that outlaws discrimination against foster children on the basis of protected categories including sexual orientation and gender identity.

The ACLU of Northern California led high school students in a four-day field investigation about the safety and civil rights concerns of transgender youth. After the trip, students created a mobile photo and poetry display and spoke in classrooms across the state.

## Florida

High school senior Nikki Youngblood sued her high school for refusing to include her photo in the yearbook unless she wore the "drape" (a low-cut, off-the-shoulder top) assigned to girls to wear. Boys were expected to wear a jacket and tie. A district court dismissed her case. The Project, the Women's



THIS CHILDREN'S PLAY, *COOTIE SHOTS: THEATRICAL INOCULATIONS AGAINST BIGOTRY*, CREATED QUITE A STIR IN THE NOVATO UNIFIED SCHOOL DISTRICT, WHICH WAS SUED BY A GROUP OF PARENTS OVER THE PLAY'S ANTI-HOMOPHOBIA MESSAGES. THE ACLU REPRESENTED THE FRINGE BENEFITS THEATER GROUP AS INTERVENORS IN THE LAWSUIT.

THE ACLU OF HAWAII'S MOLLY TAFOYA, BRENT WHITE, PATRICK Y. TAOMAE, AND EXECUTIVE DIRECTOR VANESSA CHONG WITH YOUTH AWARD WINNER MAILE SHAY-MOUNTAIN, WHO ESTABLISHED THE FIRST PUBLIC HIGH SCHOOL GAY STRAIGHT ALLIANCE IN HAWAII.

PHOTO: TIA ROBERTS



## Hawaii

The ACLU of Hawaii gave its Youth Day award to the two students who led the fight to start a gay-straight alliance at Kalaheo High School. Shealea Tindall and Maile Shay-Mountain worked for a year with school officials to qualify the club, but the school denied them "chartered" status that was granted to other student clubs and brings a faculty adviser, bank account, and an ability to raise funds on campus. The school relented last year after Alliance members solicited the affiliate's assistance.

## Illinois

The ACLU of Illinois has been involved in significant informal advocacy for students subjected to harassment based on their sexual orientation. The ACLU of Illinois is a member of the Coalition for Education for Sexual Orientation, an alliance of organizations that educate students and teachers on the rights of students in schools. The affiliate also attended a teacher training on student rights and student harassment, distributed materials on the rights of LGBT students in schools, supports GLSEN's Day of Silence, and spoke at this year's Day of Silence Night of Noise rally in Chicago.

## Kentucky

In partnership with other statewide organizations, the ACLU of Kentucky continues to fight harassment of and discrimination against LGBT students and teachers, lobbying both the state legislature and local school boards for policy changes, and researching how best to train administrators and teachers to protect LGBT students.

## Louisiana

The ACLU of Louisiana testified before the state legislature in support of a bill that would have protected students from harassment and discrimination based on sexual orientation or gender identity. Despite its efforts, the bill was



THE ACLU OF GEORGIA'S STICKS & STONES PROJECT, HEADED BY BETH LITTELL, WORKS TO PROTECT THE RIGHTS OF LGBT STUDENTS AND TEACHERS.

Rights Project, the ACLU of Florida and NOW Legal Defense Fund submitted a friend-of-the-court brief to the federal court of appeals arguing that this treatment constitutes gender discrimination in violation of federal and state civil rights laws and the Constitution. A decision is pending in *Youngblood v. School Board of Hillsborough County*.

## Georgia

The ACLU of Georgia continued to educate students, schools and other educators on how to combat anti-LGBT harassment through their Sticks and Stones project.

not enacted into law. The affiliate, however, successfully lobbied against a bill that would have created a statewide school voucher system, testifying in part that LGBT students would find themselves in a hostile environment in some of the private schools that would benefit from such a voucher system. In addition, the ACLU of Louisiana continues to distribute a student rights handbook that includes discussions of what students can do if they are harassed and how students can form gay-straight alliances.

### **Massachusetts**

The ACLU of Massachusetts is lobbying the state legislature to pass a bill that would provide age-appropriate comprehensive health and sex education, including HIV/AIDS prevention, in all schools K-12.

### **Maryland**

The ACLU of Maryland collaborated in the drafting of a bill that would have required local school boards to issue and enforce sexual orientation-inclusive harassment policies. Despite its efforts, the bill was not enacted into law.

### **Michigan**

The ACLU of Michigan successfully intervened to end discriminatory treatment of gay-straight alliances at two Michigan high schools. The principal of Dakota High School, by labeling the school's GSA a support group as opposed to a non-curricular club, denied the club privileges such as announcing meeting times and distributing fliers. After the ACLU wrote a letter to the school district, it agreed to revise its policies and invited the GSA to reapply as a non-curricular club. The ACLU also convinced the Ottawa School District to rescind its policy of restricting the GSA's distribution of information.

The affiliate also assisted a gay substitute teacher who was fired after telling students that he was gay and had a partner. The ACLU wrote a letter to the school district demanding that the teacher be reinstated, and the school district invited him back. And when a high school student in rural Michigan

was sent home from her prom because she wore pants instead of a dress, the affiliate wrote a letter to the school district, which apologized and agreed to implement a non-discriminatory dress code for such activities.

### **Missouri**

The ACLU of Eastern Missouri lobbied against a proposed law that would have prohibited any school district in Missouri from enacting a discrimination policy that exceeded the protections covered by state or federal law. It would have eliminated all existing sexual orientation anti-discrimination policies from local school districts, and prevented school districts from enacting them. The bill passed committee by just one vote and didn't get sent to a floor vote of the legislature this term. The ACLU of Eastern Missouri's Making Schools Safe Project, based on the Project's training manual of the same name, recently completed a survey of all Eastern Missouri school districts and is in the process of sending letters to area district administrators, principals, and counselors in hopes of working together to increase protection for students.

### **Montana**

The ACLU of Montana is working with a statewide coalition to stop harassment and discrimination against LGBT students. The coalition has adapted the Project's *Making Schools Safe* manual and has been encouraging Montana schools to take on the training. The affiliate has also lobbied the state legislature to require school districts to adopt anti-LGBT harassment policies. Throughout the year, the affiliate has assisted numerous students on issues including expanding anti-harassment policies to include LGBT students, GSA recognition, and challenging prom discrimination. They also provide discussion groups for community leaders, teachers, school administrators, and concerned parents and individuals to promote safe schools for LGBT youth.

### **Nebraska**

The affiliate helped students get permission to form a gay-straight alliance in the Norfolk School District. Although the school board initially refused to

allow the GSA to meet during club time, the GSA now meets and makes announcements about their activities just like any other club.

ACLU of Nebraska Legal Director Amy Miller spoke about First Amendment rights and safe schools to 400 students at an event organized by the Lincoln High School GSA. After the event, students in the Lincoln High GSA met with the Norfolk students who had recently won recognition of their GSA as a school club. The affiliate also presented its annual Defender of the Bill of Rights Award to teacher Jim Kubik, who addresses equal rights for LGBT people in his classroom and sponsors a GSA that was founded by some of his students.

## Nevada

The ACLU of Nevada lobbied unsuccessfully for legislation that would train teachers and administrators to deal with peer harassment, including harassment based on sexual orientation, but the bill was not introduced for a vote in the legislature.

The affiliate also worked with several school districts to pass anti-harassment regulations that apply to all forms of harassment even though they do not expressly include protection for sexual orientation.

## Oregon

The ACLU of Oregon helped to defeat a law that would have prohibited Oregon public schools from discussing sexual orientation in any way that "would express approval of, promote or endorse the behaviors of" LGBT people.

## Pennsylvania

After a police officer came across Marcus Wayman and another young man sitting in a parked car, the officer threatened to tell Wayman's family that he was gay. Wayman, distraught, went home and killed himself. His mother sued the police department, resulting in an important appeals court precedent that a person's sexuality is protected by the constitutional right to privacy. After Wayman's mother lost at the first trial for *Sterling v. Borough of Minersville*, the judge



MARLA DUKLER STOOD UP FOR HER RIGHTS AFTER HER APPLICATION TO START A GAY STRAIGHT ALLIANCE WAS REJECTED BY HER PUBLIC HIGH SCHOOL IN TEXAS.

took the extraordinary step of vacating the jury's verdict and scheduling the case for a new trial. The case then settled, with the city paying the mother \$100,000.

The Project went to bat for a heterosexual high school senior in Corry, Pennsylvania who had been branded as gay by classmates and teachers alike. The school's band instructor stripped the student of his position as drum major following a trumped-up disciplinary charge and verbally harassed him in front of his classmates. The student felt he had no choice but to drop out of his band class, and the school then gave him an F in the course. The Project successfully negotiated with the school to remove the failing grade, which helped the young man get admitted to college.

In 2003, a GSA and other "controversial" student groups in Mount Lebanon were subjected to different and tougher restrictions regarding their groups' ability to advertise and raise money. The ACLU of Greater Pittsburgh negotiated with the school district on behalf of these groups, arguing that these restrictions are a violation of students' First Amendment rights and the Federal Equal Access Act.

## Texas

In *Dukler v. Klein Independent School District*, the affiliate and the Project filed suit on behalf of Marla Dukler, a lesbian whose application to form a GSA was met with a change in school policy banning clubs that directly or indirectly promote



"criminal activity" – a thinly-veiled reference to Texas's law banning same-sex intimacy, which at the time had not yet been struck down. The affiliate and the Project successfully negotiated a resolution, allowing the GSA to meet.

The Project and the affiliate successfully advocated on behalf of the members of the Amnesty International Club at a San Antonio high school whose right to free expression was violated by an administrator. As punishment for some of its members participating in the Day of Silence – a nationwide action in which students remain silent for a day to express opposition to the discrimination that has silenced the LGBT community – the administrator disbanded the club. The Project and the affiliate negotiated the reinstatement of the club and a pledge to respect students' rights to free speech in the future.

## Utah

After legal battle that dragged on for five years, the Supreme Court of Utah unanimously upheld the dismissal of a parents' group's claims that an openly lesbian teacher was unfit to be a role model and otherwise participate as a full citizen. The group had filed two lawsuits seeking to oust teacher Wendy Weaver. In 1998, Weaver was told by Nebo School District not to discuss her sexual orientation in or outside the classroom and was barred from teaching girls' volleyball. A federal judge found that Weaver couldn't be singled out because of her sexual orientation and that the school violated her free speech rights. The parents then sued in state court, and the ACLU represented Weaver again. In *Citizens of Nebo School District v. Weaver*, the Supreme Court of Utah held that remedies already existed for rectifying any teacher misconduct, and that parents of students had no right to sue the school to enforce requirements of public employees.

The affiliate also intervened on behalf of an openly gay student at Jordan High School who was facing harassment at school based on his sexual orientation, a lesbian couple from Provo who were barred from "promenading" down the staircase to their family and friends (although they were allowed to attend the prom together), and a gay-straight alliance at Logan High School whose principal had tried to stop them from forming. All three situations ended with school officials agreeing to treat LGBT students equally.



TEACHER WENDY CHANDLER (FORMERLY WENDY WEAVER) SAW HER LONG LEGAL JOURNEY FINALLY COME TO AN END IN 2003, WHEN A CASE AGAINST HER BY A GROUP OF PARENTS WAS ULTIMATELY DISMISSED BY THE SUPREME COURT OF UTAH.

## Washington

The affiliate intervened on behalf of the Puyallup High School GSA, which had been meeting weekly at school, but was not allowed to distribute flyers or to seek funding from the Associated Student Body (ASB) unless the ASB voted to have the club affiliated with it. The ACLU notified the principal that the GSA must be given the same access to resources that other non-curricular clubs have at the school, and the GSA can now hold assemblies, publicize activities at school, and seek student government funding. In Federal Way, another GSA was allowed to meet at school, but was told they could only announce meeting times over the intercom or put up posters if the club became affiliated with the ASB. It's illegal to base recognition of a club on a vote in the first place, and the ASB further violated federal law when it failed to give the proposed club the two-thirds majority necessary for affiliation. After advocacy by the ACLU on behalf of the club, school officials in March agreed to give the GSA equal access to resources.

Because factually sound, medically accurate sex education information is vital to prevent censorship, sex stereotyping, and hostility to non-heterosexual students, the ACLU of Washington worked closely with other groups in drafting and promoting a bill calling for medically accurate sex education. The bill passed out of the House, but did not make it out of the Senate.

## DOCKET: HIV/AIDS

The Project and ACLU affiliates have continued to work to eliminate discrimination against people living with HIV/AIDS. Last year alone, we were involved in five lawsuits and lobbied for or against legislation introduced in nine states. We released a national survey of HIV/AIDS service providers on the civil rights violations of people living with the disease. We also lobbied statewide agencies to ensure fair treatment of people with HIV in prison and worked with city governments to promote HIV prevention through needle exchange programs.

---

### ACLU Sues Restaurant for Firing HIV-Positive 19-Year-Old

---

In November the Project released a survey, *HIV & Civil Rights: A Report from the Frontlines of the HIV/AIDS Epidemic*, which detailed widespread civil rights violations throughout the U.S. against people with HIV/AIDS. The survey was compiled from interviews over the past two years with community-based AIDS service providers from across the country.

On the day the report was released, the Project further illustrated the widespread discrimination against people with HIV/AIDS by filing an employment discrimination lawsuit on behalf of an HIV-positive 19-year-old Nebraska woman. Priscilla Doe, who is suing under a pseudonym to protect her privacy, was fired from her job as a hostess at a restaurant in the small town where she lives when the owner learned that she was HIV-positive.

Priscilla was hired in August 2002 and got along well with the owners until May 9, 2003, when she was called just before she was to report to work and



PRISCILLA DOE, WHO IS USING A PSEUDONYM TO PROTECT HER IDENTITY, WAS FIRED FROM THE SMALL-TOWN RESTAURANT WHERE SHE WORKED WHEN HER BOSS FOUND OUT THAT SHE IS HIV POSITIVE.

fired over the phone. She later learned from other employees that the owners fired her because they found out that she was HIV-positive.

*Doe v. A Nebraska Restaurant*, which is pending in state court, charges that the owner violated a Nebraska law that prohibits discrimination on the basis of HIV infection in employment, housing, schools and public accommodations.

As evidenced by the survey, Priscilla's story illustrates just one of many of the ways in which people with HIV and AIDS continue to be discriminated against across the country. Denial of medical treatment, violations of privacy, deprivation of parental rights, discrimination in the workplace, and refusal of admittance into nursing homes and residential facilities top the list of common hardships experienced by people with HIV/AIDS. All of the 43 providers surveyed reported numerous violations.

---

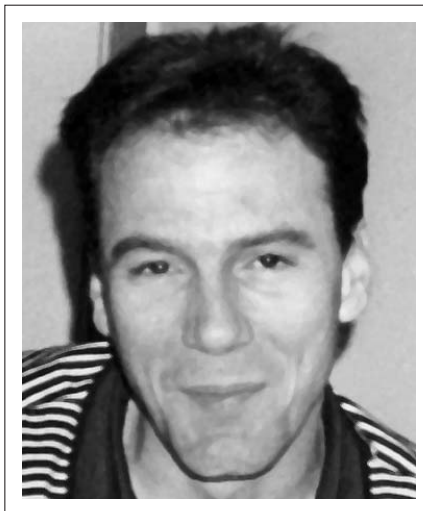
### ACLU Sues Jail for Refusing Care to HIV-Positive Inmate

---

In *Kurfis v. Las Vegas Metropolitan Police Department* the Nevada affiliate brought a lawsuit on behalf of an HIV-positive man who died because he wasn't given the medication necessary to keep him alive while in jail.

Karl Kurfis, a 33-year-old from Las Vegas, was incarcerated in the Clark County Detention Center. Prior to his arrest, he was diagnosed with HIV and

33 YEAR-OLD KARL KURFIS DIED BECAUSE THE NEVADA JAIL IN WHICH HE WAS INCARCERATED REFUSED TO PROVIDE HIM WITH HIS HIV MEDICATION. HIS PRESCRIBED COMBINATION THERAPY WAS SUPPLIED TO HIM FOR LESS THAN 14 DAYS OF THE SEVEN MONTH SENTENCE HE SERVED.



was successfully controlling the disease by taking combination drug therapy – the only treatment that has proven effective in fighting the disease. While the jail initially provided Kurfis with his medication for a few days, it eventually cut off his access to the drugs. Interruption of the drug regimen for even a short period of time can cause the virus become resistant to the drugs.

Even though Kurfis's personal physician advised the jail's medical staff of the need for his patient to continue the treatment, the jail refused to administer the medication for seven months. At one point a prison employee told Kurfis that he didn't deserve his medication because he was a drug addict.

The affiliate brought a lawsuit in federal court against the jail and prison administrators. Kurfis died before the lawsuit was resolved, but his family has decided to continue the lawsuit.

### Alabama

The ACLU's National Prison Project and the ACLU of Alabama have continued to lobby the Alabama Department of Corrections (DOC) to end

its policy – the last of its kind in the country – of segregating prisoners with HIV from the general population and from all programs such as GED and vocational programs and work release. In 2003, the ACLU was part of a delegation of state legislators, clergy, and members of the Alabama HIV Commission that met with the new Commissioner of the DOC, who agreed in principle that HIV-positive inmates should have access to programs. The ACLU also assisted the Alabama HIV Commission in preparing a report explaining why HIV segregation is unnecessary, unjust, and expensive. The report was released in September.

### California

The ACLU of San Diego helped to draft guidelines that will pave the way for people with AIDS and other serious medical conditions to obtain and use marijuana for medicinal purposes in the City of San Diego.

### Florida

When it was discovered that the State Department of Health was distributing a pamphlet titled "A Christian Response to AIDS," which contained no medical, treatment, or prevention information, the Florida ACLU contacted the Florida Department of Health and the Bureau of HIV, complaining that the pamphlet was an improper use of government funds for the dissemination of religious messages. On the ACLU's request, the state recalled the pamphlet.

### Georgia

The ACLU of Georgia opposed a bill that would make it a felony for anyone with HIV or hepatitis to assault a police officer or emergency personnel with their saliva, urine, feces, or blood knowing that she or he carried the virus. While the bill ultimately passed, the legislature amended the bill to require that the prosecutor prove that the person with HIV or hepatitis intended to transmit the virus to the police or emergency personnel.



## Illinois

The ACLU of Illinois lobbied as part of a broad coalition of medical, public health, and harm reduction groups for the recent passage of an amendment to the Hypodermic Syringes and Needles Act to allow adults to purchase syringes at pharmacies without a prescription. The bill also requires the state Department of Health to produce educational pamphlets on the dangers of drug use, how AIDS and HIV spread, how to seek out drug treatment, and how to properly dispose of needles. The governor signed the bill, making Illinois the 46th state to allow the purchase of syringes without a prescription.

## Indiana

The Indiana Civil Liberties Union worked to ensure that state legislation requiring the testing of pregnant women for HIV allows women to opt out of the testing and provided for medical treatment of those women who tested

THIS PAMPHLET, "A CHRISTIAN RESPONSE TO AIDS," WAS RECALLED BY THE STATE OF FLORIDA AFTER THE ACLU CHALLENGED ITS STATE-SPONSORED RELIGIOUS MESSAGE AND LACK OF ACCURATE MEDICAL INFORMATION.



positive. The affiliate also lobbied against a bill that would have required all people with HIV to tell their sexual partners or face criminal penalties. The bill, which could exacerbate the public health problem by discouraging people from getting tested, did not get a hearing.

## Louisiana

In *ACLU v. Foster*, the ACLU Reproductive Freedom Project and the affiliate successfully challenged a federally funded abstinence education program that preached religion. Such programs interfere with students' ability to get accurate information about HIV disease.

The ACLU of Louisiana also lobbied in support of a bill that would have required health insurers to cover certain medically prescribed contraceptives and contraceptive services, arguing in part that the lack of such coverage has forced many women to choose less expensive and less reliable methods of contraception, increasing the likelihood of unintended pregnancy and transmission of sexually transmitted diseases, including AIDS. Despite the affiliate's efforts, the bill was not enacted into law.

## Maryland

The ACLU of Maryland convinced the state legislature to hold off on mandating testing for HIV when a health care worker is exposed to a risk of transmission. The state legislature appointed the affiliate to serve on a commission to make recommendations for legislative action.

## Massachusetts

The ACLU of Massachusetts and the ACLU's Drug Policy Litigation Project represented a member of a lawful needle exchange program who was arrested for possession of hypodermic needles in the city of Lynn, which had not approved a needle exchange program. The Supreme Judicial Court of Massachusetts ruled that lawful members of needle exchange programs are

allowed to possess needles anywhere in the state and that police don't have probable cause to arrest people with valid need exchange identification cards.

The affiliate also opposed several bills that would force HIV testing, thus violating Fourth Amendment protections against unwarranted searches and seizures, violating privacy rights, and possibly discouraging testing for fear of exposure. All of the bills stalled in committee.

The ACLU of Massachusetts has done extensive public education around the need for a proposed bill that would provide age-appropriate but comprehensive health and sex education, including regarding HIV, in public schools.

## Nebraska

In *State v. Lonnie Thomas*, the affiliate represents a man who spent nearly five years in solitary confinement in a Nebraska state prison because of his HIV status. Thomas, who has now completed parole, is working two jobs and hosts a radio show. In response to his lawsuit and radio show, the prison already has released other HIV-positive inmates from arbitrarily imposed solitary confinement.

## New Mexico

In partnership with other statewide organizations, the ACLU of New Mexico lobbied in support of bills to legalize medical marijuana for patients who need it, like people with HIV, and to provide the alternative of drug treatment to incarceration. Despite its efforts, the bills were not enacted into law.

## Pennsylvania

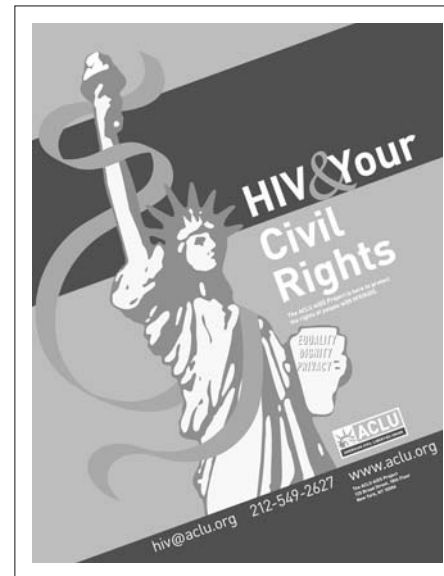
Under former Mayor Ed Rendell, Philadelphia's police force had been ordered not to interfere with clean needle distribution. In early 2003, current Mayor John Street announced a new "sweep the streets" program that included a crackdown on needle exchange programs. The ACLU negotiated with the police and successfully advocated for needle exchange to continue undisturbed.

## Rhode Island

Rhode Island's licensing statutes for veterinarians, optometrists, hearing aid dealers, and massage therapists require that professionals be "free from contagious diseases." The ACLU of Rhode Island worked with legislators to draft a bill to remove that requirement, which is inconsistent with laws against disability discrimination. The bill passed the state senate and is pending in the house.

## South Dakota

The AIDS Project and the ACLU of the Dakotas fought a bill before the South Dakota legislature that would give the state health department authority to disclose the HIV status of anyone whom the police suspect of knowingly exposing someone to HIV. Unfortunately, the bill passed.



IN NOVEMBER 2003, THE ACLU AIDS PROJECT PUBLISHED A REPORT "HIV & CIVIL RIGHTS," AND LAUNCHED AN OUTREACH CAMPAIGN TO EDUCATE PEOPLE WITH HIV/AIDS AND THEIR CASEWORKERS ABOUT THEIR RIGHTS TO BE FREE FROM DISCRIMINATION. TO RECEIVE COPIES OF THE REPORT, BROCHURE, OR POSTER, EMAIL [HIV@ACLU.ORG](mailto:hiv@aclu.org).

## DOCKET: DISCRIMINATION

Over the past year, the Project and ACLU affiliates continued their fight to end discrimination against lesbian, gay, bisexual, and transgender people. We were involved in 22 lawsuits aimed at fighting discrimination against LGBT people in the workplace, the criminal justice system or in public accommodations. We lobbied 17 statehouses across the country on proposed legislation that would either discriminate or prevent discrimination against LGBT people. We also sent letters to employers, brought complaints before local human rights commissions, challenged local police practices, and created advocacy materials to ensure that all Americans are free of discrimination based on sexual orientation and gender identity.

---

### PFLAG Mom Silenced for Speaking Out

---

The day of the historic *Lawrence v. Texas Supreme Court* decision, PFLAG mom Bonnie Cuevas, an employee of the Topeka and Shawnee County Public Library in Kansas, received a few unsolicited phone calls at work from friends and reporters about the decision.

The following day, after a story about the decision featuring comments by Cuevas appeared on the front page of *USA Today*, library supervisors told Cuevas she was never to talk about the *Lawrence* decision at work again. To justify the censorship, the library managers told Cuevas that a co-worker had complained that Cuevas was creating a "hostile work environment." When Cuevas asked whether her talking with the press had been a concern, the managers told her it was not.



PFLAG MOM BONNIE CUEVAS, PICTURED HERE WITH HER HUSBAND RUDY AND HER SONS JOSÉ (LEFT) AND MATT, WAS OVERJOYED TO HEAR ABOUT THE SUPREME COURT DECISION IN *LAWRENCE V. TEXAS* – UNTIL SHE WAS REPRIMANDED BY HER EMPLOYER FOR DISCUSSING THE CASE AT WORK.

PFLAG contacted the Project, which sent a letter to the library warning that it is a violation of the First Amendment to censor the speech of public employees about matters of public concern and demanded that the library lift its restrictions on Cuevas's speech. The library ultimately agreed to these demands and agreed that Cuevas was free to discuss the *Lawrence* decision at work.

---

### Health Care Worker Settles Discrimination Suit

---

The Project secured a hefty settlement for Mary Jo Davis, a former sonographer at Pullman Memorial Hospital in Pullman, Washington, who was fired because

she is gay. Davis worked in the radiology department at the hospital for about two years, during which time she was routinely harassed by Dr. Charles Guess, the chief radiologist. Guess constantly referred to Davis as a “fucking dyke” and “fucking faggot,” and told another doctor, “I don’t think that fucking faggot should be doing vaginal exams, and I’m not working with her.”

When Davis complained, Guess told hospital administrators that he didn’t “agree with Mary Jo Davis’s lesbian lifestyle.” Rather than discipline Guess, the hospital punished Davis, reducing her work hours to three-quarters time so Guess wouldn’t have to work with her. Finally, Davis was fired.

After a loss in the trial court, the Project successfully appealed the case to the Washington Court of Appeals, helping to establish important law protecting lesbian and gay government employees from anti-gay discrimination. This was the first time that an appeals court interpreted the U.S. Constitution to protect government employees against anti-gay discrimination.

*Davis v. Pullman Memorial Hospital*, which began in 1996, was finally settled this year with both the hospital and Dr. Guess agreeing to pay \$75,000 in damages to Davis.

## Alabama

In *Williams v. Pryor*, the ACLU National Legal Department successfully challenged Alabama’s law criminalizing the sale of sex toys, arguing that the law infringed the constitutional right to sexual privacy. The case is currently on appeal before the 11th Circuit.

## California

When Costa Mesa city officials attempted to prevent Orange County Dyke March organizers from planning their annual parade, the ACLU of Southern California challenged the city’s parade permit scheme as unconstitutional. As a result of the suit, the parade was allowed to go forward as planned. The affiliate plans to continue this case, *Orange County Dyke March, et al v. City of*



IN THE WAKE OF  
LAWRENCE V. TEXAS,  
THE PROJECT  
LAUNCHED OUR GET  
BUSY, GET EQUAL  
INITIATIVE, TO GIVE  
PEOPLE THE TOOLS  
THEY NEED TO FIGHT  
FOR EQUALITY IN THEIR  
OWN COMMUNITIES.  
LOG ON AT  
WWW.ACLU.ORG/GETEQUAL.

*Costa Mesa*, to make sure that the unconstitutional parade permit scheme is revised or struck down by the court.

The ACLU of Southern California sued on behalf of seven employees of Gay and Lesbian Adolescent Social Services (GLASS), who were denied the right to protest the selection of the extremely homophobic “Dr. Laura” Schlessinger as the keynote speaker at a government-sponsored conference for representatives from the child welfare, youth probation, and mental health departments of 21 counties. The silent protesters were evicted for wearing T-shirts with the logo “StopDrLaura.com” and for handing out written materials explaining how Dr. Laura’s biased statements about gay and lesbian people are harmful to children and youth. Two separate settlements are pending in *Adams v. Southern Counties Placement Committee*.

In *Rene v. MGM Grand*, the ACLU of Southern California helped to convince a federal appellate court that same-sex sexual harassment of lesbian and gay employees violates a federal law that prohibits sexual harassment. Medina

Rene had been called feminine names and touched sexually by his male coworkers. The U.S. Supreme Court denied MGM Grand's request to reverse the decision.

The ACLU of Southern California sued the Old Baldy Council of the Boy Scouts, claiming that the Scouts fraudulently obtained \$15,000 in federal taxpayer funds. The Scouts obtained the funds by certifying that they were in compliance with state and federal anti-discrimination laws, but California law prohibits anti-gay discrimination and the Scouts refuse to hire lesbian, gay or bisexual people or to accept them as members. Discovery and settlement negotiations in the case, *Goodwin v. Old Baldy Council, Boy Scouts of America*, are ongoing.

In another Boy Scouts case, the California affiliates filed a friend-of-the-court brief in *Evans v. Berkeley*, a case before the California Supreme Court, supporting the City of Berkeley's refusal to provide free dock space to the Sea Scouts. The Sea Scouts are arguing that they are entitled to free dock space despite their anti-gay discrimination.



In *Barnes-Wallace v. City of San Diego and Boy Scouts of America/Desert Pacific Council* the ACLU of San Diego filed a lawsuit against the City for granting special rights to Boy Scouts by giving them long-term preferential leases for the free use of taxpayer-owned property in public parks. In July, a U.S. District Judge ruled that the lease between the Boy Scouts and the City of San Diego for the Balboa Park space was unconstitutional on the grounds of separation of church and state. The city council finally settled the lawsuit in January of this year, agreeing to terminate the Balboa Park lease and end the city's support of the Scouts. The Scouts promptly sued the city.

The affiliates supported a bill that expands the prohibition on sex discrimination and sexual harassment in employment and housing by including gender identity in the definition of sex. The bill passed.

## Colorado

The ACLU of Colorado testified in support of a bill that would have added sexual orientation and gender identity to an existing employment anti-discrimination law. The affiliate also lobbied the state legislature to expand the state's hate crimes ordinance to include LGBT people. Both bills were postponed indefinitely.

## District of Columbia

In *Boy Scouts of America v. District of Columbia Commission on Human Rights*, the affiliate represented two adult Eagle Scouts who were excluded from the Boy Scouts because they are gay. The Commission on Human Rights ruled that a District of Columbia ordinance prohibiting sexual orientation discrimination could be applied to the Boy Scouts, notwithstanding the ruling of the Supreme Court in *Boy Scouts of America v. Dale*. On appeal, however, the ruling was reversed.

---

THE 2003 ORANGE COUNTY DYKE MARCH WENT ON AS PLANNED, BUT ONLY AFTER THE ACLU OF SOUTHERN CALIFORNIA STEPPED IN TO CHALLENGE THE DENIAL OF THEIR PARADE'S PERMIT BY THE CITY OF COSTA MESA.



## Delaware

The ACLU of Delaware has done extensive public education and lobbying in support of House Bill 99, which would add sexual orientation to the state's ban on discrimination in employment, housing, public accommodations, insurance, and public contracts.

## Georgia

The ACLU of Georgia challenged the Vidalia Public Library's decision to remove all non-library material from the community news area rather than permit copies of *The Gay Guardian* newspaper to be displayed in the area. In *Marcus v. Ochopee Regional Library System* a federal appeals court approved the library's actions.

The affiliate has also filed a complaint with the Atlanta Human Rights Commission on behalf of two women who were fired despite their excellent performance ratings after their supervisor learned they were lesbians. *Headspeth*



*v. Delon Hampton & Associates* is one of the first cases brought under the City of Atlanta's newly amended anti-discrimination ordinance. The affiliate is using this case to evaluate the effectiveness of the ordinance, which no longer includes the right to bring a court case against the discriminating employer, but does give the mayor the right to revoke city contracts and recommend that business licenses be revoked or suspended.

In *J.M. v. Georgia*, the affiliate successfully challenged the state's anti-fornication law. In January 2003 the Supreme Court of Georgia held that the 170-year-old law violated the right to privacy guaranteed by the state constitution.

The ACLU of Georgia is lobbying the state legislature to pass a nondiscrimination law that would include protections for sexual orientation and gender identity. The bill is now in a subcommittee.

## Hawaii

In *Reverend Vaughn Beckman v. City and County of Honolulu*, the ACLU of Hawaii challenged the city's exclusion of gay family groups from its Family Day Parade, which it co-sponsored with the Hawaii Christian Coalition as part of Independence Day weekend celebrations. In an initial defeat, the court refused to order the city to include the gay family groups, but the court is expected to address the case again before this year's parade.

## Illinois

The ACLU of Illinois lobbied for Senate Bill 101, which would add LGBT people to the list of groups protected from discrimination in employment and housing. The bill passed the Senate's Executive Committee but was not called for a vote this year. The affiliate also assisted local progressive groups fight for the successful adoption of ordinances banning sexual orientation discrimination in Decatur, Springfield, Bloomington, and Peoria.

---

THE ACLU OF MICHIGAN'S LGBT LEGAL PROJECT: TOM STEEL FELLOW KARA JENNINGS, STAFF ATTORNEY JAY KAPLAN, AND STUDENT INTERN BRETT BARBER.

## Indiana

The Indiana Civil Liberties Union, along with a coalition of groups, lobbied in favor of a bill that would have added sexual orientation to the state's non-discrimination law. The bill was defeated on the floor of the legislature.

## Kansas

Following its decision in *Lawrence v. Texas*, the U.S. Supreme Court ordered the Kansas Court of Appeals to reconsider the prison sentence of Matthew Limon, who was 18 when he was sentenced to 17 years in prison for having consensual oral sex with another male teenager. Had Matthew had sex with a girl, he would have served a maximum of 15 months in prison under the Kansas "Romeo and Juliet" law. In a stunning decision in January 2004, the Kansas Court of Appeals upheld *State of Kansas v. Matthew Limon*. The ACLU appealed, and the Kansas Supreme Court will hear the case later this year.

## Kentucky

In *Hyman v. City of Louisville*, a federal appeals court dismissed an employer's claim that an ordinance protecting LGBT employees violated his freedom of religion, holding that he had not been injured by the ordinance. The Project and the affiliate had intervened to support the city's defense of its ordinance.

The Project and the affiliate continue their advocacy on behalf of Alicia Pedreira, a lesbian who was fired from a Southern Baptist residential care facility because of its religious beliefs about homosexuality. Also represented are state taxpayers who object to the use of state funds to support such discrimination. An appeal in the case, *Pedreira v. Kentucky Baptist Homes for Children*, is still pending before a federal appeals court.

## Maryland

The ACLU of Maryland testified in support of a bill that would have expanded the state's hate crime law by providing enhanced penalties for



THE ACLU OF EASTERN MISSOURI ORGANIZED A READING TO RAISE AWARENESS OF BANNED BOOKS WEEK. READERS AND COMMUNITY LEADERS INCLUDED: JAY STEELE, RUDY NICKENS, GENA MILLER, SHERI BENSON, MONIQUE MAXEY, ANTHONY GALLOWAY. THE HOSTS WERE DIETA PEPSI AND ACLU-EM LGBT PROJECT COORDINATOR SCOTT EMANUEL (BOTTOM RIGHT).

crimes motivated by sexual orientation bias. Despite its efforts, the bill was not enacted into law.

## Massachusetts

The ACLU of Massachusetts is working to get the legislature to repeal the state's sodomy law, which is no longer enforceable when applied to private, consensual sex between adults due to an earlier state court ruling and the U.S. Supreme Court's decision in *Lawrence v. Texas*.

## Michigan

When a gay substitute teacher was terminated after telling students he was gay and had a partner, the ACLU of Michigan wrote a letter to the school district demanding that the teacher be reinstated. The school district invited him back.

In response to demands made by the ACLU of Michigan, the Michigan Department of Corrections ceased its practice of identifying the sexual



orientation of its gay inmates on prison records, which threatened the safety of lesbian and gay prisoners.

The affiliate also published a brochure on building partnerships between labor unions and the LGBT community. It discusses obtaining anti-discrimination policies and domestic partner benefits. And ACLU of Michigan attorneys participated in a town hall meeting discussing legal issues for LGBT immigrants.

## **Minnesota**

The Minnesota Civil Liberties Union successfully lobbied in opposition to House Bill 341, which would have removed sexual orientation as a protected class from the Minnesota Human Rights Act.

## **Missouri**

In *State v. Dawson, et al.*, the ACLU of Eastern Missouri represents four men charged under Missouri's sexual misconduct law following a raid at an adult bookstore. Of those arrested during the raid, only those engaging in same-sex activity were charged – heterosexuals arrested at the same time were not charged – because the law criminalized sexual activity only between members of the same gender. Within hours after the *Lawrence v. Texas* ruling, the Jefferson County Prosecutor dropped the charges under the Missouri sexual misconduct law, but decided to pursue alternate charges alleging that the defendants' actions violated Missouri law banning sexual behavior that causes "alarm or affront" to third parties, a misdemeanor. The case continues.

The ACLU of Eastern Missouri also publicly challenged sexual orientation profiling by police at a large St. Louis park. The affiliate advocated on behalf of five men improperly arrested during a sting operation and subjected to homophobic remarks by police officials. Discussions with the police department resulted in the department agreeing to reinstate an official liaison to the LGBT community, and the St. Louis Police Chief attending a meeting of the St. Louis LGBT Community Coalition to hear the community's concerns.



THE ACLU OF NEW HAMPSHIRE SUCCESSFULLY LOBBIED AGAINST A BILL THAT WOULD HAVE ENDED THE UNIVERSITY OF NEW HAMPSHIRE'S OUTREACH AND AFFIRMATIVE ACTION EFFORTS TOWARDS THE LGBT COMMUNITY.

In June, the ACLU of Eastern Missouri hired Scott Emanuel as its first LGBT Project Coordinator. The affiliate operates a listserv for LGBT activists with over 240 participants in the metro St. Louis area, has met with representatives from the St. Louis Police Department to discuss how the police can better serve the community, and convinced the St. Louis Police Department and Fire Department to appoint liaisons to the LGBT community. The affiliate is also reviving the St. Louis Anti-Violence Project. The Project's law clerks worked with the ACLU chapter at Washington University Law School to spearhead a community-wide response to the law school's decision to include military employees as part of the law school's newly approved loan assistance repayment program, despite the university's non-discrimination policy prohibiting the school from participating in programs with employers who discriminate based on sexual orientation. While the decision was ultimately upheld, the students negotiated for increased recognition of LGBT issues at the law school. Similarly, the ACLU student chapter was vocal in protesting military recruiting at the law school earlier in the year. The Project also coordinated one of the nation's only September 11 Memorials focusing on LGBT victims and families in the attacks.

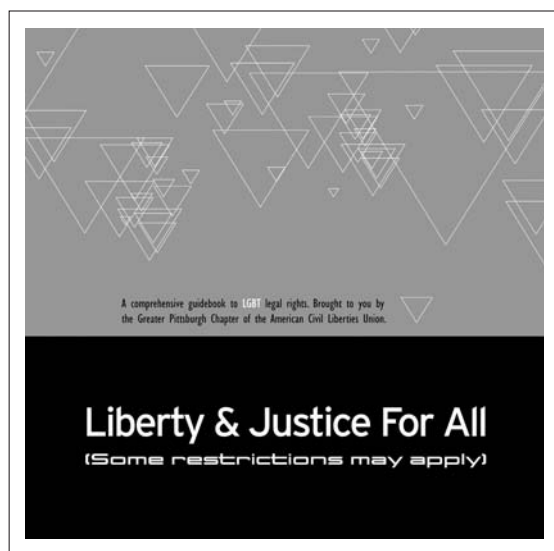
Missouri's Religious Freedom Restoration Act, introduced several times over the past few years, passed this year. The ACLU of Eastern Missouri fought hard to make sure a strong civil rights exception was included to prevent entities from engaging in discrimination based on religious conviction.

The ACLU of Kansas and Western Missouri is working with leaders of the LGBT community to establish a task force that will raise awareness for LGBT rights issues and address discriminatory practices targeted against the LGBT community. Project attorney Tamara Lange visited the affiliate in January 2003 to meet with community leaders in Kansas City and gave a talk at Southwest Missouri State University on LGBT civil rights and university sexual orientation nondiscrimination clauses.

## North Carolina

After North Carolina's Orange County adopted a civil rights ordinance covering sexual orientation, Blue Cross/Blue Shield challenged it on state constitutional grounds. In the case, *Williams v. Blue Cross/Blue Shield of North Carolina*, the North Carolina Supreme Court held that counties may not enact local laws governing employment, but they may pass non-discrimination laws regarding public accommodations and housing. The ACLU of North Carolina filed a friend-of-the-court brief in support of the Orange County law.

THE ACLU OF  
PENNSYLVANIA'S  
GREATER PITTSBURGH  
CHAPTER IS  
DISTRIBUTING A NEW  
PUBLICATION TO  
EDUCATE LGBT  
PENNSYLVANIANS  
ABOUT THEIR LEGAL  
RIGHTS.



North Carolina's "crimes against nature" law, which prohibits most sexual relations between consenting adults except for heterosexual intercourse, is no longer constitutional after the Supreme Court's decision in *Lawrence v. Texas*. Nevertheless, the North Carolina legislature is hesitant to remove the law from the books, and the state is still using the law against gay people. In *State v. Giessen*, the affiliate represented a man who was arrested after a police search for drugs turned up a video purportedly showing him having sex with two other men. The ACLU argued that the charges must be dismissed because the statute is no longer constitutional after *Lawrence*, and the charges were dropped in July.

The affiliate also lobbied in favor of two bills to prohibit sexual orientation discrimination in employment, both of which failed.

## New Hampshire

The New Hampshire Civil Liberties Union lobbied against a bill that would have eliminated all affirmative action at the University of New Hampshire, including affirmative action and outreach to members of the LGBT community. The bill was defeated in the House.

## New Mexico

In partnership with other statewide organizations, the ACLU of New Mexico successfully lobbied in support of legislation that prohibits employment and housing discrimination based on sexual orientation or gender identity. The affiliate is creating a statewide LGBT chapter and otherwise engaging in outreach to the LGBT community in New Mexico.

## Oklahoma

In *Cimarron Alliance Foundation v. The City of Oklahoma*, the ACLU of Oklahoma brought a successful lawsuit against Oklahoma City for prohibiting the Cimarron Alliance Foundation, a statewide LGBT group, from posting

banners announcing pride events. After the decision, the City Council considered turning the banner program over to a private company to avoid compliance with the court order, but in June 2003 the city decided to continue the program and allow the Cimarron Alliance Foundation and other groups to display banners.

## Oregon

The affiliate lobbied unsuccessfully for a law that would prohibit discrimination on the basis of sexual orientation and gender identity in education, employment, housing, public accommodations, and public assistance.

## Pennsylvania

The ACLU of Greater Pittsburgh sponsors "Out In Front," a local public education and fundraising committee, which raises awareness of ACLU activities on LGBT rights. This year "Out In Front" raised \$13,000 by hosting two events attended by a total of 150 people and produced a "Know Your Rights" informational brochure on issues affecting the LGBT community.

## Puerto Rico

The Puerto Rico National Chapter of the ACLU formed and led a coalition of civil rights organizations in fighting Article 54, which criminalizes sexual relations between same-sex partners in Puerto Rico. The coalition lobbied the Puerto Rico legislature to repeal the law and educated the public about its discriminatory impact. The repeal bill urged by the Alliance passed the Puerto Rico Senate, but died in the House after it became unnecessary following the Supreme Court's decision in *Lawrence v. Texas*.

## Tennessee

The ACLU worked closely with LGBT organizations and advocates to expand a local anti-discrimination ordinance in Nashville to include sexual

orientation. The coalition that formed lobbied Metro Nashville City Council members and met with the mayor. Although the measure failed in a tie-breaking vote by the vice-mayor, the mayor appointed 2 of the coalition's core advocates to the Metro Nashville Human Relations Commission, which investigates claims of discrimination.

## Texas

Roderick Johnson, an incarcerated black gay man, was repeatedly raped, assaulted, and enslaved by other prisoners. Despite his pleas for help, prison officials turned a blind eye to his situation, telling him that because he is black he should be able to defend himself and because he is gay he must enjoy the rapes. The ACLU National Prison Project, with assistance from the Project and the affiliate, filed suit on his behalf in *Roderick Johnson v. Gary Johnson*, alleging race and sexual orientation discrimination as well as cruel and unusual punishment. The prison officials' motion to dismiss the suit was unsuccessful but is now up on appeal.

Calvin Burdine was sentenced to death in 1984 after his lawyer slept through parts of his trial and after the prosecutor argued that he should be put to death instead of sentenced to life in prison, because prison for a gay man is like being "a kid in a candy store." After 20 years of appeals and publicity in the case, *Burdine v. Johnson* finally resulted in his being taken off death row in June 2003.

## Utah

After a legal battle that dragged on for five years, the Supreme Court of Utah unanimously upheld the dismissal of a parents' group's claims that an openly lesbian teacher was unfit to be a role model for students. The group had filed two lawsuits seeking to oust teacher Wendy Weaver. In 1998, Weaver was told by Nebo School District not to discuss her sexual orientation in or outside the classroom and was barred from teaching girls' volleyball. A federal judge found that Weaver could not be singled out because of her sexual

orientation and that the school violated her free speech rights. The parents then sued in state court, and the ACLU argued again for Weaver's right to equal protection and free speech. In *Citizens of Nebo School District v. Weaver*, the Supreme Court of Utah held that remedies already existed for rectifying any teacher misconduct, and that parents of students had no right to sue the school to enforce requirements of public employees.

A hate crimes bill that includes sexual orientation initially passed the House and was then recalled from the Senate calendar. Hopeful progress was made when the influential Mormon church announced that it did not oppose the bill. The ACLU of Utah participated in several panel discussions and radio shows supporting the merits of including sexual orientation in hate crimes legislation.

## **Washington**

The ACLU of Washington worked on several legislative matters, supporting long-running efforts to pass a statewide anti-discrimination bill (the measure failed to pass either house) and to expand the state's malicious harassment law to include transgender and bisexual people (the bill died in committee). The affiliate also opposed a harsh anti-gay law that would have outlawed any recognition of LGBT issues in schools or governmental policies. It stalled in committee. The affiliate also helped a Tacoma citizens' group successfully fight an effort to roll back prohibitions on discrimination based on sexual orientation.

## **Wisconsin**

Wisconsin state employees can donate to charitable organizations through payroll deductions, and the state requires that any beneficiary not discriminate based on race, sex, and several other factors. The ACLU of Wisconsin is petitioning the state to require that beneficiaries not discriminate based on sexual orientation either.



# THE STORIES WE SHOULD TELL

By Paul Cates, Public Education Director

With the religious right pushing for a constitutional amendment that would take away all the legal protections for our relationships – from civil unions in Vermont and domestic partnerships in California to local county and city domestic partnership registries – we’re facing the very real possibility that our work will be set back considerably. While polls show increasing support for our relationships, we’ve got to work fast if we are going to convince the public that this amendment is wrong for America.

How do we do that? We can take a lesson from our past and make people see us for who we really are. From the beginning of the movement, it’s been the stories people have shared about themselves that have worked so well to debunk stereotypes and help us gain acceptance. Now we need to take that a step further and show that protections for our relationships is a matter of fairness. To do that we need to show America exactly how our families suffer without access to these legal protections.

Take Sam Beaumont. Sam and his partner Earl Meadows spent over 20 years building and working an 80-acre ranch in Bristow, Oklahoma. The couple

was more likely to attend the local rodeo than a pride march. Together they raised Sam’s three sons from a previous marriage. When Earl’s parents got older, Sam tended to their every need, often spending the night with Earl’s

mother when she got too sick to care for herself. They shared a quiet life together that included supporting a family, tending cattle and raising prize-winning chickens.

Their time together came to an end in 2000 when Earl died of a stroke. Unfortunately, the notarized will Earl drafted to leave everything to Sam had only one witness – Oklahoma requires two. To make matters worse, almost all the couple’s assets were in Earl’s name.

If Sam and Earl could have married, the property would have passed to Sam automatically. But since Oklahoma law doesn’t recognize same-sex relationships, there’s a very real chance that the home Sam and Earl shared will go to Earl’s disapproving cousins who rarely spoke to Earl when he was alive and had never even set foot on the

property. Meanwhile, Sam is struggling to hold on to what little he has left.

Sam’s story is just one of many heartbreaking examples of why we need protections for our relationships. Partners are kept from hospital rooms and



THE PROJECT IS ASSISTING SAM BEAUMONT OF BRISTOW, OKLAHOMA IN HIS ATTEMPT TO HOLD ONTO THE RANCH AND HOME WHERE HE AND HIS PARTNER EARL MEADOWS SPENT 23 YEARS TOGETHER BEFORE MEADOWS’S DEATH.

prevented from making decisions about medical treatment, children are denied inheritance and Social Security benefits, gay seniors are left homeless when their ailing partners enter nursing homes because Medicaid's long-term coverage requires homes to be "disposed of" unless occupied by a spouse, and the list goes on and on.

Over the next year, the Project is committed to making sure stories like Sam's get heard. We are already working with the other national LGBT groups to find people willing to share their experiences with members of Congress, the press, and anyone else who'll listen, because we feel strongly that if America hears first-hand how our relationships are shortchanged, this amendment will be defeated.

But we can't do it alone. We need your help finding people who are willing to talk about their experiences. So if you or anyone you know has a good story to share about the harms we face because we're unable to marry, we want to hear from you. Please send an e-mail to [couples@aclu.org](mailto:couples@aclu.org) or call us at (212) 549-2627.



## LESBIAN & GAY RIGHTS AND AIDS PROJECTS STAFF

The ACLU Lesbian & Gay Rights and AIDS Projects staff are specialists in constitutional law and civil rights who undertake precedent-setting litigation, public policy advocacy, and public education on national issues related to LGBT rights and the rights of those living with or affected by HIV and AIDS.

**Lexi Adams** is the Projects' Major Gifts Associate. She joined the staff in 2002 to work on our development and public education programs.

**Chris Anders** is the Projects' Federal Policy Director, and Legislative Counsel to the ACLU's Washington National Office, responsible for advancing the Projects' mission on Capitol Hill and Pennsylvania Avenue.

**Paul Cates** is the Projects' Public Education Director. A former attorney for the New York City Legal Aid Society, he came to the ACLU after working at Pro-Media Communications.

**Ken Choe** has been a Staff Attorney since 2000. Before joining the ACLU, he was a political appointee in the Clinton Administration focusing on health care law and policy.

**Matthew Coles** has been Director of the Projects since 1995. Before that, he was a staff attorney at the ACLU of Northern California.

**Leslie Cooper** joined the Projects as Staff Attorney in 1998. Before joining the Projects, she worked at Robinson Silverman Pearce Aronsohn & Berman LLP in New York.

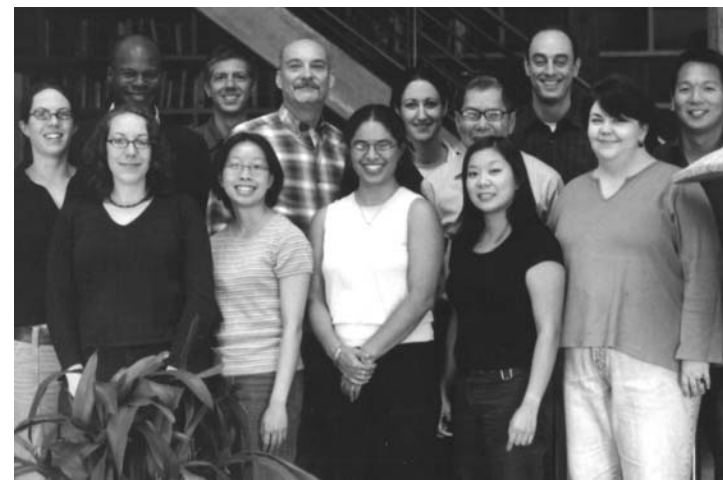
**Genie Cortez** is the Projects' Director of Development. Prior to joining us, she worked as a senior director for Changing Our World, Inc., a national fundraising and philanthropic services consulting firm.

**Joel Engardio** is a Policy Strategist who works on public education and marriage issues. Before coming to the Project, Engardio wrote for the *Los Angeles Times* and *San Francisco Weekly*, and was an associate producer at ABC News.

**Naomi Enright** joined as the Projects' Legal Assistant in 2001. Previously, she worked as a grant writer at The United Puerto Rican Organization of Sunset Park in Brooklyn, NY.

**James Esseks** is the Projects' Litigation Director. James was a partner at New York's Vladeck, Waldman, Elias & Engelhard, P.C. before joining the Projects.

**Chris Hampton** joined our staff as Public Education Associate in 2002. Before coming to the ACLU, she worked on the communications team at Lambda Legal.



THE STAFF OF THE ACLU LESBIAN & GAY RIGHTS AND AIDS PROJECTS: (BACK ROW) COLIN STEWART, PAUL CATES, MATT COLES, LESLIE COOPER, ROBERT NAKATANI, JAMES ESSEKS, KEN CHOE, (FRONT ROW) TAMARA LANGE, LEXI ADAMS, MILLIE YAN, NAOMI ENRIGHT, GENIE CORTEZ, AND CHRIS HAMPTON.



**John A. Knight**, who joined our staff in early 2004, is a Staff Attorney who works in Chicago on the Projects' work in the Midwestern states and is also the Director of the Lesbian and Gay Rights Project at the ACLU of Illinois. Previously, he was a trial attorney with the Equal Employment Opportunity Commission.

**Tamara Lange** is a Staff Attorney who joined the Projects after working at Caldwell, Leslie, Newcombe & Pettit in Los Angeles and clerking in federal trial and appellate courts. She lives in San Francisco, focusing on the Projects' work in the western states.

**Colin Stewart** is the Projects' Crawford Fellow. Before his arrival, he clerked for the Honorable Joseph A. Greenaway, Jr., at the Federal District Court of New Jersey.

**Robert Nakatani** is the Projects' Marriage Project Director. Before taking on this position, he served as the Projects' Development Director for seven years."

**Jessie Torrisi** is a Grant Writer for the Project. Previously, she wrote grants for Dance Theater Workshop and worked as a literary scout.

**Millie Yan** recently departed from her position as the Projects' Paralegal. She joined the ACLU after graduating from the University of Maryland, College Park.

*In addition to the Projects' staff, several ACLU affiliates have staff dedicated to LGBT and AIDS work: Jay Kaplan, staff attorney for the GLBT Rights Project of the ACLU of Michigan; Kara Jennings, Steel Fellow for the GLBT Rights Project of the ACLU of Michigan; Beth Littrell, Don George Fellow and Director of the Sticks & Stones Project at the ACLU of Georgia; and Martha Matthews, David Bohnett Attorney at the ACLU of Southern California.*

---

PROJECT STAFF AND SUPPORTERS MARCHING IN NEW YORK'S 2003 PRIDE PARADE.



LESBIAN & GAY  
RIGHTS PROJECT  
AIDS PROJECT

125 Broad Street, 18th Floor  
New York, NY 10004-2400  
212.549.2627  
[lgbthiv@aclu.org](mailto:lgbthiv@aclu.org)  
[www.aclu.org](http://www.aclu.org)