Examples of Anti-LGBT Discrimination by State and Municipal Employers

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Sources:

- NAN D. HUNTER, COURTNEY G. JOSLIN & SHARON M. MCGOWAN, *Government Employees, in* THE RIGHTS OF LESBIANS, GAY MEN, BISEXUALS, AND TRANSGENDER PEOPLE: THE AUTHORITATIVE ACLU GUIDE TO A LESBIAN, GAY, BISEXUAL OR TRANSGENDER PERSON'S RIGHTS 35 (4th ed. 2004) [hereinafter HUNTER ET AL., *Government Employees*].
- ACLU, *Annual Update of the ACLU's Nationwide Work on LGBT Rights and HIV/AIDS* (2003, 2004, 2005, 2006, 2007) [hereinafter ACLU, ANNUAL UPDATE 200x].
- Christopher E. Anders, *Federally-Funded Religion Will Trample Civil Rights*, *in* ACLU, ANNUAL UPDATE 2003, at 18 [hereinafter Anders].
- James Esseks, *How "Sodomy" Laws Affect You*, *in* ACLU, ANNUAL UPDATE 2003, at 8 [hereinafter Esseks].

Number of examples:	State	Local	Total	pre-1985
	8	15	23	7

States represented: CA, DE, GA, IN, KS, MD, MI (2), MN, NM, NY (2), OH (2), SC, TX (3), UT (2), WA (2), WI

Employer types:	Law Enforcement	Education	Health/Welfare	Other
	6	10	2	5

CALIFORNIA
Debro v. San Leandro Unified School District
(local – school district/teacher)
"When Karl Debro, a heterosexual high school teacher in the San Leandro public schools, expressed his opposition to racism and homophobia in a classroom discussion, the school disciplined him for raising 'objectionable' topics in class. He sued the school district in federal court, arguing that the district had violated his First Amendment right to free expression. After the trial court ruled against him, the ACLU of Northern California helped his appeal with a friend-of-the-court brief, arguing that Debro's speech was constitutionally protected. Before the federal appeals court heard the case, the case settled favorably for Debro. Cooperating attorneys Thomas R. Burke and Eric M. Stahl, Ann Brick and Maggie Crosby of the ACLU of Northern California, and Romana Mancini of the Project authored the brief, which was joined by Lambda Legal and the California Teachers Association."
ACLU, ANNUAL UPDATE 2003, 27.

DELAWARE
Aumilier v. University of Delaware
(state – university/professor)

434 F. Supp. 1273 (D. Del. 1977) (invalidating discharge of college teacher who had been quoted in several newspapers about gay rights).
HUNTER ET AL., *Government Employees* 46 n.45.

GEORGIA
Shahar v. Bowers
(state – Attorney General/attorney)
"In *Shahar v. Bowers*, Robin Shahar was denied the opportunity to work in the Georgia Attorney General's Office after the state attorney general, Michael Bowers . . . learned that she had engaged in a private commitment ceremony with her female partner. Bowers had insisted that the public would be confused if an open lesbian worked at an office that was charged with the mission of upholding Georgia's laws, including the sodomy law that was still in force at the time. The Eleventh Circuit Court of Appeals allowed Bowers to revoke his job offer. It agreed that there could be a loss of morale or cohesiveness from allowing an open lesbian to work in the attorney general's office, enforcing the state's criminal laws. In upholding Bowers' decision, the court stressed 'the sensitive nature of the pertinent professional employment.'
HUNTER ET AL., *Government Employees* 40 (citing *Shahar v. Bowers*, 114 F.3d 1097, 1108, 1110 (11th Cir. 1997) (en banc), *reh'g denied*, 120 F.3d 211 (1997), *cert. denied*, 522 U.S. 1049 (1998)). *See* HUNTER ET AL., *Government Employees* 46 nn.32-34. *See also* Esseks, at 9 ("Public employers have fired or refused to hire lesbians and gay men based on laws against intimacy. For example, Georgia's attorney general fired Robin Shahar, an attorney in his office, based on his assumption that, as a lesbian, she must be violating the state's sodomy law.").

INDIANA
Cornell v. Roberson
(state – agency/employee)
"When the State of Indiana denied employee Jana Cornell's request for bereavement leave so she could attend the funeral of her partner's father, the Indiana Civil Liberties Union sued the state. The ICLU argued that the exclusion of same-sex partners from the bereavement leave policy violates the state constitution. A trial court recently dismissed Cornell's lawsuit, saying that the bereavement leave policy is lawful because it discriminates based on marriage not sexual orientation. An appeal is pending."
ACLU, ANNUAL UPDATE 2003, at 36.

KANSAS
PFLAG Mom Silenced for Speaking Out
(local – library/employee)
"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 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."
ACLU, ANNUAL UPDATE 2004, at 39.

MARYLAND
Ancanfora v. Board of Education
(local – board of education/teacher)
491 F.2d 498 (4th Cir. 1974) (holding that teacher could not be transferred to administrative position solely because he admitted in press interviews that he was gay).
HUNTER ET AL., *Government Employees* 46 n.45.

MICHIGAN
Mack v. City of Detroit
(local – city/police officer)
"A lesbian police officer was discriminated against because of her sexual orientation and sued the City of Detroit under Detroit's human rights ordinance. Detroit argued in court that it could not be sued in state court under its own local law. The case was appealed all the way to the Michigan Supreme Court, which agreed with the City. The court ruled that there is no right to sue in state court under a local civil rights law. The ACLU of Michigan filed a friend-of-the-court brief in support of the lesbian police officer's right to sue. ACLU attorneys Jay Kaplan and Mike Steinberg worked on the case with Saura Sahu of the Sugar Justice Center at the University of Michigan Law School."
ACLU, ANNUAL UPDATE 2003, at 43-44.

Substitute Teacher/Wrongful Discharge
(local – school district/substitute teacher)
"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."
Docket: Discrimination, *in* ACLU, ANNUAL UPDATE 2004, at 39, 43.

MINNESOTA
McConnell v. Anderson,
(state – university/employee)
451 F.2d 193, 196 (8th Cir. 1971) (University of Minnesota employee fired for attempting to secure license to marry his same-sex partner).
HUNTER ET AL., *Government Employees* 46 n.48.

NEW MEXICO
Bernalillo County Assessor - Retaliatory Discharge
(local – county assessor's office/employee)

"The ACLU of New Mexico represents an employee of the Bernalillo County Assessor's office who was subjected to threatening comments by coworkers and other discriminatory work conditions related to his sexual orientation. In April 2005, the employee filed an internal complaint; in retaliation, the Assessor's office discharged him. The affiliate sent a demand letter seeking reinstatement of the employee and back pay." *Docket: Discrimination*, *in* ACLU, ANNUAL UPDATE 2006, at 50, 54.

NEW YORK

Lovell v. Comsewogue School District
(local – school district/teacher)
"Finally, in 2002, a federal district court in New York ruled that a lesbian high school teacher who had sued school officials for failing to take measures to prevent students from harassing her based on her sexual orientation stated a valid equal protection claim." HUNTER ET AL., *Government Employees* 40 (citing *Lovell v. Comsewogue Sch. Dist.*, 214 F. Supp. 2d 319 (E.D.N.Y. 2002). *But cf. Schroeder v. Hamilton Sch. Dist.*, 282 F.3d 946 (7th Cir. 2002) (rejecting comparable claim), *cert. denied*, 123 S. Ct. 435 (2002)). *See* HUNTER ET AL., *Government Employees* 45 n.28.

Quinn v. Nassau County Police Department
(local – police department/police officer)
"[I]n *Quinn v. Nassau County Police Department*, a federal district court in New York agreed with a gay police officer who alleged that the police department violated his constitutional right to equal protection when it looked the other way and allowed officers to harass and abuse him on the job. Although the police department insisted that it was legal to discriminate because of sexual orientation, the judge strongly disagreed: '[G]overnment action . . . cannot survive rational basis review when it is motivated by irrational fear and prejudice towards homosexuals.'"
HUNTER ET AL., *Government Employees* 41 (citing *Quinn v. Nassau County Police Dep't*, 53 F. Supp. 2d 347, 356, 357 (E.D.N.Y. 1999)). *See* HUNTER ET AL., *Government Employees* 46 n.36-37).

OHIO

Rowland v. Mad River Local School District
(local – school district/guidance counselor)
"[A] federal appeals court allowed an Ohio school system to fire a guidance counselor after she told a secretary and several other teachers that she was bisexual."
HUNTER ET AL., *Government Employees* 39 (citing *Rowland v. Mad River Local Sch. Dist.*, 730 F.2d 444, 446 (6th Cir. 1984), *cert. denied* 470 U.S. 1009 (1985) ("Justices Marshall and Brennan vigorously dissented from the decision of the Supreme Court not to hear Rowland's case, insisting that 'discrimination against homosexuals or bisexuals based solely on their sexual preference raises significant constitutional questions under both prongs of our settled equal protection analysis.' 470 U.S. at 1014 (Brennan, J., dissenting)."). *See* HUNTER ET AL., *Government Employees* 45 n.21.

Glover v. Williamsburg Local School District Board of Education
(local – school district/teacher)

"In *Glover v. Williamsburg Local School District Board of Education*, decided in 1998, an Ohio federal district court ordered that the school reinstate a gay teacher who had been fired because of 'animus toward [the teacher] as a homosexual.'"
HUNTER ET AL., *Government Employees* 39 (citing *Glover v. Williamsburg Local Sch. Dist. Bd. of Educ.*, 20 F. Supp. 2d 1160 (S.D. Ohio 1998)). *See* HUNTER ET AL., *Government Employees* 45 n.25.

SOUTH CAROLINA

Dawson v. State Law Enforcement Division
(state – state law enforcement division/police officer)
"[I]n a 1992 case, a South Carolina police officer was fired for inappropriate sexual conduct with another man. The police officer had insisted that he was not homosexual and that the men had only been masturbating together in the same room. Nevertheless, the court ruled against him on the basis that, regardless of whether or not he was gay, the firing was permissible because the Supreme Court had held in *Bowers v. Hardwick* that there was no fundamental right of privacy to engage in homosexual sex."
HUNTER ET AL., *Government Employees* 40-41 (citing *Dawson v. State Law Enforcement Div.*, 1992 WL 208967 (D.S.C. 1992)). *See* HUNTER ET AL., *Government Employees* 46 n.35.

TEXAS

Childers v. Dallas Police Department
(local – city police department/prospective property room employee)
"The Dallas Police Department, in particular, has been the subject of repeated lawsuits. In 1981, the department refused to hire Steven Childers, an openly gay man, in its property room. When Childers sued, a federal district court held that because many people openly despise and fear homosexuals, the police department could refuse to hire him. The court found, 'There [were] also legitimate doubts about a homosexual's ability to gain the trust and respect of the personnel with whom he works.'"
HUNTER ET AL., *Government Employees* 41 (citing *Childers v. Dallas Police Dep't*, 513 F. Supp. 134, 147 (N.D. Tex. 1981)). *See* HUNTER ET AL., *Government Employees* 46 n.38-39). *See also* Esseks, at 9 ("a gay man was denied a non-officer job in a police department because of Texas's sodomy law").

City of Dallas v. England
(local – city/police officers)
"The Texas Court of Appeals reversed course in 1993, however, by ruling that Dallas could not prevent lesbians and gay men from serving as police officers based solely on disapproval of their private, consensual sexual activities."
HUNTER ET AL., *Government Employees* 41 (citing *City of Dallas v. England*, 846 S.W.2d 957, 959 (Tex. Ct. App. 1993)). *See* HUNTER ET AL., *Government Employees* 46 n.40.

Van Ooteghem v. Gray
(local – county/employee)
"In 1980, a county employee in Texas was fired when he told his boss that he was gay and planned on speaking to the county commissioner about gay and lesbian civil rights.

The federal appeals court reviewing his case required that he be rehired because the county violated his First Amendment rights."
HUNTER ET AL., *Government Employees* 42 (citing *Van Ooteghem v. Gray*, 628 F.2d 488, 490 (5th Cir. 1980), *aff'd en banc*, 654 F.2d 304 (1981)). *See* HUNTER ET AL., *Government Employees* 46 n.45.

UTAH

Weaver v. Nebo School District
(local – school district/teacher-coach)
"Also in 1998, a federal court in Utah vindicated the rights of Wendy Weaver, a high school teacher who had lost her assignment as volleyball coach after the school learned that she was a lesbian. In a sweeping decision, the court held that the school district could not prevent the teacher from discussing her sexual orientation on the same terms that heterosexual teachers were permitted to do so. Nor could it prevent her from being out to students without violating her First Amendment rights. The court also held that bias against Weaver because she was a lesbian was not a rational reason to bar her from coaching the volleyball team."
HUNTER ET AL., *Government Employees* 39-40 (citing *Weaver v. Nebo Sch. Dist.*, 29 F. Supp. 2d 1979 (D. Utah 1998); *see also Miller v. Weaver*, 66 P.3d 592 (Utah 2003) (rejecting attempt by citizens groups to force state board of education to fire Weaver)). *See* HUNTER ET AL., *Government Employees* 45 n.27.
Citizens of Nebo School District v. Weaver
"In the latest chapter of an ongoing attempt to fire Wendy Weaver, a 23-year veteran teacher at Spanish Fork High School, because she is a lesbian, a group of parents is asking the state Supreme Court to strip the teacher of her teaching license. The parents claim that she should not be allowed to teach their children because she is a criminal for violating the state sodomy law. In 1998, the Nebo County School District barred Weaver from coaching a girls' volleyball team and required her to sign an order that prohibited her from discussing her sexual orientation in or outside of the classroom. With the ACLU's help, Weaver won a federal court decision that said government employees cannot be singled out for disciplinary action because of their sexual orientation and that the prohibition on Weaver's ability to be out violated her free speech rights. Following the federal court victory, the group of parents, Citizens of the Nebo School District for Morals and Legal Values, tried to get Weaver fired with a new case, this time in state court. In 1999, a state trial court judge threw out the key claims alleged by the group against Weaver, and the parents appealed to the Utah Supreme Court. The ACLU of Utah represents Weaver, claiming that the parents' lawsuit, if successful, would violate Weaver's free speech rights as well as her right to equal protection. Former ACLU of Utah Legal Director Stephen Clark will argue the case in October 2002. Cooperating attorney Richard Van Wagoner is assisting the ACLU of Utah with the case."
ACLU, ANNUAL UPDATE 2003, at 59-60.
"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." *Docket: Discrimination*, *in* ACLU, ANNUAL UPDATE 2004, at 39, 46-47.

Etsitty v. Utah Transit Authority
(state – transit authority/bus driver)
"The ACLU of Utah and the Project filed a friend-of-the-court brief in federal appeals court on behalf of Krystal Etsitty, a former Utah Transit Authority bus driver who was fired shortly after she revealed to her employers that she is transgender. Her employers had received no complaints about her, yet they informed her that she was being fired because they could not determine which restroom she should use while on the job. Etsitty, who identifies and lives as a woman, has legally changed her name from Michael to Krystal, and has changed her Utah driver's license designation from male to female. The transit authority told her that she would be eligible for rehire only after undergoing sex reassignment surgery. Etsitty's lawyers argued in federal court that she was protected by Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on sex, including nonconformity to sex stereotypes. The trial court ruled against her, finding that Title VII did not protect transgender individuals from discrimination. *Etsitty v. Utah Transit Authority* is still pending in the federal appeals court." *Transgender Docket*, *in* ACLU, ANNUAL UPDATE 2007, at 52, 54.

WASHINGTON
Gaylord v. Tacoma Sch. District No. 10
(local – school district/teacher)
"[T]he Supreme Court of Washington allowed a 'known homosexual' to be fired from his teaching position at a high school in Tacoma in 1977."
HUNTER ET AL., *Government Employees* 39 (citing *Gaylord v. Tacoma Sch. Dist. No. 10*, 559 P.2d 1340 (Wash. 1977) (en banc). *See* HUNTER ET AL., *Government Employees* 45 n.22. *See also* Esseks, at 9 ("a teacher in Washington State was fired because the state's criminal intimacy law made him "immoral" and therefore unemployable").

Davis v. Pullman Memorial Hospital
(state – public hospital/sonographer)
"Mary Jo Davis experienced constant harassment during her job as a sonographer at Pullman Memorial Hospital, a public institution. Her boss, Dr. Charles Guess, regularly referred to Davis as a "fucking dyke" and a "fucking faggot." At one point, Guess 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, the hospital punished her rather than discipline Guess. They reduced her work hours to three quarters time so Guess would not have to work with her. Later, Davis was fired. The ACLU got involved in the lawsuit against the hospital and Dr. Guess in 1996. The lower court dismissed the case, but a Washington state appeals court unanimously ruled that anti-gay discrimination against a

public employee violates the U.S. Constitution. The homophobic doctor is appealing the case to the state supreme court, but the hospital has not yet said whether or not it will join the appeal. Project attorney Ken Choe and cooperating attorney Richard Reed are handling the case."
ACLU, ANNUAL UPDATE 2003, at 61.
"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."
Docket: Discrimination, *in* ACLU, ANNUAL UPDATE 2004, at 39, 39-40.

WISCONSIN
Safransky v. State Personnel Board
(state – state-run home/"houseparent")
"[T]he Wisconsin Supreme Court allowed the administrators of a state-run home for mentally retarded boys to fire a gay man who had served as houseparent, on the ground that he failed to project 'the orthodoxy of male heterosexuality.'"
HUNTER ET AL., *Government Employees* 39 (citing *Safransky v. State Pers. Bd.*, 215 N.W.2d 379, 385 (Wis. 1974)). *See* HUNTER ET AL., *Government Employees* 45 n.23.