



The ACLU Fight
for LGBT Rights

70
1936
First Case

50
1986
LGBT Program

20
1986
LGBT Project

2006
ANNIVERSARY

ACLU LESBIAN AND
GAY RIGHTS PROJECT

The Annual Update of the ACLU's Nationwide Work on
LGBT Rights and HIV/AIDS



ANNUAL UPDATE OF THE ACLU'S NATIONWIDE WORK ON LGBT RIGHTS AND HIV/AIDS

ACLU Foundation

LESBIAN & GAY RIGHTS AND AIDS PROJECT

125 Broad Street, 18th Floor

New York, NY 10004

(212) 549-2627

getequal@aclu.org

aclu.org/lgbt

aclu.org/hivaids

Contents

PERSPECTIVES

- 5 LGBT Rights: A Core ACLU Issue
- 7 70 / 50 / 20
- 10 Memories of the Beginning of the Project
- 11 The ACLU and the Gay Liberation Movement
- 14 Founding Supporters

RELATIONSHIPS

- 16 Portraits of Marriage
- 20 Relationships Docket

PARENTING

- 28 Foreword to TOO HIGH A PRICE
- 30 Parenting Docket

YOUTH & SCHOOLS

- 36 The Other O.C.
- 38 Youth & Schools Docket

DISCRIMINATION

- 46 Cruel and Unusual
- 48 Discrimination Docket

TRANSGENDER

- 57 Fit to Serve
- 58 Transgender Docket

HIV/AIDS

- 62 Get Out of Town
- 64 HIV/AIDS Docket

66 CONTRIBUTORS

76 ABOUT US

78 COOPERATING ATTORNEYS



PERSPECTIVES

In this 1987 photo, ACLU staff and supporters announce the arrival of the new Lesbian and Gay Rights Project at a public demonstration.





▲ Anthony D. Romero is the Executive Director of the American Civil Liberties Union.

LGBT Rights: A Core ACLU Issue

By Anthony D. Romero, ACLU Executive Director

The fight for LGBT rights is a central ACLU concern because the fight for LGBT rights is a core civil liberties issue. It's not about "special rights"—it's about basic rights. It's about fairness and equality for all.

Three of the promises at the heart of the federal Constitution are that people will have the rights to autonomy, to expression, and to equality. That means that we get to be who we are and develop as individuals, to express our ideas and our feelings, and to have the same chance to make it in this society as anyone else.

The job of the ACLU is to make good on the promises that the Constitution makes to the people. We breathe life into those rights enumerated in the founding documents to make sure they're more than just paper guarantees. So the struggle of LGBT people to love and to live, to be open, and to get equal treatment is at the heart of what the ACLU is about.

As the essays by Matt Coles, Robert Nakatani, and Nan Hunter that follow show, the ACLU is hardly a newcomer to the fight for LGBT rights. This has been on the ACLU agenda since long before Stonewall.

And the fight for LGBT rights has never been more important to the ACLU than it is today. We have seen astonishing progress in the last few years:

- ▼ The Supreme Court ruled that same-sex relationships are protected by the constitutional right to liberty, overruling its own shameful decision to the contrary from 1986;
- ▼ Massachusetts is marrying same-sex couples, while Vermont, Connecticut, and California have created civil unions or domestic partnerships which give couples comprehensive protection under state law;





“...anti-LGBT forces are raising the stakes. In the coming year, at least six states will consider legislation to keep lesbians and gay men from adopting or being foster parents; some of these will be constitutional amendments.”

▼ Gay-straight alliances are being formed everywhere, in red states as well as blue, in rural as well as urban areas, and the courts have ruled that community opposition can not stop them.

However, at the same time, LGBT people are under ferocious assault. Lamentably, in many parts across the country it is still acceptable, even legal, to discriminate against lesbians and gays. It is one of the last bastions of accepted prejudice and formal, legally-sanctioned discrimination.

In 2004, 13 states amended their state constitutions to say that neither legislatures nor the courts could end the exclusion of same-sex couples from marriage, and two more were added in 2005, bringing the total number to 19.

Never in our history have so many state constitutions been amended to single out one group of people and deny them the protection of the law.

And anti-LGBT forces are raising the stakes. In the coming year, at least six states will consider legislation to keep lesbians and gay men from adopting or being foster parents; some of these will be constitutional amendments.

The ACLU is fighting back. As you'll see from the dockets that follow, the ACLU's commitment to LGBT rights is deep as well as long. Last year, the ACLU was involved in 88 LGBT rights cases—67 in court and 21 in administrative agencies. At the same time, the ACLU lobbied on 87 state bills affecting LGBT people, against the pernicious federal marriage amendment, and for federal laws to end employment discrimination and punish hate crimes.

The ACLU was part of LGBT rights battles in 49 states and the District of Columbia.

The ACLU has a special project with a staff of 20 devoted to battling for LGBT rights. We have created a Marriage Project at our national office

aimed at helping the ACLU be more effective in state-by-state battles over marriage. Online, we have a toolkit for activists—"GET BUSY. GET EQUAL."—that shows people how to fight for safe schools, for nondiscrimination and domestic partnership laws, and for marriage.

The fight for LGBT rights won't be easy, and it will take years to win. But the ACLU is used to long battles. We'll be in this one until it is over, and we will certainly celebrate the day that the constitution's promises to LGBT people are kept. Until then, our work lies ahead. ▲



70/50/20

By Matt Coles, Director of the Lesbian & Gay Rights and AIDS Project

1935. Franklin Roosevelt, in his third year as President, signed the Social Security Act. The Labor Day hurricane killed 423 people in the Keys. Huey Long was assassinated. Nylon and Monopoly were invented. Elvis Presley was born.

And Lillian Hellman's play *The Children's Hour*, a critical and financial success on Broadway, headed to Boston. It didn't quite make it. On the way, it ran into Boston's public censor, who banned the play because of its "lesbian content" before it played a single performance. The ACLU helped the producer challenge the ban in federal court in 1936. And so, in 1936, the ACLU took its first gay rights case.

1955. Under Dwight Eisenhower, in his third year as President, the United States began sending aid to South Vietnam. Albert Einstein and James Dean died. The Brooklyn Dodgers beat the Yankees in the World Series. *Lolita* was published. Rosa Parks refused to give up her seat in the white section of a Montgomery city bus.

And in San Francisco, Lawrence Ferlinghetti began City Lights Publishers, dedicated to printing the work of new poets. The next year, City Lights brought out the fourth paperback in its "Pocket Poets" series, Alan Ginsberg's *Howl*. A screaming protest against American culture in the mid-50's, *Howl* was filled with what was then (and is still now) stunningly blunt sexual imagery, much of it same-sex. Two San Francisco police detectives bought a copy for 75 cents and charged Ferlinghetti with printing and selling indecent books (more on the *Howl* case in Robert Nakatani's "ACLU and the Gay Liberation Movement" on p. 11).

The ACLU took the case. And from 1956 on, the ACLU would have a regular stream of LGBT cases around the country, covering everything from laws against gay bars to laws against crossdressing in public, early challenges to sodomy laws, and the first same-sex marriage case (in 1971).



▲ Director Matt Coles took over the reigns of the Project in 1995.

1985. Ronald Reagan, in his fifth year as President, signed the Graham-Rudman law requiring a balanced federal budget. Mikhail Gorbachev became leader of the Soviet Union. Rock Hudson died of AIDS. Madonna launched her first road show, the "Virgin Tour." Coke changed its 99-year-old formula—for a few months.

And the ACLU won its challenge to Georgia's sodomy law in the U.S. Court of Appeals in Atlanta. Laws making gay relationships a crime seemed to be on the way out. Significant gains on LGBT equality seemed very possible. The ACLU decided it needed a special project to direct its LGBT work (and I do mean L.G.B.T.; the organization's first significant transgender case was brought in 1967, and its first significant bisexual case in 1956). The ACLU's Lesbian & Gay Rights Project opened its doors on June 1, 1986. That, as it turned out, was just 30 days before the U.S. Supreme Court overturned the ACLU's win in the Georgia *Bowers v. Hardwick* case (more on this in Nan Hunter's "Memories of the Beginning of the Project" on page 10).

2006. This year marks 70 years since the ACLU's first LGBT case, 50 years since LGBT work began to be a regular part of the ACLU's docket, and 20 years for the ACLU's Lesbian & Gay Rights and AIDS Project.

All three of these anniversaries reflect something singular about the gay rights movement. The history of the LGBT rights movement in America shows not so much a social debate about whether treating gay people differently is right or

wrong, but instead a concerted effort to keep that debate from ever happening. *The Children's Hour* and *Howl* are pretty obvious examples.

As Lillian Hellman herself was fond of pointing out, the lesbian "theme" in *The Children's Hour* was incidental. The play was about the power of lies. But in 1936, the possibility that even an incidental part of the play might cause people to think about whether it was right to punish someone for being gay was too much of a threat. The *Howl* case in '56 was classic old-fashioned censorship as well, although Ginsberg went much further than Hellman had; his wild poetry was unapologetic about gay (and straight) sexuality.

Sodomy laws were less obviously about preventing debate. But as the ACLU showed the Supreme Court in *Lawrence v. Texas* (the 2003 case in which the court overturned its own ruling in *Bowers*), those laws were never really used to police private sexual conduct. By the 1960's, they had clearly become a way to keep gay people in hiding and quiet. Since same-sex sexuality was illegal, it was OK to fire gay people from government jobs, take away custody of our children, and shut down places where we congregated. There was no room for argument about whether any of that treatment was right since by coming out (or being outed, or being found in a place where gay people went) you admitted you were an unconvicted felon.

More than anything else, it was getting rid of that state of affairs that led the ACLU to set up the Project in '86.

There were pretty brassy attempts to stifle the young gay rights movement as well. In 1965, the San Francisco Police Department tried to shut down a fundraiser for the newly-formed Council on Religion and the Homosexual by scaring patrons away with floodlights and cameras, and, when that didn't entirely work, by "inspecting" the hall repeatedly for code violations. The ACLU took that case too (see page 11).

The fight to prevent a social or at least a political discussion about equality for LGBT people culminated in Colorado's infamous Amendment 2. After the 1986 Supreme Court loss in the Georgia case, the gay rights movement put increasing emphasis on passing laws against sexual orientation discrimination. Starting in the late 80s, the other side fought back with constitutional amendments, which took away the power of state legislatures and city councils to pass civil rights laws. The point was not to defeat proposed discrimination laws, but to prevent them from ever being taken up. Our opponents were trying to rig the system. They succeeded in Colorado with Amendment 2. When the Supreme Court struck it down in 1996 as a violation of the 14th Amendment, we had our first great Supreme Court win in *Romer v. Evans* (a joint ACLU/Lambda Legal case).

But if *Romer* ended amendments that banned civil rights laws, it did not stop our opponents from trying to rig the political process against us. By the start of 2006, 18 states had amended their constitutions to prohibit state courts and legislatures from ever allowing same-sex couples to marry (one more, Hawai'i, had passed an amend-

ment that applied only to courts). There is a federal counterpart in Congress, supported by the President and the party that controls both houses.

These amendments are not about using the democratic process to decide whether same-sex couples should be able to marry. Every single one of the states that passed an amendment already had a law excluding same-sex couples from marriage, and the Congress passed its own version in 1996.

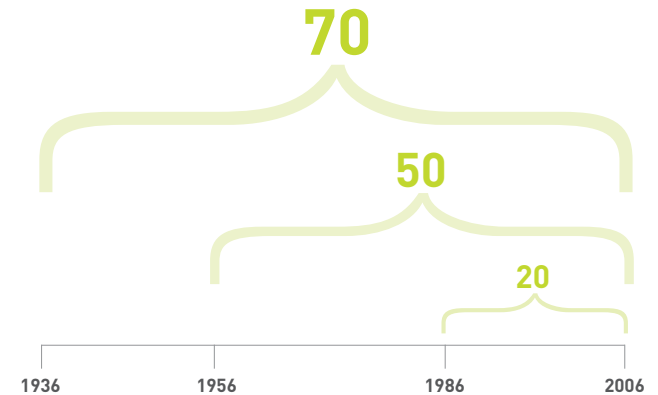
What these amendments do is strip courts of the power to set aside laws that violate core constitutional values. That, of course, is one of the essential functions of courts in America. They also ensure that LGBT people will always be unable to turn to legislatures (as we have already successfully done in six states) to get legal protection for our relationships. Like Amendment 2, they restructure our government so that the question of equal treatment for LGBT people will never get considered in the ordinary way—in courts and legislatures and in the arena of public debate.

It may be a long time before the federal courts (or Congress) end the exclusion of same-sex couples from marriage in America. While our system gives courts the power to do the right thing when legislatures (or citizens) do not, for the most part, they have not been very bold about using it. The federal courts have a largely undeserved reputation for insisting on equality for African-Americans and women in the face of prevailing opposition. History shows that courts are much better at insisting that recalcitrant states get in

line with emerging social consensus than they are at forging a new social consensus.

But if courts are slow to create rights, they are a very good way to make the case for change to society as a whole. There is no doubt that gay rights in general and marriage in particular are on the public mind today in large part because court cases have put them there. The more we use those cases not just to lay a claim of right, but to show how unfair it is to treat same-sex couples as strangers, the more effective we'll be in using them to build a social consensus for change.

The sad truth is that the ACLU lost its first gay rights case. *The Children's Hour* was not able to play in Boston. But the public outcry that followed the case led to the first serious limitations on the public censor, the beginning of its end. So too today, using cases to inform, to educate, to argue in the court of public opinion may be the most important thing we can do. ▲



“All three of these anniversaries reflect something singular about the gay rights movement...not so much a social debate about whether treating gay people differently is right or wrong, but instead a concerted effort to keep that debate from ever happening.”

Memories of the Beginning of the Project

By Nan Hunter, Former Project Director



▲ Nan Hunter was the founding director of the Project from 1986 – 1990.

It was a hell of a month to start a gay rights project.” That was the title of the ACLU Lesbian & Gay Rights Project’s first annual report. The month in question was June 1986—the month of *Bowers v. Hardwick*. The Project officially started on June 1, and on June 30, one of the grimmest eras in LGBT law began. I remember the conference call on the afternoon of the 30th, when Larry Tribe, the Harvard Law School professor who argued the case for us as an ACLU cooperating attorney (the Georgia ACLU represented Hardwick), said, “Well, guys, I tried.” We all knew that there would be lots of long, hard days ahead.

At the time, the “Project” consisted of me and my assistant, Jonathan Ned Katz, a historian whose secretarial work was his day job. Together, we occupied one office and one secretarial cube on the seventh floor of the old ACLU building on West 43rd Street, halfway between offices of *The New Yorker* and *The New York Times*, which seemed somehow apt. Although there were only two of us, the ACLU was doing a tremendous

amount of LGBT rights and AIDS work through its affiliates—not only on the coasts, but in places like Minnesota and Louisiana as well. One of my primary goals was to help focus and coordinate the body of work that was well underway throughout the nation.

That summer, I first turned to another case in the Supreme Court, not a gay rights case as such, but one which turned out to have enormous consequence for our community. *School Board of Nassau County v. Arline*, a disability discrimination case, involved a teacher with tuberculosis. Reaganites in the Justice Department (including then-Department of Justice lawyer John Roberts) cooked up a theory that communicable diseases were not covered by the anti-discrimination law, even if the fear of transmission in a particular case was irrational. I wrote the *amicus* brief for the American Public Health Association. When our side won the case the following February, we established a baseline of sanity and equal treatment under law for how America should deal

with the social consequences of this disease.

The bad news of *Bowers* and the investment of time that paid off in *Arline* were the two biggest events of 1986. But there was one other little matter that didn’t seem so urgent or important at the time. At the October meeting of the ACLU Board, the organization passed a statement endorsing the right of same-sex couples to marry. I remember feeling like this, too, was an investment with a payoff far into the future. As far as I know, however, it was the first time that any non-gay group in the United States took this position as a matter of organizational policy. It made me proud of the ACLU then, and it still does.



The ACLU and the Gay Liberation Movement

By Robert Nakatani, Senior Strategist

▲ Robert Nakatani

Twenty years ago, with leadership support from Ambassador James C. Hormel and Brooks McCormick, the ACLU set up the Lesbian & Gay Rights Project. Just over 20 years before that the ACLU helped usher in the gay liberation movement on the West Coast.

San Francisco was then far from marriage-proclaiming Mayor Gavin Newsom's "city that knows how." The police didn't just raid gay bars and attack places where gay people dared to socialize—they shuttered them, particularly the ones that permitted "manifestations of aberrant sexual urges or desires", i.e. hand holding or dancing. Some bars survived by submitting to extortion by police officers, but even those places would often find the police encamped outside their entrances, writing down license plate numbers of potential customers.

A watershed event in the modern gay rights movement took place around a 1965 police raid not of a bar but of a New Year's costume ball at

California Hall in San Francisco. The ball was organized by six "homophile" organizations to benefit the Council on Religion and the Homosexual (CRH). CRH was a newly-formed organization of San Francisco Bay Area clergy and lesbian and gay leaders, dedicated to fostering a dialogue on theology and homosexuality and exploring ways churches could help with a range of needs faced particularly by young gay, lesbian, and transgender people.

Before the New Year's Day event, CRH ministers and attorneys met with the San Francisco Police Department's "sex crimes" detail to inform them about their fundraiser and got assurances that the police would leave them alone. As the ball was about to begin, police in riot gear cordoned off the area, set up floodlights outside the event, and took still and motion picture photographs of everyone attending.

While this intimidation worked to dissuade over a thousand would-be partygoers from attending, 200 courageous people endured this police

gauntlet to enter the hall. The police then moved in to harass event organizers and participants.

Herb Donaldson, a legal advisor for the CRH event who would later become one of California's first openly gay judges, recalled, "The plain-clothes police started coming in to make inspections. There was a fire inspection. There was a health inspection. I think it was about the fourth inspection when we said, 'That's enough! If you want to come in, you're going to have to get a search warrant.' We were cheek-to-cheek with the police. We were just standing there and they were standing there. They didn't believe we would stand them off."

Eventually, the police arrested Donaldson and another legal advisor, Evander Smith, for "obstructing an officer in the course of his duties."

Then (and now) the most forceful advocate against police civil liberties abuses, the ACLU



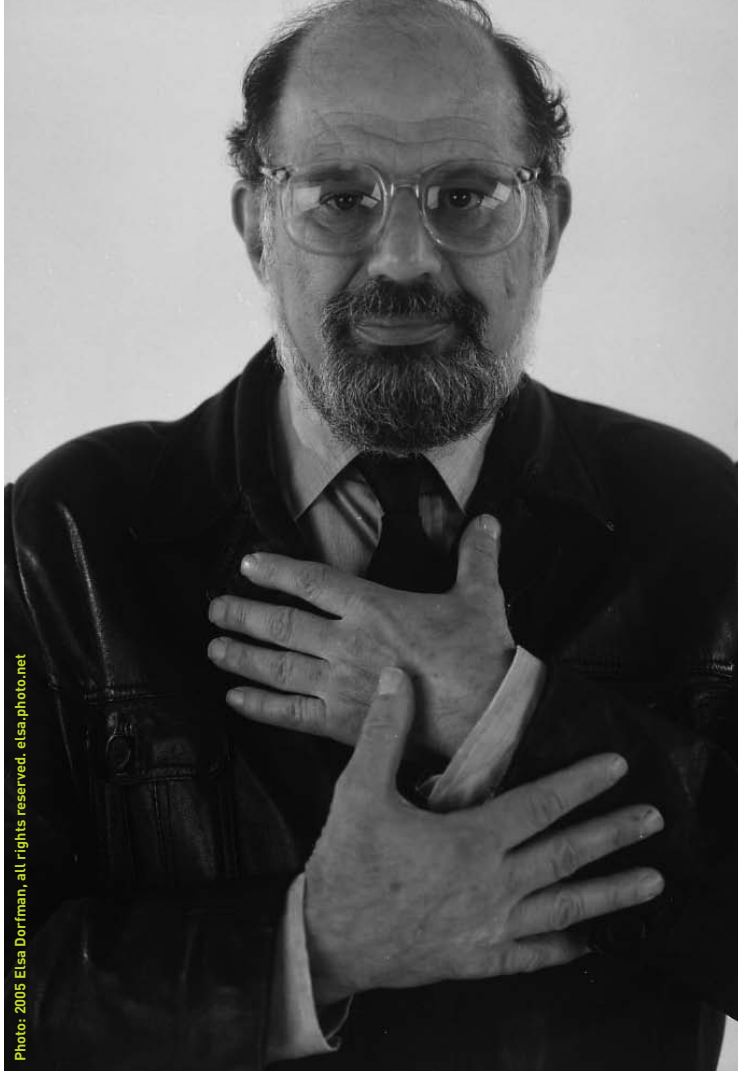


Photo: 2005 Elsa Dorfman, all rights reserved. elsa.photo.net

▲ **The ACLU defended the works of influential Beat poet and gay rights activist Allen Ginsberg from censorship over 50 years ago.**

took on this case. At the criminal trial, Donaldson recalls that ministers and their wives “dressed up in their Sunday ‘go to church’ clothes [to] come and sit in the audience” to demonstrate their support. At the close of the prosecution’s case, the ACLU’s Marshall Krause unexpectedly asked Judge Leo Friedman to instruct the jury to bring in a verdict of “Not Guilty.” Dismissing police testimony that their actions were taken only for the purpose of enforcing alcoholic beverage control laws, the judge so ordered and the jury took just 10 minutes to comply.

The CRH ball raid, the surrounding publicity, and the subsequent trial opened the eyes of the general public to the persecution faced by LGBT people. The day after the raid, seven CRH-affiliated ministers held a press conference condemning police intimidation of gay people. The following June, CRH issued a pamphlet entitled *A Brief of Injustices: An Indictment of Our Society and Its Treatment of the Homosexual*, which detailed and decried all the ways society punishes gay people. The CRH event and its aftermath not only contributed to a diminishing of police harassment of gay people but also led to unprecedented structural changes: the appointment of a special liaison between the police department and the gay community and the formation of a LGBT community hotline to report police abuse.

The CRH ball raid and its aftermath also galvanized the relatively small and scattered homophile organizations into a full-fledged LGBT movement. Gay organizations began holding annual candidate nights for office-seekers, demonstrating the growing clout of the LGBT vote. By the early 70’s, distinctly political gay

groups had formed, providing the base that Harvey Milk would use to become the first openly gay elected official in the country.

Although the CRH ball raid and trial were remarkable for galvanizing the LGBT community, the ACLU’s earliest work protecting the civil liberties of lesbians and gay men preceded even this event. It is no accident of history that much of this early work involved the First Amendment. Lesbians and gay men instinctively saw that the key to their liberation lay in that amendment’s broad protection for their speech, for their freedom to associate and dissent, for genuine expression of their humanity. They knew that speaking out about the “love that dares not speak its name” was essential to their ultimate freedom and dignity. And who better than the American Civil Liberties Union to defend their right to speak out?

One of the earliest clashes of free gay expression and homophobic censorship was precipitated by the publication of *Howl*, a nearly epic poem by New York-based beat poet Allen Ginsberg. His poetry, said Lawrence Ferlinghetti, his publisher and owner of the renowned City Lights Bookstore, “is a howl against everything in our mechanistic civilization which kills the spirit.” The police were not about to ignore this landmark poem penned by an openly gay renegade. Ginsberg not only took on established authority but he also challenged conventional mores with an unapologetic flair:

Who bit detectives in the neck and shrieked with delight in police cars for committing no

crime but their own wild cooking pederasty and intoxication,

Who howled on their knees in the subway and were dragged off the roof waving genitals and manuscripts,

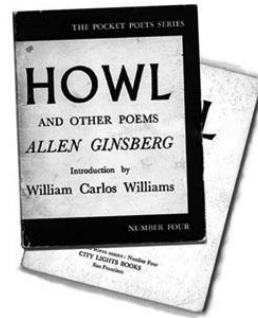
Who let themselves be fucked in the ass by saintly motorcyclists, and screamed with joy,

Who blew and were blown by those human seraphim, the sailors, caresses of Atlantic and Caribbean love,

Who balled in the morning in the evenings in rose gardens and the grass of public parks and cemeteries scattering their semen freely to whomever come who may,

So in 1956, two San Francisco police officers went into City Lights Bookstore and, for 75 cents, bought a copy of the 44-page *Howl and Other Poems*. That purchase formed the basis for the arrest of Ferlinghetti for “willfully and lewdly printing, publishing, and selling obscene and indecent writing, papers, and books.”

Immediately recognizing what was at stake, the ACLU came to Ferlinghetti’s defense, first working to mobilize community support for the poet and the man who dared to print and distribute his work. Fearing the end of San Francisco as the liveliest spot for young poets in the country, 21 San Francisco booksellers demanded that Mayor George Christopher end police censorship of books, stating, “This sort of censorship has no



“One of the earliest clashes of free gay expression and homophobic censorship was precipitated by the publication of *Howl*, a nearly epic poem by New York-based beat poet Allen Ginsberg.”

place in a democratic society and is harmful to San Francisco’s reputation as a center of culture and enlightenment.”

The defense called nine expert witnesses to the stand, and included letters of support from renowned writers, critics, and publishers. In closing arguments, defense lawyers read passages from the Bible, Balzac, Shakespeare, Ulysses, and Marlowe that were comparable to *Howl* in either erotic content or use of “vulgar” expressions.

The closely watched trial won a landmark ruling from Judge Clayton Horn who, in an unusually comprehensive 38-page opinion, found for the defense. “[L]ife is not encased in one formula whereby everyone acts the same or conforms to a particular pattern. Would there be any freedom of the press or speech if one must reduce his vocabulary to vapid innocuous euphemism?” he wrote. The judge went on to say, “In considering material to be obscene, it is well to remember the motto, “*Honi soiet qui mal y pense*” (“Evil to him who thinks evil”).

Half a century later, the American Civil Liberties Union is still defending the right of LGBT people to speak out. The type of expression we’re defending has moved far beyond the printed word—a “GAYS R OK” personalized license plate, a kiss by two girlfriends at school, *Angels in America* in a program for gifted high school students, a t-shirt with the slogan “I support gay marriage,” students’ personal stories about sexual orientation and gender identity in a high school newspaper, a second-grader’s explanation to his friend that “gay is when a girl likes another girl.” The constitutional principle, and the purpose for defending it, remains the same as 50 years ago. The ability of every one of us to engage in meaningful lives and to participate fully in our democratic society is rooted in our ability to express ourselves openly and freely.

STAN YOGI AND ELAINE ELINSON, WHO MADE SIGNIFICANT CONTRIBUTIONS TO THIS ESSAY, ARE WRITING A BOOK ON THE HISTORY OF CIVIL LIBERTIES IN CALIFORNIA, SOON TO BE PUBLISHED BY HEYDAY BOOKS.



▲ In 1985, the ACLU board of directors approved the creation of the Lesbian & Gay Rights and AIDS Project—but raising the money to get it started proved to be a challenge. Luckily, two community leaders stepped forward to provide the Project with the necessary funding. Between 1985 and 1986, ACLU supporters Ambassador James C. Hormel and Brooks McCormick made the initial gifts needed to start the Project. They've both been faithful supporters ever since.

FOUNDING SUPPORTERS

20 Years of Sustaining the ACLU Lesbian & Gay Rights and AIDS Project

When the ACLU Lesbian & Gay Rights and AIDS Project opened our doors in 1986, there was a lot of work ahead. Amidst *Bowers v. Hardwick*, the AIDS crisis, and the bleak political landscape, the Project needed to quickly develop a program, articulate a vision for moving forward on gay rights, build a docket of cases, and raise the money to support all of it. The Project would literally not be around today without the incredible dedication, vision, and generosity of the following supporters, who first gave to the Project in its inaugural year—and are still contributors today:

Anonymous (2)

Larry Chanen

Herbert I. Cohen, M.D. & Daniel C. Cook

Roger Funk & Douglas Noffsinger

David L. Harsany, M.D.

James C. Hormel

Arthur S. Leonard

Brooks McCormick

Larry Simmons & James Akerberg

Duane T. Williams



RELATIONSHIPS

Clients in the Washington affiliate's marriage lawsuit, Pamela Coffey (back) and Valerie Tibbett show their love and enthusiasm at a rally on the steps of the Washington State Supreme Court in Olympia.



In love since the Eisenhower administration, retired teacher Bob Pingpank (top) and Episcopal priest Rich Nolan are registered in a domestic partnership in West Palm Beach, FL; they are fighting a ballot initiative that could strip them of their legal rights.



Karen Wood, a retired state employee, was barred from sharing state benefits with her partner Terry Tavel; they won a six year battle when the Alaska Supreme Court finally ruled that gay and lesbian employees must be provided domestic partner benefits.



Nebraska will not recognize Donna Colley and Margaux Towne-Colley as the legal parents of their son Grayson; the couple is challenging a constitutional amendment that excludes same-sex couples from any kind of legal protections for their relationship.

Portraits of Marriage

Since the first marriage lawsuit for same-sex couples in 1972, the ACLU has been at the forefront of both legal and public education efforts to secure marriage for same-sex couples and win legal recognition for LGBT relationships. Denying same-sex couples legal protections and the rights found only in marriage is inherently unfair and causes significant harm to people. Our clients are living proof. They want nothing more than to build secure lives with their partners and families. ▲



Celebrating their 10th anniversary together, Jody Helgeland and Jessie Tanner (who suffers from untreated asthma due to lack of insurance coverage) are seeking the same domestic partner health benefits that the University of Wisconsin provides to married employees.



Raising a family in suburban Washington, D.C., Lisa Kebreau and Mikki Mozelle (with their son) say they want to get married to teach their children the values of commitment, stability, and love between parents in a marriage.



Mary Li, the daughter of a mixed-race marriage that was illegal at the time, did not want to witness a repeat of marriage discrimination with her partner Becky Kennedy (and their daughter Ava). They were married in Oregon, but the state Supreme Court later invalidated it.



Amy Tripi and Jeanne Vitale feel they are married “for real” and are registered domestic partners in New York City; however, they are forced to pay for individual health care costs that can be as much as \$2000 a year more than if they were married.



Florida will not allow Teresa Ardines (right), a former Miami police sergeant, to include Melissa Bruck and their sons Connor and Chandler in her health benefits and even barred Teresa from picking up their sons’ birth certificates after Melissa gave birth.



Without marriage Wade Nichols and Taiwan-born Francis Shen are forced to maintain a transnational relationship living on temporary visas, since a same-sex spouse cannot receive citizenship like in a heterosexual marriage in the U.S. or in Taiwan.

Portraits of Marriage CONTINUED



Former military men Nigel Simon and Alvin Williams have long lived as a committed couple while raising children in Maryland, and they want the state to legally recognize them as spouses.



Grandparents Virginia Wolf and Carol Schumacher raised a family over their 30 years together, but they now struggle with retirement plans since Virginia's basic retiree benefits in Wisconsin cannot be extended to Carol.

1936 **Defense of *The Children's Hour* against censorship for lesbian content**

1956 **Defense of San Francisco Bay Area gay bar (*Hazel's Inn*) raided by police**

1957 **Defense of Allen Ginsberg's *Howl* against obscenity charges for gay content**

1963 **Defense of gay man fired by U.S. Government (*Scott v. Macy*)**

Sodomy law challenge (*Enslin v. Walford*)

ALASKA

The ACLU of Alaska and the Project challenged the denial of domestic partner health and pension benefits to gay and lesbian employees of the State of Alaska and the City of Anchorage. The denial of benefits was upheld in the trial phase in 2001. The case was appealed to the state Supreme Court, which unanimously ruled in 2005 that gay and lesbian government employees must be provided domestic partner benefits in *Alaska Civil Liberties Union v. Alaska and Anchorage*.

The ACLU of Alaska testified in opposition to non-binding legislation in support of the proposed Marriage Protection Amendment to the U.S. Constitution in Congress. The measure passed in the state Senate and is awaiting consideration in the House.

CALIFORNIA

Marriage came closer to reality in California this year as same-sex couples prevailed in *Woo v. Lockyer*. The ACLU's California affiliates, along with the National Center for Lesbian Rights (NCLR) and Lambda Legal, argued in Superior Court that state laws excluding same-sex couples from marriage impermissibly discriminate based on gender and deny lesbian, gay, and bisexual people a fundamental right. Anti-gay groups have appealed the decision, and a hearing is expected in 2006.

Both houses of the California Legislature voted to end discrimination in California's marriage laws, making it the first legislature in the nation to say that LGBT people should not be excluded from marriage. The governor vetoed the bill.

The California ACLU affiliates, along with NCLR and Lambda Legal, helped to defend California's new domestic partnership law, *AB 205*, which provides same-sex couples with nearly all of the protections afforded to married heterosexuals under state law. Anti-gay groups had challenged the law, arguing that it unlawfully amended a voter initiative, *Proposition 22*, which says only a marriage between a man

and a woman is valid in California. In two lawsuits, *Knight v. Schwarzenegger* and *Thomasson v. Schwarzenegger*, the California Court of Appeals said the domestic partner law does not create "marriage by another name."

Bernardo Heights Country Club allows spouses and grandchildren to golf for free and to inherit a membership, but domestic partners may only golf as visitors a few times a year. The California affiliates and the Project filed a friend-of-the-court brief in *Koebke v. Bernardo Heights Country Club*, arguing that businesses must offer domestic partners the same family benefits they offer to married spouses. The California Supreme Court held that state law prohibits businesses from discriminating based on marital status and requires that domestic partners be offered the same family benefits as married couples. Koebke and her partner were represented by Lambda Legal.

Proponents of a ballot initiative to amend the state constitution, excluding same-sex couples from marriage and any recognition of their relationships, filed a lawsuit against the California Attorney General, claiming that he did not fairly and accurately represent the purpose and effect of the initiative in ballot materials. The California ACLU affiliates, NCLR, and Lambda Legal intervened in *Bowler v. Lockyer* in order to defend the draft ballot materials. The Attorney General prevailed in court.

COLORADO

The ACLU of Colorado successfully thwarted a pair of bills targeting same-sex relationships. *SB 140* would have prohibited any legal recognition for same-sex couples; *HCR 1002* would have enshrined such a policy in the state's Bill of Rights. Both of the measures have been postponed indefinitely.

Partnering with a local LGBT organization, the ACLU of Colorado succeeded in convincing the city of Boulder to grant equal housing occupancy rights to registered domestic partners, ending the treatment of same-sex couples as "non-related" parties.

CONNECTICUT

In August 2004, the ACLU of Connecticut and Gay & Lesbian Advocates & Defenders filed a lawsuit in state trial court on behalf of seven gay and lesbian couples challenging the denial of marriage licenses. The couples believe only marriage will provide them with the protections that they need to live securely as a family. They all have been in committed relationships for between 10 and 28 years, and many are raising children. The Connecticut Family Institute and two town clerks who object to issuing marriage licenses to LGBT people are appealing the March 2005 denial of their petition to enter into *Kerrigan & Mock, et al. v. Connecticut Department of Public Health, et al.*

The ACLU of Connecticut mobilized in support of a civil unions bill in the legislature, working with local allies on lobbying and public outreach. Unfortunately, the bill was amended to define marriage as a union between one man and one woman. Governor Rell signed the bill in April, and on October 1, 2005, Connecticut became one of the few states to create civil unions for same-sex couples without a court order.

FLORIDA

The Project and the ACLU of Florida filed a challenge before the Florida Supreme Court on behalf of six same-sex couples charging that a voter initiative, sponsored by an anti-gay legal group, threatens protections for the families of same-sex couples and violates the Florida Constitution. The proposed measure would amend the state's constitution to ban marriage by same-sex couples and civil unions, and the amendment would threaten domestic partnership laws already in place in several Florida cities. The ACLU of Florida is working in a coalition to oppose the petition and issued a report on the potential impact of the proposed amendment on existing domestic partner benefits.

GEORGIA

In November 2004, the ACLU of Georgia, along with Lambda Legal,

challenged a state constitutional amendment prohibiting state recognition of marriages and other unions of same-sex couples. The case is pending before a state trial court.

IDAHO

The ACLU of Idaho helped defeat a constitutional amendment limiting marriage to "one man and one woman" and banning any recognition of same-sex relationships from other states. The affiliate provided testimony, held a bi-partisan legislative luncheon and a conference on marriage the week before the amendment went into the Senate State Affairs Committee, and organized constituents across the state. *SJR 101* passed the legislature and will go on the ballot in November 2006.

ILLINOIS

A joint resolution in the Illinois legislature would amend the state constitution to make marriage legal only between one man and one woman. The ACLU of Illinois is fighting *HJRCA 1*, which is on hold in committee.

In cooperation with Equality Illinois and Lambda Legal, the ACLU of Illinois held several town meetings across Illinois to address the need for legal protections of same-sex relationships.

INDIANA

A proposed constitutional amendment to define marriage as between one man and one woman and bar marital status or the "legal incidents" of marriage to anyone else passed the Indiana legislature. To amend the state constitution, the proposed amendment must pass two consecutive General Assembly sessions without change before going to voters in 2008. The ACLU of Indiana lobbied and testified in opposition to the amendment and is part of a statewide coalition working to oppose the passage of *SJR 7* next year.

IOWA

Several state legislators, a congressman, and a church filed a lawsuit

1965

Challenge to police raid on San Francisco event sponsored by the Council on Religion and the Homosexual

with the Iowa Supreme Court seeking to overturn an Iowa district court decision granting the dissolution of an Iowa couple's civil union licensed in Vermont. Lambda Legal, the Project, the ACLU of Iowa, and the Lesbian, Gay, Bisexual, and Transgender Community Center of Central Iowa signed a friend-of-the-court-brief seeking the dismissal of the lawsuit. The Iowa Supreme Court upheld the dissolution in *Alons, et al, v. Iowa District Court for Woodbury County*.

1966

Challenge to Florida law outlawing gay bars (*Inman v. Miami*)

The ACLU of Iowa lobbied the legislature against a proposed amendment to the Iowa constitution that would ban the recognition of marriage for same-sex couples. The measure passed in the Iowa House but died in the Senate.

1967

Challenge to Los Angeles ordinance-making it illegal for performers to "impersonate a person of the opposite sex."

KANSAS

The ACLU of Kansas and Western Missouri ran a get-out-the-vote campaign against *SCR 1601*, a proposed state constitutional amendment reserving marriage for opposite-sex couples only and barring alternative forms of legal recognition for unmarried couples. The amendment was approved by voters in April 2005.

MAINE

The ACLU of Maine testified against a proposed amendment to Maine's constitution excluding same-sex couples from marriage. *LB 1294* died in committee.

MARYLAND

Nine same-sex couples and a widower would like to be able to marry in Maryland one day. They come from all walks of life, and some of the couples have been together for decades and raising children. On their behalf, the Project and the ACLU of Maryland, in cooperation with the ACLU of the National Capital Area and Equality Maryland, filed a lawsuit against the state for denying same-sex couples the right to marry in violation of the state constitution. The trial court sided with the ACLU in *Deane & Polyak v. Conaway* in January 2006, ruling that it is unconstitutional for the state to deny same-sex couples the ability to marry.

Challenge to deportation of gay man (*Boutillier v. INS*)

Sodomy law challenge (*Delaney v. Florida*)

The ACLU of Maryland lobbied and organized a public campaign in favor of a bill to create a registry for life partners, allowing same-sex couples the legal recognition needed to make medical and end-of-life decisions for each other. The *Medical Decision Making Act* was passed by the state legislature but was vetoed by the governor. The legislature will attempt a veto override in the 2006 session.

MASSACHUSETTS

After the landmark court decision in *Goodridge v. Department of Public Health* upholding marriage rights for all people, the Massachusetts Senate asked the state Supreme Judicial Court if a law prohibiting marriage for same-sex couples but providing all of the benefits through civil unions would satisfy the *Goodridge* ruling. The Project and the ACLU of Massachusetts submitted a friend-of-the-court brief, arguing that a separate status is inherently unequal; the court agreed. The legislature then passed a constitutional amendment prohibiting same-sex marriages but permitting civil unions. The amendment needed approval during a second joint session of the state legislature but failed in fall 2005.

After the *Goodridge* decision, city and town clerks began issuing marriage licenses to lesbian and gay couples in Massachusetts, and almost 6,000 same-sex marriages have taken place, including some non-resident gay and lesbian couples. Governor Romney and Attorney General Reilly ordered the municipal clerks to stop issuing marriage licenses to non-resident same-sex couples, relying on an archaic state law. Arguing that the use of the statute was discriminatory, the ACLU of Massachusetts filed a lawsuit, *Johnstone v. Reilly*. The affiliate is also defending the clerks of Provincetown and Somerville in another lawsuit, *Flynn v. Johnstone*, in which former Boston mayor and U.S. ambassador to the Vatican Raymond Flynn brought a lawsuit against the clerks.

MICHIGAN

In November 2004, the voters of Michigan approved an amendment to the state constitution stating, "the union of one man and one

woman in marriage shall be the only agreement recognized as a marriage or similar union.” In response, the Governor rescinded domestic partner benefits for state employees, and the city of Kalamazoo raised questions about continuing to provide benefits to its employees. The ACLU of Michigan filed a lawsuit asking a state court to clarify that the amendment does not bar public employers from providing domestic partner benefits to employees. The court ruled in the ACLU’s favor in *National Pride at Work v. Granholm and City of Kalamazoo*, but opponents appealed to a higher court, which put the benefits decision on hold while it considers the case.

A lawsuit was brought against the Ann Arbor Public Schools alleging that the city’s provision of domestic partner benefits to its employees violates Michigan’s law banning marriage for same-sex couples. The ACLU of Michigan filed a friend-of-the-court brief in support of Ann Arbor. The court dismissed *Thomas More Law Center v. Ann Arbor Public Schools*, and the Court of Appeals agreed, but opponents have requested review by the Michigan Supreme Court.

MONTANA

After a ruling by the Montana Supreme Court in 2005, Carol Snetsinger’s partner Nancy Siegel began receiving state employee spousal benefits. The court ruled in *Snetsinger v. Montana University* that the state must provide lesbian and gay employees of the University of Montana System with the option of purchasing health insurance and other employee benefits for their domestic partners. The Project and the ACLU of Montana brought a lawsuit on behalf of Snetsinger and PRIDE, Inc., a statewide LGBT advocacy organization.

NEBRASKA

In May 2005, a federal district judge struck down Nebraska’s anti-gay constitutional amendment, one of the broadest marriage exclusion measures in the country, banning any and all forms of legal recognition for same-sex relationships. The court ruled the amendment was unconstitutional for excluding LGBT people from the democratic process by denying them the ability to lobby the government for any kind of protection for their relationships. *Citizens for Equal Protection v. Bruning* is currently on appeal to the Eighth Circuit Court of Appeals.

Ryan Fette, a university student in Lincoln, Nebraska, took his partner to the County Clerk’s office on Valentine’s Day and asked for a marriage license as a personal protest. Although Fette never expected the license application to be approved in Nebraska, the clerk’s office refused to give him an application form or allow him to see any of the brochures or information about marriage available to the public. The ACLU of Nebraska contacted the clerk’s office and informed them that denying materials was a violation of the open records law. The clerk’s office apologized and agreed not to deny anyone access to these documents.

NEW HAMPSHIRE

The state legislature defined marriage in New Hampshire as “between one man and one woman,” but also created a committee to study discrimination against LGBT people. The New Hampshire Civil Liberties Union advises the committee, preparing testimony on the separation of church and state to prevent religion-based discrimination against LGBT people.

NEW JERSEY

The ACLU of New Jersey filed a friend-of-the-court brief supporting seven same-sex couples who seek the right to marry in the state. The affiliate stated that the constitutional rights of minorities may not be subjected to a majority vote, and constitutional rights cannot be read to exclude particular groups from protection. The ACLU submitted the briefs on behalf of numerous civil rights organizations including the American-Arab Anti-Discrimination Committee, the Asian American Legal Defense and Education Fund, the Hispanic Bar Association, and the National Organization for Women. The Appellate Division of the Superior Court ruled against the couples in *Lewis v. Harris*, but their appeal to the New Jersey Supreme Court is underway. The couples were represented by Lambda Legal.

NEW MEXICO

With its allies, the ACLU of New Mexico lobbied against a proposed statutory “Defense of Marriage Act.” The statute was defeated.

1970

First challenge to policy on gays in the military (*Schlegel v. US*)

1971

Challenge to anti-gay security clearance rules (*Gayer v. Laird*)

1972

First challenge to law restricting marriage to persons of the opposite sex (*Baker v. Nelson*)

Defense of Washington teacher fired for being gay (*Gaylord v. Tacoma*)

1973

Defense of San Francisco Bay Area gay man denied a security clearance (*Rock v. Department of Defense*)

NEW YORK

The New York Civil Liberties Union is representing an employee at Monroe Community College who would like her partner to have the same health care benefits as a spouse in an opposite-sex marriage. Patricia Martinez and her partner were married in Canada, and it was recognized as a civil union in Vermont. The NYCLU filed *Patricia Martinez v. The County of Monroe* in 2004.

The Project, the NYCLU, and the law firm Paul Weiss Rifkind Whar-ton & Garrison LLP are representing couples from throughout New York who wish to marry in the state. A New York court was asked to strike down marriage laws for violating state constitutional guaran-tees of equality, liberty, and freedom of speech. However, the judge upheld the marriage laws in December 2004, and an appeal was argued before a state intermediate appeals court in October 2005 in *Samuels & Gallagher, et al. v. New York State Department of Health*.

NORTH CAROLINA

The ACLU of North Carolina was part of a coalition that worked to defeat an anti-gay amendment that would have denied not only marriage to same-sex couples, which state law already accom-plishes, but would prohibit any recognition of civil unions, domestic partnerships, or similar relationships in the state.

OHIO

Because of the state constitutional amendment banning marriage for same-sex couples, criminal defendants have argued that Ohio's domestic violence statute does not apply to unmarried couples. The ACLU of Ohio submitted friend-of-the-court briefs in several of these cases, arguing that Ohio's domestic violence statute does not create a legal status approximate to marriage and is not in conflict with the constitutional amendment. Trial courts ruled different ways, and the issue is now on appeal.

OREGON

The Project and the ACLU of Oregon defended the right of Mult-nomah County, Oregon to issue marriage licenses to same-sex couples beginning in March 2004, leading to a lawsuit in which a judge ruled that depriving same-sex couples of the benefits of mar-riage is unconstitutional. However, voters passed a constitutional amendment excluding same-sex couples from marriage, and the Oregon Supreme Court subsequently reversed the earlier court decision in *Li and Kennedy v. Oregon* on grounds of mootness. The 3,022 marriages of same-sex couples that had been performed in Multnomah County were invalidated.

A trio of bills were introduced in the Oregon legislature to extend legal recognition to same-sex couples short of marriage. The ACLU of Oregon lobbied and testified in favor of *SB 1000*, which would pro-vide civil unions and add sexual orientation and gender identity to the state's non-discrimination laws. The affiliate also supported *HB 3476*, which would provide reciprocal benefits to same-sex couples without creating a state-sanctioned union. Both bills failed.

RHODE ISLAND

The ACLU of Rhode Island testified and lobbied in favor of a bill extending death benefits to all domestic partners of police or fire-fighters who die in the line of duty. *S 1209* passed the Senate but was held in the House on the last day of the session. The affiliate also supported a bill to provide insurance coverage for infertility regard-less of marital status; however, the bill did not move out of commit-tee. Two marriage bills to allow marriage for same-sex couples failed to reach a vote in either chamber of the General Assembly despite testimony and lobbying by affiliate staff.

SOUTH CAROLINA

The ACLU of South Carolina fought against a proposed constitu-tional amendment excluding gay men and lesbians from marriage. Ultimately, *HB 3133* passed, and the proposed amendment will be placed on the November 2006 ballot.



OH

Organizers of a benefit put together a punk rock concert to raise money for the ACLU of Ohio and allied LGBT rights organizations that worked against the state anti-gay marriage amendment.

SOUTH DAKOTA

In response to a legislative proposal to amend the state constitution to reserve marriage for opposite-sex couples and bar civil unions, domestic partnerships, and “other quasi-marital relationships,” the ACLU Dakotas Chapter coordinated grassroots lobbying and testified against the amendment. The proposal passed, however, and will be on the ballot in 2006.

TENNESSEE

The Tennessee affiliate lobbied in opposition to a proposed state constitutional amendment that would reserve marriage to opposite-sex couples, but the bill passed. On behalf of several organizations and citizens, a state representative, and a lesbian couple, the ACLU of Tennessee filed a challenge to the amendment. *ACLU of Tennessee v. Darnell* is currently in court, and a decision is expected in 2006.

UTAH

The ACLU of Utah lobbied on behalf of the Mutual Dependence Benefits Contract Act, which sought to reduce some of the harm done by the passage of a constitutional amendment prohibiting marriage for same-sex couples. The bill would have allowed two adults not eligible for marriage to create “mutual dependence benefits contracts” to provide for shared rights and responsibilities

regarding property ownership and health-related matters. *SB 89* died early in the session.

In April 2005, the ACLU of Utah was contacted by a professor at Utah State University who had been told by the school’s legal counsel that the new state amendment banning same-sex couples from marriage would prohibit the university from providing partner health care benefits for its employees. The affiliate advised the professor and administration officials on how the amendment would have no effect on the University. Unfortunately, Utah State would not change its policy to include partner benefits.

VIRGINIA

Legislators easily approved an amendment to the Virginia Constitution that not only prohibits marriage for same-sex couples but also civil unions, domestic partnerships, or any other legal relationship that purports to approximate marriage between unmarried individuals. *HJ 586/SJ 337* must now pass the legislature a second time in 2006 before being submitted to voters. The ACLU of Virginia and Equality Virginia are mobilizing to oppose the re-passage of the amendment.

The affiliate is working with Stand Up for Equality, a statewide coal-

1975 **Defense of gay federal employee fired for being “flamboyant”** (*Singer v. U.S.*)

1976 **Defense of gay father denied visitation with his children** (*Voeller v. Voeller*)

1977 **Challenge to university’s refusal to recognize lesbian/gay student group** (*Mississippi Gay Alliance v. Mississippi State University*)

1978 **Lawsuit against the Briggs Initiative, a measure to ban gay people from teaching in California’s public schools** (*California Federation of Teachers v. Eu*)

tion, to repeal 2004’s so-called “Marriage Discrimination Act,” prohibiting civil unions, domestic partnership contracts, or other arrangements between persons of the same sex that bestow the privileges or obligations of marriage. Lobbying against *HB 751* resulted in consideration in a committee, but the repeal effort did not move forward.

WASHINGTON

The ACLU of Washington is representing 11 same-sex couples who have challenged Washington’s statute restricting marriage to heterosexual couples as a violation of the state constitution. The couples come from across Washington and include a police officer, firefighter, nurse, college professor, retired judge, and banker among others. A trial court judge ruled in *Castle v. State of Washington* that the denial of marriage to same-sex couples is unconstitutional. The case was appealed to the state Supreme Court and arguments were held in March 2005.

WISCONSIN

The Project and the ACLU of Wisconsin filed a lawsuit against the state of Wisconsin on behalf of six lesbian state employees and their partners seeking domestic partner health insurance and family leave protections. Married employees of the state of Wisconsin are permitted to include their spouses and children on the state insurance plan and other benefits, but domestic partners are not. Several women in the lawsuit have spent significant amounts of money because their partners have no health insurance, and one woman experienced difficulty obtaining emergency leave when her partner was hospitalized. The lawsuit, *Helgeland v. Department of Employee Trust Funds, et al.*, is ongoing.



PARENTING

The Lofton-Croteau family enjoys time together at their home in Florida. Steve Lofton (front right) and Roger Croteau (back right) fought a long battle to adopt their children, but the state will not recognize gay parents in adoption.



CONTINUED
1980

New York high court strikes down sodomy law (*People v. Onofre*)

1981

Defense of San Francisco gay weekly paper against libel suit filed by police

1982

Suit for bereavement leave for San Francisco gay man whose partner died (*Brinkin v. Southern Pacific*)

1983

Privacy defense of membership lists of gay rights organizations involved in a boycott (*Solidarity v. Coors*)

1984

U.S. Supreme Court strikes down Oklahoma law targeting teachers who support gay rights (*NGLTF v. Oklahoma*)

Foreword to TOO HIGH A PRICE

By Shay Bilchik, President and CEO of the Child Welfare League of America

After learning that a number of states were likely to consider laws—and even constitutional amendments in some instances—that bar lesbian and gay people from adopting and foster parenting, the Project updated its 2002 publication TOO HIGH A PRICE. The following is from the foreword by Shay Bilchik.

Our country is in a child welfare crisis. A statement such as this is not made lightly or without substantiation. But as the nation's oldest and largest membership-based advocacy organization for children and families, the Child Welfare League of America (CWLA) recognizes the significant barriers that stand between children in foster care and the families they so desperately need. There are currently over 500,000 children in America's foster care system. Last year, over 119,000 foster children waiting to be adopted were not able to be placed with permanent families. This instability in

their lives is compounded by the fact that they are frequently shuffled from one temporary placement to another or placed in settings in which there is too little individual adult supervision. Often they "age out" of the system without ever finding the lifelong connection to a family they deserve. Imagine going through life without the love and support of a family.

Ask anyone charged with finding families for these children and they will tell you that it is a daunting task. Most prospective adoptive parents are hoping to adopt babies. Often they do not feel they have the capacity to care for the waiting children who are older, many of whom have significant physical or emotional needs, or are part of a group of siblings—in other words, most of the nearly 119,000 children waiting to be adopted. The impact of this is significant. Research shows that when children age out of the system without a

lifelong family connection they are far more likely to become homeless, drop out of school, or be incarcerated.

Finding the right home for each child is also challenging because all children have different needs. Some children do better when there are other children in the home. Others need more individual attention. While some will do better with a two-parent family, others will do equally well with only one parent. All potential parents are put through a rigorous screening process to determine which are capable of providing a safe, stable, nurturing family life for a particular child. The responsibility to match a waiting child with the best possible adoptive setting rests with trained placement case-workers. There are never enough families for these waiting children. So the task of finding a good family for each waiting child can be extremely difficult.



▲ The Project is distributing free copies of the newly released second edition of **TOO HIGH A PRICE** across the country.

An urgent need exists to try to bridge this gap between the number of children needing families and the number of families willing to love and care for these vulnerable children. That's why there is widespread agreement throughout the child welfare profession that every individual or couple interested in adopting or fostering should be considered. We simply cannot afford to systematically exclude any group of caring and loving people from an already limited pool of prospective parents. Laws and policies that ban lesbians and gay men from adopting and fostering fly in the face of well developed child welfare policy and standards by depriving children of willing and able parents.

Each prospective adoptive or foster parent should be assessed on a case-by-case basis with the overriding determining factor being the ability to love, nurture, and care for a child in need of a family. CWLA backs up this

assertion through the development and dissemination of our practice standards, known as the Standards of Excellence for Child Welfare Services, which are widely viewed as benchmarks for high-quality services that protect children and youth and strengthen families and neighborhoods.

Until recently, elected officials across the country deferred to the child welfare professionals' judgment that the system of case-by-case evaluations is the best practice. In fact, only one state in the country, Florida, bans all gay people from adopting, placing it well outside the mainstream of accepted child welfare practice. The state passed the ban in 1977 in response to an anti-gay crusade led by Anita Bryant, who was a singer and spokesperson for the Florida orange juice industry. Relying on harmful stereotypes about gay people, Bryant helped convince the legislature that the ban was needed to protect children.

At the time this law passed, there was little social science research about gay parenting to debunk the myths and stereotypes on which Bryant based her campaign. But in the nearly three decades since the Florida law went into effect, many social science studies have been conducted on the ability of gay people to parent and the development of their children. It has now been established by the research that gay people are just as capable of being good parents as heterosexual or "straight" peo-

ple, and that their children are just as likely to be healthy and well adjusted. Not a single reputable study has found that children raised by gay or lesbian parents have been harmed because of their parents' sexual orientation in any way.

Because of this research and because exclusions based on traits other than one's ability to be a good parent are contrary to good child welfare policy and practice, the Child Welfare League of America has issued a public statement supporting the parenting of children by lesbians and gay men, and condemning attempts to restrict competent, caring adults from serving as foster and/or adoptive parents. I am happy to report that CWLA is joined by every other major child health and welfare organization in this regard. These other organizations include the American Academy of Pediatrics, the American Psychiatric Association, the American Psychological Association, the National Association of Social Workers, and the North American Council on Adoptable Children. None of these organizations would take such a strong and unequivocal stand on an issue unless they were able to do so upon the basis of sound social science, established practice and our collective expertise in serving children and families.

In recent years, however, we have witnessed a disturbing trend. Lawmakers in various regions of the country have ignored

sound child welfare policy by introducing ill-conceived legislation to ban gay people from adopting and foster parenting. One does not have to look too closely to realize that this legislation is about politics, not protecting children. Prohibiting lesbians and gay men who wish to become parents from doing so goes against decades of science and child welfare practice. Moreover, it does nothing to alleviate our current child welfare crisis. We need more permanent families for our foster children, not fewer.

Misconceptions and stereotypes about gay people are especially harmful when they are used to deny children the chance to grow up in a loving, secure family. There are few easy solutions when it comes to the myriad challenges facing those who have dedicated their lives to serving children and families, but the call to prevent and eliminate laws that deny children homes is one that we all must answer. Doing so furthers our efforts to ensure that every single child in need of the love and support that only a family can offer is given every opportunity to find just that. It is time that our lawmakers put political gain aside and truly put the best interests of children first. ▲

1986

U.S. Supreme Court upholds Georgia sodomy law (*Bowers v. Hardwick*)

1987

Court requires Catholic university to recognize gay student group (*Gay Rights Coalition v. Georgetown University*)

U.S. Supreme Court rules disability discrimination laws apply to people with contagious diseases, including AIDS (*Schoolboard v. Arline*)

1988

Challenge to Dannemeyer Initiative, which would have quarantined people with AIDS (*California Medical Association v. Eu*)

In 1976, the ACLU defended a gay father who was denied visitation with his children after divorce. Since this early case, the ACLU has been committed to defending the rights of LGBT parents, not only in custody and visitation arrangements but also by challenging discriminatory laws that restrict the rights of LGBT people to parent. We recently secured a victory in a challenge to an Arkansas policy that bars gay people from foster parenting. The court issued a finding of fact confirming what we and the children's health and welfare organizations have been saying for years: gay people are just as capable of being good parents as straight people and their children are just as well adjusted. Our recent case in Arkansas illustrates existing biases against gay and lesbian parents and the need to change laws and public policy to protect all parents' rights regardless of their sexual orientation or gender identity. We affirm what leading child welfare agencies have always said about parenting: laws and family court rulings should be based on the best interest of children.

ARKANSAS

In 1999, the Project, along with the ACLU of Arkansas, filed a lawsuit in state court challenging a regulation disqualifying any person from serving as a foster parent "if any adult member of that person's household is a homosexual." In 2004, *Howard v. Child Welfare Agency Review Board* finally went to trial, and expert witnesses testified about the scientific research concerning children raised by lesbian and gay parents and the baselessness of the various stereotypes. In December 2004, the trial court struck down the regulation. The state has appealed, and the Arkansas Supreme Court will hear the case.

The Arkansas legislature considered a bill that would have banned gay men and lesbians from becoming foster or adoptive parents. *HB 1119* was later amended to ban adoption placements in any home where unmarried, cohabitating people lived. The ACLU of Arkansas lobbied against the bill, providing legislators with information about the healthy adjustment of children of lesbian and gay parents and the desperate need for adoptive and foster parents in the state. The bill died in committee.

CALIFORNIA

In three related cases, the California Supreme Court recognized

non-birth mothers as legal parents even though they had not obtained second-parent adoptions. The Court held that an adult who receives a child into her home and holds the child out as her own cannot be treated as a legal stranger to the child solely because she and the child's other parent are of the same gender. In *Kristine Renee H. v. Lisa Ann R.*, the non-birth mother had obtained a pre-birth judgment of parentage, but the Court of Appeal found it was void because a child could have only one "natural mother." In *K.M. v. E.G.*, one partner provided her eggs for in vitro fertilization and the other partner got pregnant, but when the couple split up the birth mother claimed the genetic mother was merely an egg donor. In *Elisa Maria B. v. Superior Court*, the non-birth mother tried to avoid paying child support for her disabled child, even though the two women had decided to become parents and gone through artificial insemination together. The ACLU of Northern California filed a friend-of-the-court brief arguing that equal protection and due process required the interpretation of the Family Code that was adopted by the Court.

The ACLU of Southern California filed a lawsuit against Olive Crest adoption agency on behalf of a lesbian couple, a doctor and a law student, who were pre-certified to be foster parents, but their adoption process was suspended based on a new agency policy that "prefers



AR

Craig Stooles, a librarian, and his partner Matthew Lee Howard, a teacher, have been together for nearly 20 years. The couple is raising two children, and they have sought to become foster parents in Arkansas, where LGBT people are barred from foster care.

to place children with nuclear families.” The court dismissed *Jane Brooks and Shannon Rose v. Olive Crest Foster Family and Adoption Agency* on technical grounds, and the ACLU was preparing a new complaint when Olive Crest agreed to make policy changes.

COLORADO

After adopting and raising a child together for several years, a lesbian couple broke up. In Colorado, however, only one member of a same-sex couple can be a legal parent. A trial judge found that both women should share equal parenting time and responsibilities, but the legal parent appealed. The ACLU of Colorado filed a friend-of-the-court brief in the lawsuit, *In re Parental Responsibility for E.L.M.C.*, arguing that both the child’s best interests and the law require the non-legal parent to be a part of her child’s life. A three-judge panel unanimously agreed, further prohibiting the legal parent from subjecting the child to homophobic teachings. The ACLU of Colorado also worked to help defeat a subsequent recall effort by the Colorado State Legislature against the judge who decided this case.

FLORIDA

After a five year battle, the ACLU’s lawsuit challenging Florida’s notorious ban on adoption by gay people ended in January 2005 when the United States Supreme Court declined to take the case. A

three-judge panel of the 11th Circuit Court of Appeals upheld the law in 2004, and the full 11th Circuit Court refused to take the case in a bitterly divided 6-6 vote. While *Lofton v. Secretary of Florida Dept. of Children and Families* did not succeed in court, the courageous families brought national attention to the irrationality of denying children the benefits of adoption just because their caregivers are gay, and to the senselessness of throwing away qualified adoptive parents when thousands of children are waiting to be adopted. The ACLU of Florida is an active participant in the Coalition for Fair Adoption, which is seeking to end Florida’s blanket exclusion of lesbians and gay men from consideration as adoptive parents.

GEORGIA

Days after a lesbian mother filed for child support from the biological father, his current wife called the Department of Family and Children Services (DFCS) and made an anonymous report against the mother citing domestic abuse, drug use, and involvement in a lesbian relationship. Although an investigation yielded no evidence of domestic abuse or drug use, a juvenile court took away the mother’s children because she is a lesbian, despite the recommendations of DFCS, a child advocacy organization, and the court-appointed guardian. The ACLU of Georgia assisted with the mother’s appeal. In December 2004, the Court of Appeals unani-

CONTINUED
1988

Federal courts rule that federal law protects people with AIDS from discrimination (*Chalk v. District Court; Doe v. Centinella Hospital*)

1989

Federal court overturns discharge of gay man from the military (*Watkins v. U.S.*)

New York courts recognize gay families (*Braschi v. Stahl*)

1990

Consent decree establishes prisoners with HIV have right to equal treatment and access to prison programs (*Gates v. Deukmejian*)

CIA agrees to stop discriminating against gay employees (*Dubbs v. CIA*)



MO

Dawn Roginski and Lisa Johnston, at their 2002 commitment ceremony, are ideal foster parents by all accounts. Johnston works in child development and Roginski is a chaplain at a psychiatric treatment center for children.

mously reversed the decision of *In re E.C. and S.C.* in the juvenile court, reuniting the children with their mother and her partner in time to celebrate Christmas together.

MICHIGAN

The ACLU of Michigan published an educational booklet, *Families Under Attack*, which tells the stories of local LGBT families at risk due to lack of legal protections under state law. The booklet is the final product of the affiliate's "Story Project" that collected stories of LGBT families around the state. Five thousand copies of the booklet have been printed and distributed throughout Michigan.

The ACLU of Michigan is lobbying in support of *HB 5399*, an adoption bill introduced in the Michigan State House of Representatives that would amend the state adoption code to specifically allow two unmarried persons, including same-sex couples, to jointly adopt a child.

MISSOURI

The Missouri Department of Social Services denied the application of a lesbian to serve as a foster parent because of her sexual orientation, despite finding that Lisa Johnston, who has years of child welfare educational and professional experience, is "exceptionally qualified." The decision came even as the agency was struggling to

find homes for 2,000 foster children. The Project and the ACLU of Kansas and Western Missouri filed a lawsuit, *Johnston v. Missouri Department of Social Services*, which is currently in state trial court.

The ACLU of Eastern Missouri and the ACLU of Kansas and Western Missouri collaborated with PROMO, the Missouri statewide LGBT rights organization, to host community forums throughout the state to discuss gay parenting issues and legislative strategies to strengthen protections for LGBT people.

NEW JERSEY

The ACLU of New Jersey helped a lesbian couple who were expecting a child gain the right to have both partners recognized as legal parents and listed on their child's birth certificate. In obtaining a court order, the ACLU argued that denying the non-biological lesbian mother the same parent-child status to which a male heterosexual would be entitled does not serve the best interests of the child. In a first-of-its-kind ruling, the judge based his decision on New Jersey's artificial insemination law, which deems a non-biological spouse a child's parent when consenting to artificial insemination.



Scott Emanuel, project coordinator at the ACLU of Eastern Missouri, addresses a crowd in St. Louis as part of the affiliate's campaign to foster dialogue on LGBT families and their lack of legal protections.

PENNSYLVANIA

The ACLU of Pennsylvania lobbied against a proposed bill that would create a court approval requirement for surrogate parenting arrangements and would allow approval only for heterosexual married couples in which the wife is determined to be infertile. The ACLU pointed out the bill's many practical difficulties in addition to its exclusion of all but married opposite-sex couples.

A proposed bill would comprehensively revise Pennsylvania's Adoption Act to end second parent adoption, adoption by same-sex couples, and even adoption by unmarried individuals. The ACLU of Pennsylvania is working with other LGBT and childrens' rights organizations to keep the anti-family amendments in *SB 637* from moving out of committee.

TENNESSEE

The ACLU of Tennessee lobbied in opposition to a bill that sought to prohibit people from serving as foster parents if they or someone in their household is gay or lesbian. *SB 1924/HB 2230* failed.

UTAH

The ACLU of Utah testified and submitted a letter citing problems with the proposed Uniform Parentage Act, which would allow only

married people to legally contract with surrogate mothers, therefore denying the same right to same-sex couples in Utah who wish to start a family. *SB 14* passed without changes to the problematic provisions.

VIRGINIA

The ACLU of Virginia is representing a non-biological mother whose ex-partner moved from Vermont to Virginia in order to avoid a custody ruling from the Vermont court with which she disagreed. A Vermont court ruled that the biological mother was in contempt of court for trying to avoid its ruling, but litigation in Virginia is before the Virginia Court of Appeals.

Under Virginia law, new birth certificates can be created for adopted children, replacing the birth parents' names with those of the new adoptive parents. However, the Department of Vital Records refused to change the birth certificates of Virginia-born children adopted by same-sex couples in other states. The Department claimed the application form was not designed to accommodate the names of same-sex parents since Virginia does not allow same-sex couples to adopt jointly. The ACLU of Virginia filed a lawsuit, and the Virginia Supreme Court ruled in *Davenport v. Bowser* that new birth certificates be issued to all adoptive parents regardless of sexual orienta-

1991

Minnesota courts recognize domestic partnership in guardianship case (*In reKowalski*)

California court overturns Concord anti-gay rights initiative (*BANGLE v. City of Concord*)

1992

Kentucky Supreme Court strikes down sodomy law (*Commonwealth v. Wasson*)

New York courts allow adoption by gay partner (*Adoption of Evan*)

tion, including children born in Virginia who are jointly adopted out-of-state by a same sex-couple.

The ACLU of Virginia helped defeat a bill that would have placed statutory restrictions on adoptions by gays and lesbians. The affiliate lobbied against an outright ban on such adoptions, then further lobbied against a compromise bill that would have added sexual orientation to the already established list of factors used in determining the fitness of prospective adoptive parents. While the compromise bill *HB 2921* did pass the House, it died in committee in the Senate.

WASHINGTON

The Project and the ACLU of Washington filed a friend-of-the-court brief in support of the non-biological lesbian mother of a child in a custody dispute. The court recognized in *Carvin v. Britain* the concept of “de facto parents,” allowing the non-biological mother the opportunity to prove in a trial court that she is a parent to the child and therefore eligible to seek custody or visitation.

WEST VIRGINIA

After Christina Smarr’s death, her parents sought to take custody of her son away from her partner, Tina Burch, who was raising the child with Smarr. The Project filed a friend-of-the-court brief urging the West Virginia Supreme Court not to separate the four-year-old boy from his surviving parent. The Court ruled in *Burch v. Smarr* that Tina Burch is a psychological parent and awarded her permanent custody of her son.



YOUTH & SCHOOLS

Student journalists at East Bakersfield High School in California speak out after their student newspaper was censored for discussing LGBT issues.

1995

Virginia court gives custody to boy's grandmother over objections of lesbian mom (*Bottoms v. Bottoms*)

1996

1996 Federal court rules FBI illegally fired San Francisco doctor with HIV who did physicals on agents (*Doe v. Attorney General*)

U.S. Supreme Court strikes down Colorado constitutional amendment which would have prevented lesbians and gay men from being protected by civil rights laws (*Romer v. Evans*)

Federal Defense of Marriage Act enacted

The Other O.C.

By Chris Hampton, Public Education Associate

Santiago High School's sprawling campus is like any other in sunny Orange County. Teenage couples hang around holding hands during class breaks and at lunchtime exchange brief kisses. After seeing other couples express their affection on campus daily for years, Charlene Nguon didn't think twice about giving her girlfriend, Trang Nguyen, a quick peck on the cheek before heading off to class.

Charlene and Trang are pretty typical California 17-year-olds. They consider the beach their special place because "it's just beautiful any time of the day," according to Charlene. "It's where we go to escape." They like playing Xbox video games together and listen to a lot of emo and indie rock bands like Keane and Death Cab for Cutie. When you call Charlene's cell phone, a Dashboard Confessional song plays out in its entirety before you can leave a message. "We're doing fine," goes the song, "We're doing nothing at all."

The girls met during their freshman year when they were both in a life science class. "We didn't talk at all until seating was changed," said Charlene. "But then they sat us next to each other and we got to be friends." It was over a year before anything romantic happened between them. "I was sort of in denial," Charlene said. Eventually, Trang confessed her feelings, "and then I finally realized I liked her, too."

Charlene and Trang had been dating for a few more months before they started feeling confident enough to let their affection show at school like their classmates. Once they did, however, it wasn't long before the school took notice. One day in December of 2004, the couple was standing outside near the parking lot talking with a straight couple. Both couples were hugging as they talked, and a school staff member came up behind them, tapped Charlene on the shoulder, and said, "Getting hot and heavy?" The staff

member went on to say that nobody was allowed to hug and kiss at school. While Charlene and Trang were sent to the principal's office for more lecturing, the straight couples carried on in the parking lot without any interference.

Over the next few months, Charlene and Trang were singled out for punishment several more times for small displays of affection while straight couples acted much the same way nearby. One of Charlene's friends took photos of straight couples kissing right in front of school officials without any repercussions. This didn't stop the principal from punishing Charlene and Trang. He even called Charlene's mother and told her that Charlene is a lesbian. Fortunately, Charlene's mother, while initially taken aback at the news, became more understanding and supported her daughter throughout the school's repeated punishments. In March, Charlene and Trang were each suspended

from school for a week. After word of the suspension got out, a letter inviting Charlene to join the National Honor Society ended up in the trash.

“That was totally devastating,” recalled Charlene, who had always maintained very good grades in school. “I was ranked 20th out of 421 students at my school. I want to go to a good college, and being in National Honor Society could have really helped me with that.”

Eventually, the principal told Charlene she could no longer attend Santiago High School. Charlene registered at another school, which changed her daily commute from an easy ten-minute walk to a four-and-a-half mile bike ride. That was when the ACLU intervened, suing the school district on Charlene’s behalf. While the lawsuit continues, Charlene was allowed to return to Santiago at the beginning of her senior year.

▲ **Charlene Nguon hugged and kissed her sweetheart while on the campus of her high school in Orange County, CA just like many other students, but Charlene was suspended because her affection was shared with another girl.**

In an assembly early in the school year, the principal used what was supposed to be time allotted to discuss standardized test scores with the entire student body to defend his position, claiming that he isn’t prejudiced.

“I was sort of amused and irritated at the same time when he did that,” said Charlene. “It’s pretty normal at school for the time being, though,” she added. “Trang and I are just really careful.” She hopes the lawsuit ends before she and Trang graduate. Looking to the future, she says she’s not sure what she wants to study in college. “I’ve always been interested in other cultures, so maybe something international,” Charlene said, adding, “Then again, now I’m kind of wondering whether I might want to go to law school.” ▲



1997

South Carolina drops its ban on insuring people with HIV (*Doe v. SCHIP*)

Federal court strikes down state law against lesbian and gay student groups (*GLBA v. Alabama*)

New Jersey becomes first state to expressly authorize joint adoption by gay couples (*Galluccio v. New Jersey*)

U.S. Supreme Court strikes down law restricting gay materials on the Internet (*ACLU v. Reno*)

1998

Federal court in Utah reinstates lesbian high school coach (*Weaver v. Nebo School District*)

Schools can be an insecure environment for LGBT youth and educators. The ACLU took action against a California initiative to ban gay people from teaching in state public schools in 1978, and we continue our efforts to make the classroom safe and free for LGBT people. The Project's Youth & Schools program defends free expression in public schools, demands that learning environments do not encourage bullying and violence, and helps educators create an atmosphere respectful of students' sexual orientation and gender identity. With the marked increase in the number of students who were censored or punished for wearing gay supportive t-shirts and denied permission to form Gay-Straight Alliances, the ACLU's work on behalf of LGBT youth in schools has never been more relevant.

ALABAMA

When the principal of a public high school in Alabama prohibited students from wearing t-shirts bearing the slogan "Gay? Fine by me" at school, the ACLU of Alabama sent a letter to school officials advising them to lift the restriction that violates students' First Amendment rights. In response, the school changed its policy and allowed students to wear the t-shirt to school. In another incident, the ACLU of Alabama sent a letter to the school principal after complaints about anti-gay harassment, explaining the school's obligation to prevent student harassment and offering resources to help address the problem.

ARKANSAS

The Arkansas legislature considered a bill that would have prohibited schools from endorsing or promoting "any form of marriage that is contrary to the definition of marriage in the Arkansas Constitution" in textbooks or any other form of instruction. The ACLU of Arkansas lobbied against the "School Textbook Marriage Protection Act," emphasizing that it would have a chilling effect on speech, and *HB 1136* was defeated.

CALIFORNIA

Student editors at East Bakersfield High School were shocked

when administrators censored a series of articles in the student newspaper about sexual orientation and gender identity. The Project and the ACLU of Southern California represented five students and the Gay-Straight Alliance Network, who filed a lawsuit in *Paramo v. Kern High School District* to stop the censorship. The school eventually agreed to allow the articles to run in the student newspaper, *The Kernal*, in November 2005. See copies of the articles at aclu.org/caseprofiles.

In *Ramirez v. LAUSD*, the ACLU of Southern California brought a lawsuit on behalf of LGBT students, the Gay-Straight Alliance Network, and a GSA advisor claiming anti-gay harassment and discrimination at Washington Prep High School. Students perceived to be gay or lesbian were verbally and physically attacked by peers with impunity by teachers and staff who called the students "sinners." The case was settled with an agreement to provide three years of anti-harassment training at the school.

The ACLU of Southern California filed a lawsuit on behalf of Charlene Nguon and her mother in September 2005. *Nguon v. Garden Grove Unified Board of Education* was filed after the principal at Santiago High School singled out Nguon for discipline a number of

times for displaying affection with her girlfriend and then told her that either she or her girlfriend had to transfer to another school. Straight students routinely show affection to one another without being disciplined.

The ACLU of Southern California drafted the language for the *Safe Place to Learn Act* and coordinated lobbying efforts with Equality California and the Gay-Straight Alliance Network. The law would permit the state superintendent of schools to withhold educational funding for school districts found liable for violating their anti-harassment and safe schools obligations.

Ann Long was dismissed from her position as editor of the student newspaper for not obtaining parental permission before writing about gay students. The ACLU of Southern California, along with the California Safe Schools Coalition and the National Center for Lesbian Rights, sent a demand letter to the school reminding them of Long's rights and the school's obligations.

COLORADO

Students at Palmer High School in Colorado Springs formed a gay-straight alliance club, but the school refused to recognize it. Without school approval, students could not meet on school property on the same terms as other groups, post club-related information at the school, use the school public address system for announcements, or appear in the yearbook. The ACLU of Colorado brought a lawsuit on the students' behalf in federal court, *Palmer High School Gay/Straight Alliance v. Colorado Springs School District No. 11*, and the school agreed to provide equal treatment for the club.

FLORIDA

The Panhandle Chapter of the ACLU of Florida assisted students at Tate High School in exercising their right to free speech by participating in a Day of Silence protest against LGBT discrimination. The principal told students they were prohibited from wearing armbands and threatened to discipline anyone who participated in the



These t-shirts with the slogan "Gay? Fine by me." were banned by school officials in Alabama.



▲ "Know Your Rights" palm cards, key outreach tools in the Project's Youth & Schools program, are being passed around in public schools across the country. The Project partnered with GLSEN to help distribute over 100,000 cards in as many public schools as possible.

CONTINUED
1998

Federal court in New York upholds “don’t ask, don’t tell” (*Able v. U.S.*)

Oregon court finds state’s health insurance policy, which denies benefits to domestic partners, violates the state constitution (*Tanner v. OHSU*)

1999

Maryland court strikes down sodomy law (*Williams v. Glendinning*)

Mississippi high court permits son’s visitation with gay father and partner (*Weigand v. Houghton*)



Rosa Villasenor, now 18 and graduated, led her fellow students on a successful campaign against LGBT harassment in her California high school.

event. After a Chapter attorney met with the principal and explained the students’ First Amendment right to engage in this form of protest at school, the Day of Silence was allowed to go forward, and about 70 students participated.

GEORGIA

The ACLU of Georgia represents several LGBT public school students who have suffered harassment, retaliation, and censorship because they sought to form a gay-straight alliance. After significant advocacy by the affiliate, the White County School District agreed to allow the students to form a GSA but then summarily eliminated all extracurricular clubs.

The ACLU of Georgia lobbied against a bill that seeks to hinder the formation of gay-straight alliances at public schools by requiring parental permission as a condition of student participation in extracurricular clubs. The legislative action ended when the State Board of Education proposed a similar regulation. The Georgia affiliate provided written and oral testimony, participated in strategy sessions, and helped organize other advocacy groups. The Board of Education rejected the proposed regulation by a vote of 10 to 3.

HAWAII

The ACLU of Hawai’i and the Project are representing three young people—a 17-year-old male-to-female transgender girl, an 18-year-old lesbian, and an 18-year-old boy perceived to be gay—in a federal civil rights lawsuit against Hawai’i Youth Correctional Facility (HYCF). The young people were abused and harassed because of their sexual orientation and gender identity while at HYCF. In *R.G., et al. v. Koller, et al.*, the affiliate is requesting that HYCF establish policies, procedures, and training to prevent further abuse of LGBT youth in their care.

ILLINOIS

An Illinois middle school stripped a student council president of her position when learning she is bisexual after she ended a relationship with another girl. School officials also changed the student leader’s class schedule and removed her from band class in order to separate her from her ex-girlfriend. The ACLU of Illinois reminded school administrators that taking away her student council position was discriminatory, and they agreed to restore the student’s position as council president and her original class schedule.



Kerry Pacer, Coretta Scott King, Lindsay Pacer, and Charlene Hammersen were presented with awards at the ACLU of Georgia's 2005 Bill of Rights Awards Dinner. The late Mrs. King, in one of her last public appearances, was honored with the affiliate's National Civil Liberties award. The young women, White County High School students, were recognized with Student Civil Liberties awards for their efforts to create a Gay-Straight Alliance.

KENTUCKY

In 2003, the ACLU brought a lawsuit on behalf of students who wanted to form a GSA club at Boyd County High School. The ACLU won, and the Boyd County Board of Education agreed to enact anti-harassment policies and conduct mandatory student trainings. However, the school board has failed to develop an appropriate training for all students to attend. After negotiations with the board, the ACLU has returned to court to seek enforcement of the initial agreement in *Boyd County High School Gay Straight Alliance v. Board of Education*. In February 2005, the Alliance Defense Fund filed a lawsuit to shut down the training. The Project and the ACLU of Kentucky intervened in that lawsuit, *Morrison v. Boyd County Board of Education*, on behalf of five students in the original GSA, and one parent of a student who wants to have an anti-harassment training at the school. Meanwhile, the ACLU of Kentucky is working with a broad statewide coalition to advance *HB 405*, legislation that would address anti-LGBT harassment and bullying in schools.

MASSACHUSETTS

The ACLU of Massachusetts is working on a public education and awareness campaign with a citizens' group in Lexington, Massachusetts and surrounding communities to stop efforts by anti-gay groups to prevent school children from reading some books, including *What*

Makes a Family, about two families with gay parents. The affiliate is also fighting to prevent anti-gay groups from extending a current state law requiring schools to provide parental notice and an opt-out from sex education curricula on any discussion of lesbian or gay parents.

MICHIGAN

Officials at Clare High School in Clare, Michigan refused to grant permission for a gay-straight alliance to form and be recognized as a non-curricular club at the school. After the ACLU of Michigan sent a letter to the school district advising administrators of their legal obligation to treat GSA's the same as other clubs, the gay-straight alliance was formally approved.

A Lansing, Michigan student wanted to start a GSA but the principal refused her request. Over the summer, she went to Lansing Pride and picked up one of the Project's "Know Your Rights" palm cards from a booth sponsored by the ACLU of Michigan. When the student approached the principal about starting a GSA again, she showed him the card and told him the ACLU had said to call if she had any problems. The principal backed down immediately. Sixteen students showed up for the first meeting of the high school GSA.

Nevada becomes 11th state to pass a gay employment rights law

Challenge to dismissal of high-level state transgender employee is successfully settled (*Doe v. Kansas*)

New Jersey Supreme Court extends legal doctrine of “psychological parent” to parents in same-sex relationship (*V.C. v. M.J.B*)

Transgender Northern California high school teacher successfully defeats efforts to take away her teaching credential (*Warfield v. California Commission on Teacher Credentialing*)

MINNESOTA

The ACLU of Minnesota filed a federal lawsuit on behalf of two students and their parents against Maple Grove High School for denying them equal access to school facilities and failing to publicize meetings of their gay-straight alliance club. The affiliate corresponded with officials of the large school district in suburban Minneapolis, reminding them of the students’ right to form a gay-straight alliance in school. When administrators refused to recognize the club, it filed a lawsuit.

The ACLU of Minnesota provided trainings on anti-gay harassment and LGBT students’ rights at several high schools and conducted an LGBT students’ rights workshop for activists who attended a lobby day organized by the statewide LGBT organization, OutFront Minnesota.

MISSOURI

LaStaysha Myers, a heterosexual 15-year-old student in Webb City, Missouri was twice sent home from school for wearing homemade t-shirts in support of a gay classmate who had previously been censored for wearing pro-gay t-shirts. One of her t-shirts bore several handwritten slogans, “I support the gay rights!” and “Who are we to judge?” The other had a rainbow and the Webster’s dictionary definition of gay: “Merry, happy.” After the Project and the Kansas and Western Missouri affiliate filed a lawsuit, *Myers v. Thornsberry*, the school district agreed in June 2005 to allow LaStaysha to wear her t-shirts.

The Missouri House of Representatives considered a bill that would provide protection for students from bullying and discrimination based on actual or perceived characteristics, including sexual orientation. The ACLU of Eastern Missouri advocated in support of the bill, particularly at the LGBT Equality Lobby Day in Jefferson City. *HB 843* did not come to a vote in the legislative session but will likely be reintroduced in 2006.

NEBRASKA

A gay-straight alliance club at a high school in rural Norfolk,

Nebraska invited the ACLU of Nebraska’s Legal Director to speak at a school assembly on marriage, the Patriot Act, and students’ rights. Students are allowed to attend other assemblies instead of their regularly scheduled classes if they have permission slips from parents, but the principal refused to honor this policy for the ACLU speaker. Earlier in the month, the principal allowed students to be excused from class with permission slips for an abstinence-only speaker sponsored by the Bible Club. After negotiations with the ACLU of Nebraska, the school backed down, and students were allowed to attend the assembly.

NEVADA

The ACLU of Nevada lobbied for the passage of *AB 210*, a safe schools initiative that mandates training on, and reporting of, harassment of protected groups. Although the bill does not specifically address LGBT harassment, the training and reporting requirements will apply to harassment based on sexual orientation in the two largest school districts in the state, which already prohibit LGBT discrimination.

NEW JERSEY

L.W., a student in the Toms River schools, was subjected to peer harassment and bullying based on his perceived sexual orientation. As he progressed through school, the harassment increased in frequency and severity, and L.W. ultimately transferred to another school district. The ACLU of New Jersey and several child advocacy organizations filed a friend-of-the-court brief on the student’s behalf in *L.W. v. Toms River Board of Education*, urging a court to interpret anti-discrimination laws to apply to school children subjected to bias-based bullying.

NORTH CAROLINA

The ACLU of North Carolina intervened when a high school refused to allow a student club to use the name “Gay-Straight Alliance” because they did not want to draw any attention. The affiliate sent a letter explaining the students’ right to use the name they chose, and the school changed its position.



OH

Zach Hust's t-shirt caught the ire of Ohio school officials who demanded he take it off, but protests from fellow students and intervention by the ACLU restored his right to free expression.



MO

LaStaysha Myers was censored for wearing gay-themed t-shirts in her Missouri high school.

In response to student concerns, the ACLU of North Carolina sent a letter to a high school to ensure that students would be permitted to exercise their First Amendment rights and participate in the 2005 Day of Silence, a national event protesting discrimination against LGBT youth by remaining silent in school. Administrators at the school agreed to allow students to express themselves in this way.

OHIO

The ACLU of Ohio sent a letter to Dublin Jerome High School officials demanding that they stop censorship of a group of students who wanted to wear t-shirts in support of marriage for same-sex couples. Student Zach Hust was told to take off a t-shirt that read "I support gay marriage" after administrators claimed that another student had been offended by it. The next day, about 20 students protested the action by coming to school in similar t-shirts. The school conceded and allowed the students to wear their t-shirts.

OKLAHOMA

The ACLU of Oklahoma represented a student's attempt to form a gay-straight alliance at his central Oklahoma public high school. In addition to barriers in starting a GSA, the student was subjected to religious proselytization in class by one of his teachers. The affiliate persuaded the school district to allow the GSA to form.



MO

The ACLU of Eastern Missouri lead workshops and distributed materials to students from 20 school districts who attended the statewide 4th Annual Gay-Straight Alliance Convention in St. Louis.

Federal appeals court rules that HIV+ candidate for police department has the right to be “protected from discrimination founded on fear, ignorance or misconceptions.” (*Holiday v. City of Chattanooga*)

Religious Liberty Protection Act, which would have set up religious defenses to civil rights actions, is derailed

Vermont becomes the first state to establish civil unions

U.S. Supreme Court rules that public universities can collect student activities fees even from students who object to LGBT student groups (*Southworth v. Grebe*)

TEXAS

In March 2005, in response to a public high school’s refusal to allow students to start a gay-straight alliance, the Project and the ACLU of Texas sent a letter to Rockwall High School demanding a change in their decision. As a result, the GSA was allowed to meet.

UTAH

A Provo High School student was worried that he and his same-sex date would be turned away from their prom because two years earlier a faculty member had turned a female couple away at the prom. The ACLU of Utah provided the student with information about his rights and contacted the Provo High School principal and the district superintendent, who allowed the student to attend the prom with his date.

VERMONT

The ACLU of Vermont was instrumental in drafting and lobbying for two safe school bills, both of which were signed into law in 2005. *H 113* protects LGBT students by requiring every public school’s anti-harassment policy to include sexual orientation. Schools must also meet stringent investigation and reporting standards when a complaint of harassment is made. *H 629* requires schools to have policies and to provide training to prevent bullying.

VIRGINIA

The ACLU of Virginia helped defeat a legislative proposal to prohibit gay-straight alliance clubs in high schools. The House passed *HB 2868*, but the Senate did not consider it.

WEST VIRGINIA

The ACLU of West Virginia sent a letter to a school after it barred a student from bringing his same-sex date to the prom. The affiliate reminded the school of the various laws against discrimination and their legal obligation to recognize all students’ rights. After receiving the letter, the school permitted the student to bring his date.

WISCONSIN

The administration of Hartford Union High School in Hartford, WI cancelled the 2005 Day of Silence one week in advance of the event. Students in the school’s GSA worked with administrators in the planning process, but the principal abruptly cancelled the event citing fears of disruption and public opposition. Students, parents, and teachers requested that the school board allow the Day of Silence as it has done in past years, but to no avail. The ACLU of Wisconsin is assisting students in considering their legal options and to ensure that the school does not cancel the event next year.



DISCRIMINATION

Louise Bizzari (front left) and her partner Barbara Hackett (front right) tell the press about discrimination they faced while at a health care center in upstate New York. The couple are joined by Project staff attorney Sharon McGowan (back left) and Barrie Gewanter (back right), Executive Director of the ACLU Central New York Chapter.

Federal court strikes down challenge on religious grounds by Pat Robertson-funded legal group to Louisville's law banning sexual orientation and gender identity discrimination (*Hyman v. Louisville*)

Federal appeals court upholds San Francisco law requiring any company that does business with the city to recognize domestic partnerships (*ATA v. San Francisco*)

New York high court holds that housing policy which favors married students discriminates against lesbians and gay men (*Levin v. Yeshiva University*)

Cruel and Unusual

By Joel Engardio, Public Education Specialist

His burglary sentence was four years, but Roderick Johnson's punishment in a Texas jail included brutal prison rape by unsupervised inmates. Johnson, who is gay, testified that he was repeatedly raped and sold as a sex slave by prison gangs. He told the jury that inmates could purchase sex with him by paying the gang that "owned" him with items from the prison commissary that cost as little as three dollars. Johnson filed multiple complaints and requested transfer to a safe area or another jail, but prison officials denied his pleas—even, he testified, telling him that he must "fight or fuck." Finally after 18 months, Johnson was moved into a wing for vulnerable prisoners once the ACLU learned about his case and intervened.

Johnson served the remainder of his term without reporting any more sexual assaults. At first it was unclear if Johnson

could sue the prison for discrimination based on sexual orientation. But the ACLU won a landmark ruling from a federal appeals court allowing his case to go forward. The ACLU had argued that Johnson was targeted for being gay and was denied his Eighth Amendment right to protection against cruel and unusual punishment. The federal appeals court unanimously agreed in September 2004.

Johnson and the ACLU took the case to trial in September 2005. The statistics seemed to be on Johnson's side: Human Rights Watch had identified Texas as the worst state in the nation for prison rape. The Department of Justice found that prisoners in Texas reported six times as many allegations of inmate-on-inmate sexual violence as any other state.

In court, current prisoners testified that they saw Johnson being forced into sexual

acts while prison officials ignored his screams for help. However, prison employees testified they could not validate his rape claims because there was no medical evidence Johnson was raped, and he often changed his stories. Defense attorney David A. Harris said Johnson lied in court about his cocaine use. The defendants also told the jury that Johnson was someone who "wore tight pants" and flirted with guards.

"Their strategy was a typical response to rape allegation for female victims," said Johnson's lawyer Margaret Winter, "to challenge their credibility and say they are promiscuous." Winter is the Associate Director of the ACLU's National Prison Project.

After deliberating for eight hours over two days, the jury of six men and six women returned a 10-2 verdict against Johnson. The Texas Department of Criminal Justice



▲ Roderick Johnson sued officials for not protecting him from rape and sexual torture by other inmates while in a Texas prison.

officials at the Allred Unit near Wichita Falls were found not liable for the raping of Johnson.

Juror Randy Shelton told the Associated Press he didn't think there was enough evidence of the assaults. "He probably was [raped]," Shelton said. "But he never came out with a rape test."

Despite the defeat, Johnson's trial has made a difference. The case establishes the right of a gay inmate to sue for damages for discrimination based on sexual orientation and raises public awareness of the problem of prison rape and abuse.

"Now the people in Texas and the world know something about the hell that Texas prisoners are experiencing," Winter said.

Johnson is disappointed by the jury's decision but is grateful that his case was able

to shed light on a problem few know about. "This case was never about money, but about justice," Johnson said following the October 18, 2005 verdict. "For me, I will continue to fight for other victims of prison rape, struggle to raise awareness of the problems they confront, and find solutions for protecting them." ▲

CONTINUED
2001

Federal appeals court rules that public officials cannot compel minors to disclose their sexual orientation to family members (*Sterling v. Minersville*)

Minnesota court strikes down sodomy law (*Doe v. Watson*)

Federal court rules that emergency medical personnel cannot be forced to take HIV tests (*Doe v. An Oregon Resort*)

2002

Federal appeals court issues decision allowing gay man to sue the police for failing to protect him because of his sexual orientation (*Swidriski v. Houston*)

Since the 1950's, the ACLU has been defending LGBT people from discrimination. When a San Francisco gay bar was raided by police in 1956, the ACLU stepped in to fight the illegal harassment, an unpopular move at the time. Over the years, the ACLU has fought LGBT discrimination on several fronts—from challenging “sodomy” laws to advocating for civil rights that protect LGBT people.

ALABAMA

The Alabama legislature considered a bill to prevent public libraries and other public entities from purchasing or making available any materials related to “a lifestyle or action prohibited by the sodomy and sexual misconduct laws of the state.” The ACLU of Alabama testified and lobbied against *HB 30*, which died in committee.

ARKANSAS

For the first time in Arkansas history, a bill was introduced in the legislature to add sexual orientation to the state’s civil rights laws. The ACLU of Arkansas led the lobbying effort in support of *HB 2751*. The bill died in committee but inspired public discussion about the need for civil rights protections for gay people in Arkansas.

CALIFORNIA

For years, the City of Berkeley, CA gave free space in its marina to the Sea Scouts, which are affiliated with the Boy Scouts of America. The city informed the Scouts that they must comply with federal and municipal regulations preventing discrimination on the basis of religion or sexual orientation in order to maintain their relationship with the city. The Sea Scouts filed a lawsuit against the city, but an appellate court concluded that the city did not violate their rights. *Evans v. City of Berkeley* is currently on appeal in the state Supreme Court. The California affiliates jointly filed a friend-of-the-court-brief, arguing that the appellate decision creates the correct balance between the city’s interest in preventing discrimination and a private organization’s right of “expressive association.”

The ACLU of Southern California filed a lawsuit against the Old Baldy Council of the Boy Scouts for fraudulently obtaining \$15,000 in federal taxpayer funds to sponsor its recruitment activities. The Boy Scouts signed a certification of compliance with state and federal anti-discrimination laws, but they prohibit LGBT people and anyone who refuses to swear an oath to God to be members or employees. The District Court ruled in favor of the Scouts in *U.S. ex rel Glenn Goodwin v. Old Baldy Council of the Boy Scouts of America, Inc.*, but the ACLU has appealed to a federal appeals court.

COLORADO

The ACLU of Colorado lobbied and testified in favor of *SB 028*, which would have expanded the state’s employment discrimination laws to include sexual orientation and gender identity. The bill passed both houses of the state legislature, but supporters were unable to overcome the governor’s veto.

The ACLU of Colorado supported a bill allowing health insurance carriers to offer benefits for domestic partners and their dependents. *SB 235* has been signed into law.

DELAWARE

The ACLU of Delaware spearheaded a coalition in support of outlawing discrimination based sexual orientation in employment, housing, public accommodations, public works contracts, and insurance. The measure passed in the Republican-controlled House, but stalled in the Democratic-controlled Senate and did not make it out of committee.

DISTRICT OF COLUMBIA

Article 125 of the Uniform Code of Military Justice prohibits sodomy by service members. In the wake of the Supreme Court's decision in *Lawrence v. Texas*, the Project and the ACLU of the National Capital Area filed friend-of-the-court briefs in several military appeals arguing that the military could not criminalize consensual sodomy. The military courts have concluded that the military may still punish consensual sodomy when special military interests are implicated, although they have overturned several sodomy convictions as well.

FLORIDA

The Panhandle Chapter of the ACLU of Florida assisted a man in Ft. Walton Beach who was arrested for prostitution after he invited a man, who turned out to be an undercover police officer, to his apartment to have consensual sex. The judge threw out the case, citing *Lawrence v. Texas*. The chapter is monitoring the police for other bogus "prostitution" arrests for consensual sexual activity between same-sex partners.

In June, after a county library put up a display in honor of gay pride month, the Hillsborough County Commission enacted a policy barring county participation in gay pride events. The ACLU has participated in community organizing, including a town hall meeting, in response to the county's action.

GEORGIA

A lesbian member of the Druid Hills Golf Club filed a complaint with the Atlanta Human Rights Commission since the club does not afford people in same-sex relationships the same benefits as married people. The commission found the club in violation of a city law that prohibits businesses from discriminating on the basis of marital status or sexual orientation. The ACLU of Georgia wrote a letter defending the constitutionality of the law and advocating for punitive action against the club. However, the state legislature passed a statute, *HB 67*, which took away the power of municipalities to outlaw discrimination against unmarried people.



San Francisco Foundation CEO Sandra Hernandez, M.D., honoree Tanya Neiman, Ambassador James Hormel, ACLU of Northern California Executive Director Dorothy Ehrlich, and Neiman's partner Brett Mangeles celebrate achievements in LGBT rights. The ACLU of Northern California presented Neiman, Director of the Volunteer Legal Services Program of the Bar Association of San Francisco, with the "On the FrontLine Award" for her contributions in protecting the rights of LGBT people and those living with HIV and AIDS.

Federal appeals court rejects claim that decision to allow transgender woman to use women's room violates freedom of religion (*Cruzan v. Minneapolis*)

Unprecedented settlement calling for district-wide reforms of Northern California case involving harassment of LGBT high school students (*Loomis v. Visalia Unified School District*)

First state appeals court ruling that constitutional equality rights prohibit firing of public employee because of her sexual orientation (*Davis v. Pullman Memorial Hospital*)

HAWAII

The ACLU of Hawaii filed a lawsuit to stop enforcement of *Act 50*, a state law that gives unbridled discretion to public officials to ban an individual from any public place for up to a year. The lawsuit was prompted by a security guard who banned a man from the Hawaii State Library because he used one of the public computers to access www.gayhawaii.com, a resource Web site for the LGBT community. Meanwhile, the affiliate lobbied in support of a bill repealing *Act 50*, which passed the legislature and is set to become law. The original lawsuit has been dropped.

The City of Honolulu decided to use public funds to promote the evangelical beliefs of the Hawaii Christian Coalition and bar participation of LGBT groups in the 2003 Family Day Parade. In response to three lawsuits brought by the ACLU of Hawaii, the city and county of Honolulu agreed to ensure gay rights groups cannot be blocked from participating in city-sponsored events and that taxpayer funds will no longer be used to promote one religion over others.

ILLINOIS

The ACLU of Illinois fought two bills in the legislature that would have repealed *SB 3186*, the amendment to the Illinois Human Rights Act that added sexual orientation and gender identity as protected categories. The bills were put on hold in committee.

The ACLU of Illinois lobbied against *HB 1063*, which would amend the Illinois Human Rights Act to provide a broad exemption for religious employers and nonprofits who act "in conjunction" with a religious institution. Secular social service agencies and hospitals who have some relationship with a religious institution would be allowed to discriminate against LGBT people, so long as the discrimination was motivated by religious tenets. The affiliate provided a detailed fact sheet, organized meetings, drafted an alternative amendment, and lobbied house leadership. The amendment died.

The ACLU of Illinois worked to restore a public accommodation anti-

discrimination law that the legislature passed but courts subsequently failed to apply as intended. The ACLU re-drafted the previous bill to clarify and strengthen it, found a Republican co-sponsor, organized a coalition of disability advocates, and negotiated amendments with the Illinois State Medical Society and the Catholic Conference. However, the House leadership refused to allow *HB 1000* to go to the floor for a vote.

KANSAS

The ACLU of Kansas and Western Missouri published an LGBT rights handbook specific to Kansas and Missouri. The affiliate also provided continuing legal education in areas of concern to LGBT people—estate planning, child custody, and employment law—with the Kansas Bar Association, the first time the state bar sponsored LGBT-related training.

In February of 2000, Matthew Limon had just turned 18 and was living in a residential school for developmentally disabled youth in Miami County, Kansas when he was arrested for having consensual oral sex with another boy who was just days from his 15th birthday. Although Kansas has a law that makes penalties for statutory rape less severe when the case involves two teenagers, the law only applies to opposite-sex couples. Instead of the maximum 15-month sentence he would have gotten if he were straight, Limon was sentenced to 17 years and two months in prison. The Project and the ACLU of Kansas and Western Missouri assisted Limon for several years, first as a friend of the court and then as counsel appealing his case to the U.S. Supreme Court, which sent his case back to the Kansas courts. In 2004, *Kansas v. Limon* reached the Kansas Supreme Court, which finally overturned his conviction and freed him in 2005.

LOUISIANA

The ACLU of Louisiana lobbied in the legislature on a number of proposed bills. The affiliate helped draft and introduce a bill seeking to prohibit employment discrimination based on actual or perceived sexual orientation (*HB 571* was cancelled in the House but may be

introduced in the Senate next session). Affiliate staff testified in support of one bill that sought to prohibit discrimination and harassment on the basis of sexual orientation in state government (*HB 317* passed out of committee but failed on the floor), and another prohibiting harassment, intimidation, and bullying of students on the basis of sexual orientation (*HB 540* was deferred). The Louisiana affiliate testified against legislative proposals to confine certain books and materials in public libraries to areas designated exclusively for adults in reaction to the gay-themed children's book *King and King* (*HCR 119* & *HR 79* failed in committee).

MAINE

The ACLU of Maine testified and lobbied in support of a bill forbidding the denial of rights based on sexual orientation in employment, housing, public accommodations, credit, and education. *LB 1196* passed, signed by the governor, and survived a challenge at the ballot box in November 2005.

The ACLU of Maine conducted an oral history project in collaboration with Bowdoin College to document oral histories of same-sex couples in Maine. "Our Neighbors, Our Selves: Same-Sex Couples in Maine" included a photo/narrative installation and online presentation.

MARYLAND

The *Hate Crimes Penalties Act* would expand the state's hate crimes law to include gay, lesbian, bisexual, and transgender people. The ACLU of Maryland testified in support of the bill, generated action alerts, spoke to the media, and worked with a coalition to fight a possible referendum challenge, which ultimately did not take place. In May 2005, the legislation was enacted into law.

MICHIGAN

The Michigan affiliate is lobbying in support of *HB 4956*, an amendment to the state's civil rights act that would add sexual orientation and gender identity to the categories protected against discrimination. *HB 4956* is currently in a House committee.



Mathew Limon, seen here in his mug shot from 2000, is now free and rebuilding his life.

The ACLU of Michigan lobbied against a bill permitting doctors, medical professionals, and hospitals to deny medical services to patients based on religious or moral beliefs and refuse to provide any kind of treatment to LGBT patients. The bill passed out of the House, but died in committee in the Senate.

With the support of the Gill Foundation, the ACLU of Michigan organized "Get Equal" trainings for advocates throughout the state on techniques and strategies for achieving LGBT civil rights in Michigan.

MONTANA

The ACLU of Montana lobbied to pass a number of measures in the legislature. A statewide anti-bullying bill protecting LGBT students passed the Senate, but fell one vote short in the House. An amendment to add sexual orientation to the protected classes in the state's hate crimes law was narrowly defeated in the House. A bill to add sexual orientation to the state's far-reaching anti-discrimination law passed the Senate, but died in committee in the House.

NEBRASKA

The Nebraska State Historical Society refused to allow an LGBT activist to speak in opposition to the nomination of a homophobic

Effort by rural Kentucky school district to avoid recognizing a gay-straight alliance by banning all extra-curricular clubs fails (*Boyd County High School Gay-Straight Alliance v. Board of Education*)

Federal appeals court requires school officials to take effective, preventive measures when they learn that LGBT students are being harassed (*Flores v. Morgan Hill Unified School District*)

Successful lawsuit for Arkansas student outed by school officials and then disciplined (in part by being forced to read the Bible) for talking about being gay (*McLaughlin v. Pulaski County Special School District*)

state senator to the Nebraska Hall of Fame. The ACLU of Nebraska intervened, which led to an apology, and the hearings will be reconvened in 2006 to allow all testimony to be offered.

NEVADA

Don Troxel had an agreement to lease space to establish a new nightclub in Las Vegas. When the owners found out it would be a gay bar, however, they refused to sign the lease. The ACLU of Nevada represented Troxel in a lawsuit against the owner. *Celebrity Las Vegas v. World Entertainment Centers* was settled when the city helped Troxel find a more desirable alternative location.

The ACLU of Nevada filed a friend-of-the-court brief in a Lambda Legal appeal brought by Darlene Jespersen, who was fired from her position as a bartender at Harrah's Casino in Reno for refusing to wear makeup. A federal appellate court upheld the lower court dismissal of *Jespersen v. Harrah's Operating Co., Inc.*, but the entire appeals court voted to rehear the case.

The ACLU of Nevada successfully lobbied for passage of *AB 5*, amending the Nevada Equal Rights Commission law to establish a state public policy against discrimination in public accommodations based on sexual orientation. The law also empowers the Commission to investigate such complaints.

NEW HAMPSHIRE

The legislature passed sweeping changes to the Medicaid program, and the state Department of Health and Human Services was given wide discretion to disseminate new program rules and guidelines to the public. The New Hampshire Civil Liberties Union is investigating new changes to the Medicaid program that may discriminate against LGBT people by limiting their ability to pass property to surviving partners and other family members.

The New Hampshire Civil Liberties Union successfully lobbied against a bill that would have repealed the state's hate crimes law,

which includes protections for sexual orientation discrimination. The bill was resoundingly defeated on a full vote of the legislature.

NEW JERSEY

The ACLU of New Jersey is actively supporting legislation to amend the state's non-discrimination law to include gender identity and expression. *S 2437/A 3678* appears to have strong support and will be considered during the next legislative session.

NEW MEXICO

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.

NEW YORK

The Project and the New York Civil Liberties Union filed a discrimination lawsuit on behalf of a Utica couple, Louise Bizzari and Barbara Hackett, who were kicked out of the wellness program at the Charles T. Sitrin Health Care Center because they are lesbians. Bizzari suffers from severe osteoarthritis and other medical conditions and needs to use the facility's public pool to avoid losing her leg. *Louise M. Bizzari and Barbara A. Hackett v. Charles T. Sitrin Health Care Center, Inc.* awaits trial.

The New York Civil Liberties Union is lobbying and conducting public outreach in support of a proposal in New York City that would identify and address discriminatory practices and create equal opportunities. *Int. 512-A* would move the city from a passive system that responds to individual complaints of discrimination to a comprehensive and proactive system that involves partnerships between city agencies and community advocates. Thirty-two council members have signed on as sponsors of the bill, and an initial hearing was held in April 2005.

The New York affiliate is supporting a bill before the New York State Assembly that would outlaw discriminatory practices of insurance companies based on a person's sexual orientation. A 2678 would also make it illegal for a company to inquire about a person's sexual orientation in its insurance application process.

OKLAHOMA

Since April 2005, the ACLU of Oklahoma has been fighting efforts to censor children's books in the Oklahoma County Metropolitan Library System; books being threatened include *King and King*, *Daddy's Roommate*, and *Heather Has Two Mommies*. The affiliate joined with local allies to rally supporters to attend meetings of the library commission, speak against censorship, and make hundreds of calls to Oklahoma County residents. Due to the increased public awareness, the library commission has not removed the books or changed its policy.

In response to an Oklahoma County policy protecting county employees from employment discrimination based on sexual orientation, the state legislature attempted to void any state or local anti-discrimination policy protecting LGBT employees. The ACLU of Oklahoma and its allies lobbied against the bill, which failed in committee.

PENNSYLVANIA

Wilkes Barre police officers stopped a man for a traffic violation and then taunted him about "looking gay" and severely beat him. The ACLU of Pennsylvania assisted in defending his disorderly conduct and resisting arrest charges, as well as advising on a potential civil rights lawsuit against the officers.

The ACLU of Pennsylvania awaits a court decision in *Hartman v. City of Allentown*, a challenge to an anti-discrimination city ordinance passed in 2002 that included sexual orientation and gender identity. The affiliate filed friend-of-the-court briefs on behalf of a number of church, community, and business organizations in support of the Allentown ordinance.

A proposed amendment to the Pennsylvania Human Relations Act would add prohibitions against discrimination on the basis of sexual orientation and sexual identity. The ACLU of Pennsylvania is working with the Center for Lesbian and Gay Civil Rights and other organizations to build legislative and public support for the amendment.

RHODE ISLAND

A bill to establish the crime of "indecent exposure/disorderly conduct" was opposed by the ACLU of Rhode Island because it unduly empowered the police, who have used similar measures in the past to justify raids on a gay theater. The bill died in committee.

TEXAS

The ACLU of Texas filed a lawsuit in federal court in April 2002 on behalf of Roderick Johnson, a gay African-American prisoner who was subjected to gang-run sexual slavery in a Texas penitentiary. In September 2004, the U.S. Court of Appeals for the Fifth Circuit ruled that government officials may not discriminate based on sexual orientation and Roderick could sue prison officials for not protecting him from rape and sexual abuse by other prisoners. In September 2005, a Texas jury found the prison officials not liable. The Project and the ACLU's National Prison Project assisted the Texas affiliate in *Johnson v. Johnson*.

UTAH

The ACLU of Utah represented a woman before the Utah State Tax Commission who was appealing the denial of her application to obtain three personalized license plates with gay-positive messages: "GAY WE GO," "GAYS R OK," and "GAY RIGHTS." The commission approved the personalized license plates, a first-of-its-kind decision by the state body that had never previously accepted any application containing the word "gay."

VIRGINIA

The ACLU of Virginia lobbied on behalf of *SB 1077*, which would have repealed Virginia's sodomy law. The measure, stating that "human

California enacts legislation providing the best domestic partnership protections in the nation except for Vermont

U.S. Supreme Court strikes down all remaining sodomy laws, ruling that same-sex relationships deserve the same respect accorded heterosexual relationships (*Lawrence v. Texas*)

U.S. Supreme Court orders Kansas courts to reconsider case of boy given 17 years in jail for having consensual gay sex (if he had had relations with a girl, his sentence could not have exceeded 15 months) (*Kansas v. Limon*)



An artist's rendition of a Utah license plate that state authorities would not allow. After pressure from the ACLU, the state of Utah reversed its policy against using the word "gay" in personalized plates.

carnal knowledge" is not a crime when all persons are consenting adults, failed in the state Senate.

WASHINGTON

Working closely with LGBT organizations, the ACLU of Washington organized phone banks targeting members in key legislative districts and held an online campaign to lobby for passage of a bill that would add sexual orientation to the state's broad anti-discrimination law. *HB 1515* passed by a wide margin in the House, but was defeated in the Senate by just one vote in 2005. In January 2006, the affiliate and partners reintroduced the measure for the 29th time in as many years. In a surprising move, the Washington legislature passed the bill into law.



TRANSGENDER

Diane Schroer, an Army veteran, accepted a position at the Library of Congress, but the job was rescinded because she is transgender.

North Dakota Supreme Court overrules a decades-old decision stripping gay parents of custody rights after a divorce (*Damron v. Damron*)

Massachusetts Supreme Court opens marriage law to same-sex couples (*Goodridge v. Department of Public Health*)

Tennessee appellate court strikes down a family court order barring a gay dad from coming out to his own son (*Hogue v. Hogue*)

New York permits same-sex couples, like heterosexual couples, to get unemployment benefits if one leaves a job to move with the other (*Newland v. Unemployment Compensation Appeals Board*)

Fit to Serve

By Lexi Adams, Major Gifts Officer

"I knew I was different before I was old enough to remember things."

Diane Schroer grew up outside of Chicago, the youngest of three boys in an all-American 1950's family. Yet, she says, "My earliest memories are of just feeling I should be a girl and wondering why I wasn't." Over the next four decades, Diane would do everything she could to push those feelings out of her mind, box them up, and keep them secret.

Instead, she pushed herself toward a demanding and all-consuming career in the U.S. Army, following in the footsteps of her father and her two older brothers. After 25 years of distinguished service, the 49-year-old veteran retired as a Colonel in the Special Forces. She specialized in fighting international crime and insurgency in, as she dryly puts it, "the world's garden spots"—Colón, Panama; Port-au-Prince, Haiti; Kinshasa,

Congo; Cairo West, Egypt and a few yet-unnamed." Over the course of her career, she completed over 450 parachute jumps, received numerous medals and decorations, and ultimately led an \$8 billion highly classified anti-terrorism operation.

Diane's ability to keep a secret served her well in her military career, but ultimately put too much strain on her personal life. After leaving the Army in 2004, she began researching gender issues online. "Things I'd not comprehended before started rapidly falling into place and making sense," she said. "I realized I could finally fully become who I've always known I was inside."

Diane had a difficult decision to make, but she was unhappy enough to take the risk. As she told ABC's "20/20" this fall, "I think when I learned enough to understand what it was that I was really feeling, I could either hide that, or I could acknowledge to

the world that I was in fact a woman. And receive their acknowledgement back."

She began coming out to her family, as well as friends from the military, who were largely supportive. "It was a tremendous relief," she recalls.

However, there were still many obstacles in her path. After a stint at a private homeland security consulting firm in Washington, D.C., during which she was undergoing hormone therapy and living as a woman everywhere except at work, Diane began searching for a new career.

When she saw the job listing for a Terrorism and International Crime Research Analyst at the Library of Congress's Congressional Research Service, she thought she'd found the perfect fit in a position for which she was exceptionally qualified. The Library of Congress agreed. After all, she had 25 years of

experience in counter-insurgency and counter-terrorism in the Special Forces, holds masters degrees in History and International Relations, and maintains a 16,000-volume home library collection on military history, the art of war, international policy, and political philosophy.

The hiring process for the position with the federal government took several months, during which Diane's name and gender had not yet been legally changed. Finally, in December 2004, Diane was offered the Research Analyst position, which she happily accepted. But she wanted to explain her transition honestly to her new employer before beginning work.

She invited her new supervisor out to lunch, where they discussed the position and her qualifications for it, as well as her start date and her future colleagues. Over the course of the meal, Diane informed her supervisor that she was transgender and in the process of transitioning under her doctor's care. As Diane recalls, her supervisor asked "good questions," including whether she should change the name on the official hiring documents to Diane. The next day, Diane received a phone call from her new boss, letting her know that after a "long, restless night," she had decided that Diane would not be "a good fit" for the Library of Congress after all.

Knowing that just 24 hours before she had been considered the strongest candi-

date for the position and that her references had been told that she had already been hired, Diane was stunned. "My first instinct was just to walk away from it, but then I felt really hurt and insulted," she says. "For 25 years, I went to every god-forsaken hellhole anyone could conceive, without so much as a whimper...only to be told I was not good enough to work for the federal government."

Frustrated, Diane contacted the ACLU. Today, with the Project's help, she is challenging the withdrawal of her job offer in federal court. As her Project attorney, Sharon McGowan, points out, "Diane is still the same exact person that the federal government knew it wanted when it hired her."

Diane's case has attracted national attention, but it hasn't fazed her. She is living full time as a woman and working as an independent consultant. In her free time, Diane sails, rides her two Harley-Davidsons, and spends time with her friends and her three dogs. Almost all of Diane's lifelong friends have been wonderfully supportive of her transition. "This kind of experience makes you examine what's really important in life and question your perspectives. And it has all very poignantly reminded me that the most important thing in life is good friendships." ▲

ADAPTED FROM AN EARLIER ESSAY BY CHRIS HAMPTON



▲ Army veteran Diane Schroer speaks at the Project's 2005 Summer Attorney Reception in New York

San Francisco Mayors Gavin Newsom and Jason West permit first same-sex marriages in the country

Legal challenges to laws restricting marriage to opposite-sex couples launched in New York, California, Oregon, Maryland, and Washington

Federal Marriage Amendment goes down to defeat in U.S. Senate

Housing authorities in New York and California are persuaded to allow domestic partners of tenants to live in Section 8 housing

Gender nonconformity has long been used as an excuse to persecute all LGBT people. The ACLU has been a leader in ending discrimination and advancing public education about gender identity and transgender people. In fact, the ACLU of Southern California established a Transsexual Rights Committee back in 1982. The ACLU works to include gender identity in nondiscrimination laws, raises awareness of the types of harms that transgender people face, and brings impact lawsuits to change biased laws against transgender people in employment, schools, and public accommodations.

CALIFORNIA

In testimony to the San Francisco Human Rights Commission, the ACLU of Northern California asserted the right of intersex people to control decisions over altering their bodies through surgery or hormone treatment. The ACLU argued that performing genital surgery on infants for cosmetic purposes violates laws prohibiting genital mutilation and the child's right to privacy, harms reproductive and sexual capacity, and diminishes options for expressing gender identity. The ACLU argued that doctors ought to wait until children have the capacity to decide for themselves what procedures, if any, to undergo.

DISTRICT OF COLUMBIA

The Project and the ACLU of the National Capital Area are representing Diane Schroer, a 25-year veteran of the U.S. Army whose job offer with the Library of Congress was rescinded after she revealed that she was in the process of transitioning from male to female. While still presenting as a man, Schroer applied for and accepted a job with the Library of Congress as a senior terrorism research analyst. Although her future boss raised no objections when they discussed her transition and desire to start work presenting as female, the offer was then withdrawn. Schroer's ongoing case has placed transgender rights in the national spotlight, garnering a feature on the ABC news magazine "20/20" in October 2005.

HAWAII

The ACLU of Hawaii lobbied and testified on behalf of a pair of bills that would prohibit discrimination based on gender identity and expression as well as sexual orientation in employment and housing.

Both *HB 1450* and *HB 1715* were approved in the state legislature but vetoed by the governor.

ILLINOIS

The ACLU of Illinois represents a transgender woman in a custody battle in which the biological mother is seeking to take custody from the transgender parent because of her gender transition. Although the family court has recommended that the parties settle this custody dispute, the biological mother and the court have not pushed for a final resolution. The transgender woman retains custody of her child for now.

MICHIGAN

Schneider Carriers, a trucking line, has an informal policy prohibiting transgender employees from using bathrooms that correspond to their gender identity and expression. The ACLU of Michigan asked Schneider to reconsider the policy, but it will only allow bathroom use according to the gender listed on state issued-identification or drivers' licenses. Unfortunately, the Michigan Secretary of State's office has a policy of allowing gender marker changes only for individuals who have completed sex reassignment surgery. As this policy leaves out many transgender individuals, the ACLU of Michigan is working with the transgender community to advocate for a more inclusive policy.

The ACLU of Michigan coordinated a series of legal clinics across the state for the transgender community and recently produced a Transgender Legal Issues Manual to provide the transgender community with relevant legal information.



Liz, a client of TransLatina, a transgender services program at the Hispanic AIDS Forum, wants to be treated fairly in public accommodations.

NEW MEXICO

The ACLU of New Mexico represented a transgender woman parolee who was being required to present as a male during her visits to her parole officer. With the assistance of the Project, the affiliate sent a demand letter asking the Department of Corrections to change its discriminatory stance. In April 2005, the Department agreed to do so, and the parolee is now permitted to live as a woman at all times.

NEW YORK

The New York Civil Liberties Union testified in support of a bill that would amend a human rights law in Albany County to include transgender people and co-hosted a town hall meeting on the subject. The bill has been temporarily pulled.

The Project has joined a coalition of organizations supporting the Sylvia Rivera Law Project's negotiations with the state Board of Health to allow transgender people to change the gender designation on their New York birth certificates.

The Project's lawsuit *Hispanic AIDS Forum v. Estate of Bruno*, originally filed in 2001, is pending before a trial court. The Hispanic AIDS Forum (HAF) was forced out of its home of 10 years in

Queens because other tenants in the building complained about HAF's transgender clients using the restrooms. A state appeals court ruled in 2005 that the state's law against sex discrimination does not apply to transgender people using the restroom. However, other issues, including disability claims, are still pending before the trial court.

NORTH CAROLINA

Teri Lovo-Ciccione filed a petition for a spousal visa for her El Salvadoran husband, Jose Lovo-Lara, who was legally working under a temporary immigration visa. The petition was denied because Lovo-Ciccione is transgender. The ACLU appealed the decision to the federal Board of Immigration Appeals, based on her female North Carolina birth certificate and valid marriage in the state. The Board of Immigration Appeals ruled that the government has no basis for refusing to recognize the marriage for immigration purposes.

A student at a public community college was told by the school administration that all women participating in the graduation ceremony would be required to wear a dress or a skirt. After the ACLU of North Carolina contacted the school, the administration changed the policy prior to graduation.

Arkansas court strikes down state regulation that banned gay people and anyone living in a household with a gay adult from being foster parents (*Howard v. Child Welfare Agency Review Board*)

Montana Supreme Court rules that University of Montana System must provide its LGBT employees equal benefits for their domestic partners (*Snetsinger v. Montana University System*)

Lawsuits filed in Michigan, Utah, Georgia, Tennessee, and Florida challenging measures amending state constitutions to prohibit legal recognition of same-sex couples

OREGON

The ACLU of Oregon is part of a coalition that drafted language and built support for an amendment to the anti-discrimination ordinance in the City of Eugene that would add gender identity. A vote on the measure has been put on hold while disagreements with identity requirements on state-issued licenses are resolved.

TENNESSEE

The ACLU of Tennessee lobbied in support of a bill that encouraged the study of health disparities, including transgender people's health issues. Although *HJR 0091* passed, transgender disparities were dropped from the bill.

TEXAS

Erica Hill, a 36-year-old African-American transgender woman who has identified as a female since a young age, works as a Certified Nursing Assistant at a nursing home in San Antonio. After an offsite administrator visited the nursing home, Hill's supervisor told her not to return until she agreed to "dress her gender." Hill wore unisex scrubs identical to those worn by all other CNA's, male or female. Hill ultimately decided not to pursue litigation against her former employer.



HIV/AIDS

The ACLU of Illinois and the AIDS Foundation and supporters rally at the state capitol to call attention to a number of HIV prevention and AIDS health care bills.

U.S. Supreme Court refuses to hear appeal of federal appeals court decision upholding Florida's ban on adoption by lesbians and gay men (*Lofton v. Florida*)

West Virginia high court takes custody of a child away from his grandparents and awards it to his nonbiological mother, applying the "psychological parent" doctrine to same-sex couples (*Burch v. Smarr*)

Rural school district in Missouri capitulates when the ACLU files suit, representing a student who was disciplined for wearing a gay-positive t-shirt to school (*Myers v. Webb City High School*)

Get Out of Town

By Paul Cates, Public Education Director

At first Joelle McClain thought the stress of moving her family from Mississippi to Peru, Indiana was causing the nagging cold-like symptoms that wouldn't go away. But days after moving into the Hill Top Farm Apartments in August 2005, she was forced to check into the local hospital. She was initially diagnosed with a virus, but it persisted. After several more bad weeks, the doctors tested her for HIV. She was stunned when the tests came back positive.

"I just couldn't believe this was happening to me," said Joelle. "It wasn't until the second test results came back that it started to sink in."

Joelle had moved to Peru with her husband and daughter to be closer to her husband's work as a truck driver. They were new to the area and didn't have any friends to turn to for support. They had become friendly with another couple in the

building, and Joelle's husband relied on them to get back and forth from the hospital. Not realizing the reaction she was about to receive from her neighbors in the complex, Joelle told the couple that she was newly diagnosed with HIV.

The husband in this couple, who is a maintenance worker for the apartment complex, told the apartment manager, Kathy Scott. Scott confronted Joelle and asked her point-blank if she was HIV positive. Joelle answered honestly that she was. A few days later, Joelle found an eviction notice on her door. Having paid the rent on time, Joelle went to Scott for an explanation. At first Scott refused to answer her, but Joelle pressed her on it. Eventually, Scott admitted that she was evicting her because she had received complaints from neighbors about her health and that they were afraid that they could catch HIV. Joelle offered to provide Scott with literature explaining that





▲ The Midwestern town of Peru, Indiana seemed like an inviting place for Joelle McClain's family to relocate, but they were soon driven out of town when neighbors in her apartment complex discovered she was diagnosed with HIV.

her neighbors were not at risk, but Scott refused to take it. Joelle contacted the ACLU AIDS Project, which agreed to represent her in the eviction proceedings.

Unfortunately, things got even worse for Joelle and her family at the apartment complex. Their neighbors shunned them and even made nasty comments to Joelle when she was in the public areas of the complex. The family also received numerous threatening phone calls. All of this was very difficult for Joelle and her daughter, who were often at the apartment alone while Joelle's husband was on the road for work. The family was also dealing with Joelle's recent HIV diagnosis, which was difficult enough for the family.

"My husband understands how I got HIV and that it wasn't my fault," said Joelle. "But it's been very difficult on our family. While I know he's sticking by me 100 percent, he still has a lot of anger about it."

Eventually, the family decided it wasn't worth it to stay and fight the eviction. Peru, Indiana, which was the birthplace of Cole Porter, had proven to be inhospitable to the

Joelle family. In November, the family moved to Clare, Michigan, so that Joelle could be closer to her parents and other family members. After what happened in Peru, she decided to tell their new landlord upfront about her HIV status. The new landlord assured her it wouldn't be a problem.

This move turned out to be a good one for the family. Joelle has been reunited with her 11-year-old son, who had been living with his father. Her son took the news about her HIV very hard at first, but after some education he's now doing much better. Being closer to her extended family has been a big support to Joelle, who was recently also diagnosed with lymphoma and diabetes.

The Project was also able to resolve a lawsuit against Joelle. Even after Joelle and her family were forced out of their home, the landlord continued the litigation claiming that the family had caused damage to the apartment. The landlord finally agreed to drop the claims, but Joelle was forced to give up the security deposit she had put down for the apartment.

"I'm living proof that this disease can happen to anyone," said Joelle. "But this disease has been around long enough that people should realize that you're not going to get HIV just from being someone's neighbor." ▲

Illinois becomes the 15th state to prohibit sexual orientation discrimination and the 5th to outlaw gender identity discrimination

Board of Immigration Appeals grants spousal visa to El Salvadorean husband of male-to-female transgender native, rejecting the argument that their marriage cannot be recognized by immigration authorities because of the federal Defense of Marriage Act (*Petition of Lovo-Lara*)

Arkansas Board of Cosmetology affirms that a person with HIV cannot be banned from practicing cosmetology

The ACLU has fought discrimination against people with HIV and AIDS since the pandemic began, and created the AIDS Project in 1986. The U.S. Supreme Court ruled in 1987 that people with HIV or AIDS are covered under disability laws, and the Project has supported HIV prevention efforts and defended the rights of people with AIDS in health care access, on the job, in housing, and while in prison. Constitutional protections do not end with an HIV diagnosis, and the ACLU's legal and educational strength will be put to even greater use in the next year.

ARKANSAS

Alan Dugas was expelled from his cosmetology school in Paragould, Arkansas in early 2005 after disclosing that he is HIV positive to an instructor. The school said a State Board of Cosmetology regulation barred individuals with infectious diseases from studying or practicing cosmetology. The Project, along with the ACLU of Arkansas, sent a demand letter to the Board of Cosmetology requesting that it publicly clarify that this regulation does not bar individuals with HIV from practicing cosmetology. The Board immediately agreed, instructed Hair Tech Beauty College accordingly, and in September 2005 adopted a new regulation affirming that HIV is not transmittable in cosmetology activities.

CALIFORNIA

The ACLU's California affiliates lobbied against a proposal in the California legislature that would change the state's federal reporting of HIV cases from a unique code to people's actual names.

COLORADO

John Couture was hired by Bonfils Memorial Blood Center in Denver to work as a phlebotomist as part of a mobile blood collection team. When Couture disclosed his HIV status to the employer, he was fired, then later rehired in an inferior position in Bonfil's production department. The ACLU of Colorado and the Project filed a friend-of-the-court brief arguing that simply having HIV does not make him a legitimate risk to blood donors. The Tenth Circuit Court upheld a lower court ruling against Couture.

ILLINOIS

The ACLU of Illinois investigated the legitimacy of a genetic testing service in Chicago after it placed advertisements in the gay press claiming "Many People Are Resistant to HIV." The affiliate persuaded the business to remove this line because of the possibility that such an assertion could be misunderstood and lead persons to practice unsafe sex.

The ACLU of Illinois opposed a bill that called for all Illinois libraries to have filtering software that censors constitutionally-protected materials, including information about HIV/AIDS prevention. The affiliate prepared a fact sheet with examples of censored Web sites to legislators and the Illinois Library Association. *HB 2458* was defeated in committee.

ACLU of Illinois lobbied against bills requiring mandatory HIV testing of all prisoners, including an unsuccessful request to amend one bill to make the testing voluntary. Both proposed bills failed.

NEBRASKA

The ACLU of Nebraska testified against a bill that would criminalize sexual contact for persons who are HIV-positive if they do not disclose their status to partners. The bill remains in committee.

In 2004, the Project and the ACLU of Nebraska filed a lawsuit on behalf of a 19-year-old woman who was fired from her job as a restaurant hostess in a small town when her boss discovered that

she is HIV positive. *Priscilla Doe v. A Nebraska Restaurant* settled out of court in 2005.

NEW YORK

The New York Civil Liberties Union represented Sue Denis, a health teacher who was disciplined for teaching a state-mandated HIV lesson to her sixth grade class in 2003. In March 2005, Sag Harbor School District agreed that Ms. Denis did not violate the District's code of conduct.

TEXAS

The ACLU of Texas drafted a bill and lobbied to enact legislation authorizing disease control programs to combat the spread of infectious and communicable diseases, including HIV, hepatitis B, and hepatitis C. The legislation would provide people with needle exchange, education on transmission and prevention, and assistance obtaining substance abuse treatment and other health services. *SB 127/HB 2005* made it to a vote in the Senate but failed in a House committee.

WYOMING

The ACLU of Wyoming lobbied against a bill that would increase criminal penalties for any prison inmate with a life-threatening disease who propels certain objects at corrections or detention officers. The bill is targeted at inmates who are HIV-positive. The bill passed but was modified to a sentencing enhancement under more limited circumstances.



Hair Tech Beauty College in Paragould, Arkansas (shown in above photo) expelled student Alan Dugas out of an irrational fear of HIV transmission. At the Project's urging, a state agency clarified that a person living with HIV/AIDS poses no threat in cosmetology school or practice.

About Us

THE ACLU

The American Civil Liberties Union is headquartered in New York City and coordinates with independent affiliate offices in 47 states and the District of Columbia (California has three affiliates in San Francisco, Los Angeles, and San Diego/Imperial Counties). The national office maintains chapters in North and South Dakota, Wyoming, and Puerto Rico. Most of the direct legal, legislative, and public education work is handled by the affiliates. As experts in their own backyards, this report illustrates the breadth of affiliates' efforts in lobbying, litigating, and advocating on behalf of LGBT and HIV/AIDS issues.

The affiliates and the national ACLU share the same commitment to defend the basic rights guaranteed to all by the federal constitution, especially the Bill of Rights. National staff members consult with affiliates in setting priorities and developing strategies, managing cases and campaigns, and taking the lead on important national lawsuits. The affiliates operate with their own Boards of Directors and staff, litigation docket, local and state legislative lobbying, and public education campaigns. The state affiliates are linked to the national by electing the governing board of the national ACLU and sharing financial support with the headquarters. People who join the national ACLU automatically become members of a state affiliate. Donations are shared between the local affiliate and national.

THE PROJECT

The combined Lesbian & Gay Rights Project and the AIDS Project are part of the ACLU's Legal Department. Our staff are specialists in constitutional law and civil rights who undertake impact litigation to change the law, advocacy to improve public policy, and outreach to move public opinion on the rights of LGBT people and persons living with HIV and AIDS. Nine staff lawyers monitor legal work regionally. The public education team ensures that our litigation informs and impacts the general public, and the development team helps raise the necessary funds to make our work possible. A federal legislation director manages relevant bills and lobbying in Washington, D.C. The senior strategist coordinates long range development and public education plans. And our new marriage campaign manager is launching the Project's advocacy program on marriage for same-sex couples.

Six affiliates (Illinois, Florida, Georgia, Michigan, Northern California, and Southern California) have staff and attorneys focused on LGBT rights, and several others have activist member/volunteer groups working on LGBT rights and AIDS concerns (Delaware, Eastern Missouri, Kansas and Western Missouri, Ohio, Pennsylvania, Nevada, Southern and Northern California, and Washington).

YOUR SUPPORT

The Lesbian & Gay Rights and AIDS Project works in your state and across the country, and we rely on you to ensure our success in 2006 and beyond. If you would like to contribute, please send a check to:



ACLU Foundation – LGBT
125 Broad Street, 18th Floor
New York, NY 10004
212-549-2627, getequal@aclu.org



▲ The Project staff enjoys a sunny fall day outside our lower Manhattan office building: (back row) Mick Schommer, Rose Saxe, James Esseks, Michael Mitchell, Sharon McGowan, Christine Sun, Leslie Cooper, Tamara Lange, Chris Hampton; (front row) Marissa Gonzalez, Ken Choe, Lexi Adams, Genie Cortez, Matt Coles, Zoë Mizuho, and Paul Cates.

STAFF

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

Chris Anders is the Federal Policy Director and Legislative Counsel to the ACLU's Washington National Office, responsible for advancing the Project's mission on Capitol Hill and in the White House.

Paul Cates is the 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, Senior Staff Attorney, has been with the Project since 2000. Before joining the ACLU, he was a political appointee in the Clinton administration focusing on health care law and policy.

Jodi Clagg is a consultant who served as a Public Education Specialist for the Project until September 2005. In the past, she worked as a case manager for Big Brothers Big Sisters.

Matthew Coles has been Director of the Project since 1995. Previously, he was a staff attorney at the ACLU of Northern California.

Leslie Cooper, Senior Staff Attorney, joined the Project in 1998. She was an attorney at Robinson Silverman Pearce Aronsohn & Berman LLP in New York.

Genie Cortez is the Development Director. 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 consultant who serves as a Public Education Specialist for public education and marriage issues. Before working with the Project, he was a writer at the *Los Angeles Times* and *San Francisco Weekly* and an associate producer at ABC News.

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

Marissa Gonzalez is the Paralegal. She joined the Project after working as a case manager for Safe Horizon.

Chris Hampton is the Public Education Associate. Previously, she worked for Lambda Legal and the University of Kansas and was a reporter and editor for a gay newspaper.

John A. Knight is a Senior Staff Attorney based in Chicago and 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 Senior Staff Attorney, based in San Francisco, who splits her time with the Project and the ACLU of Northern California. She joined the Project after working at Caldwell, Leslie, Newcombe & Pettit in Los Angeles and clerking in federal trial and appellate courts.

Sharon McGowan started as a Staff Attorney in August 2004 and was previously the ACLU's Brennan First Amendment Fellow. She previously worked for Jenner & Block and was part of the litigation team on *Lawrence v. Texas*.

Zoë Mizuho is the administrative assistant for the Project. Previously, he worked in sundry bookstores and libraries.

Michael Mitchell is the Marriage Campaign Manager. He joined the Project after serving four years as Executive Director of Equality Utah, the statewide LGBT organization.

Robert Nakatani is Senior Strategist. Previously, he was the Project's Development Director for seven years.

Rose Saxe started as a Staff Attorney in the fall of 2004. Before joining the ACLU, she was an associate at Rosen Preminger & Bloom LLP, a small firm in New York City specializing in employee benefits law.

Mick Schommer is the Public Education Coordinator. He joined the Project after several years as a Washington, D.C.-based consultant.

Christine Sun joined the Project and the ACLU of Southern California as a Staff Attorney in 2005. Previously, she worked on LGBT rights issues with the ACLU of Northern California and was an associate at Kecker & Van Nest, LLP.

Cooperating Attorneys

The ACLU has been fortunate over the years to work with a number of outstanding lawyers who labored on behalf of our clients and alongside our staff attorneys. We have developed close working relationships with exceptional lawyers in all types of private practice and wish to acknowledge their dedication not only to our clients but to our mission. The following are names of cooperating attorneys who worked on the ACLU's LGBT and HIV/AIDS-related cases in the last year.

Ashleigh E. Aitken - Morrison & Foerster LLP (Irvine, CA)
Matthew Alsdorf - Paul, Weiss, Rifkind, Wharton & Garrison LLP (New York, NY)
Paul Alston - Alston Hunt Floyd & Ing (Honolulu, HI)
Aldo Badini - Dewey Ballantine LLP (New York, NY)
Andy Baida - Rosenberg Martin Funk Greenburg, LLP (Baltimore, MD)
Richard Baker - Milbank, Tweed, Hadley & McCloy LLP (Los Angeles, CA)
Linda Balisle - Balisle & Roberson, S.C. (Madison, WI)
Robert Bartle - Bartle & Geier (Lincoln, Nebraska)
Kenneth J. Bartschi - Horton, Shields & Knox, P.C. (Hartford, CT)
Stephen Bomse - Heller Ehrman LLP (San Francisco, CA)
Lisa Brunner - Husch Eppenger, LLC (Kansas City, MO)
Barbara Buchanan - Pepper Hamilton LLP (Detroit, MI)
Linda Burrow - Munger, Tolles & Olsen LLP (Los Angeles, CA)
Christopher Campbell - Latham & Watkins LLP (Orange County, CA)
Caroline Ciruolo - Rosenberg Martin Funk Greenburg, LLP (Baltimore, MD)
David Codell - Law Office of David C. Codell (Los Angeles, CA)
Marc De Leeuw - Sullivan & Cromwell LLP (New York, NY)
Lisa dell'Aquila - Paul, Weiss, Rifkind, Wharton & Garrison LLP (New York, NY)
Richard DeNatale - Heller Ehrman LLP (San Francisco, CA)
Michael Diamond - Milbank, Tweed, Hadley & McCloy LLP (Los Angeles, CA)
David Dinelli - Munger, Tolles & Olsen LLP (Los Angeles, CA)

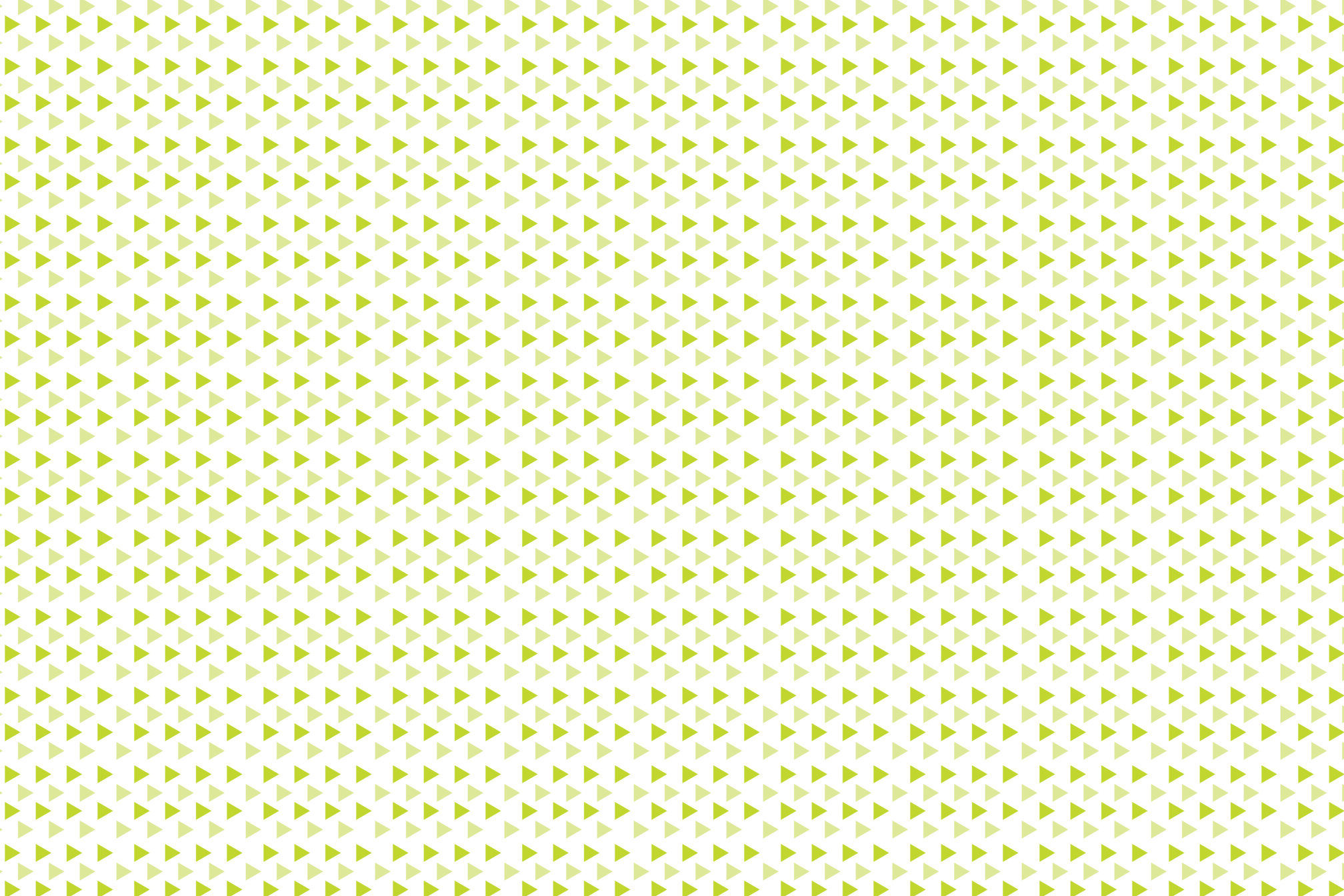
Andrew Ehrlich - Paul, Weiss, Rifkind, Wharton & Garrison, LLP (New York, NY)
Derik Fettig - Morrison & Foerster LLP (Los Angeles, CA)
Bill Fleischaker - Fleischaker, Williams & Powell, L.C. (Joplin, MO)
Sara Fuks - Dewey Ballantine LLP (New York, NY)
Karen Getman - Remcho, Johansen & Purcell (Sacramento, CA)
Jeffrey Goldman - Milbank, Tweed, Hadley & McCloy LLP (Los Angeles, CA)
Gitanjali Gutierrez - Gibbons, Del Deo, Dolan, Griffinger & Vecchione (Newark, NJ)
Matthew Hall - Morrison & Foerster LLP (San Francisco, CA)
Edward Hernstadt - Frankfurt, Kurnit, Klein & Selz, PC (New York, NY)
Professor Roderick Hills - University of Michigan Law School
Maya Hoffman - Morrison & Foerster LLP (San Francisco, CA)
David Ivers - Mitchell, Blackstock, Barnes, Wagoner, Ivers, & Sneddon (Little Rock, AR)
Collie James IV - Latham & Watkins LLP (Orange County, CA)
Mahogany Jenkins - Morrison & Foerster LLP (San Francisco, CA)
Adam Kaiser - Dewey Ballantine LLP (New York, NY)
Roberta Kaplan - Paul, Weiss, Rifkind, Wharton & Garrison, LLP (New York, NY)
Nancy Katz (Plymouth, MI)
Tom Kayser - Robins, Kaplan, Miller & Ciresi L.L.P. (Minneapolis, MN)
Kurt Kissling - Pepper Hamilton LLP (Detroit, MI)
Christopher Krimmer - Balisle & Roberson, S.C. (Madison, WI)
Jordan Kushner - Latham & Watkins LLP (Orange County, CA)



▲ (from left to right) Cooperating Attorney
 Jeffrey Goldman, Cooperating Attorney Matthew
 Hall, Cooperating Attorney Angela Padilla

Deborah Labelle - (Ann Arbor, MI)
 Eric Laufgraben - Dewey Ballantine LLP (New York, NY)
 Sean C. Lemieux (Indianapolis, IN)
 David Lubitz - Swidler Berlin LLP (Washington, D.C.)
 Marilyn D. Martin - Culver-Morrison & Foerster LLP (Irvine, CA)
 Allison Mendel - Mendel & Associates (Anchorage, AK)
 Viktoriya Meyerov - Drinker Biddle & Reath LLP (Philadelphia, PA)
 Brian McGrath - Dewey Ballantine LLP (New York, NY)
 Elizabeth Miller- Frankfurt, Kurnit, Klein & Setz, PC (New York, NY)
 Jilana Miller - Heller Ehrman LLP (Los Angeles, CA)
 Maureen Murphy - Murphy, Murphy, & Nugent, LLC (New Haven, CT)
 Lynn Nakamoto - Markowitz, Herbold, Glade & Mehlfaf, P.C. (Portland, OR)
 Natalie Naugle - Morrison & Foerster LLP (San Francisco, CA)
 Paige Nichols (Lawrence, KS)
 Michael Okerlund - Robins, Kaplan, Miller & Ciresi L.L.P. (Minneapolis, MN)
 Angela L. Padilla - Morrison & Foerster LLP (San Francisco, CA)
 Earle A. Partington - Law Office of Earle A. Partington (Honolulu, HI)
 Edward Posner - Drinker Biddle & Reath LLP (Philadelphia, PA)
 Douglas Pravda - Paul, Weiss, Rifkind, Wharton & Garrison LLP (New York, NY)
 Margaret R. Prinzing - Remcho, Johansen & Purcell (Sacramento, CA)
 Abby Rubenfeld - Rubenfeld & Associates (Nashville, TN)

Linda Roberson - Balisle & Roberson, S.C. (Madison, WI)
 Jeffrey T. Scott - Sullivan & Cromwell LLP (New York, NY)
 Amanda Shelton - Pepper Hamilton LLP (Detroit, MI)
 William Singer - Singer & Fedun, L.L.C. (Belle Mead, NJ)
 Jessie Siggold - Heller Ehrman LLP (Los Angeles, CA)
 John E. Stephenson - Alston & Bird, LLP (Atlanta, GA)
 Christopher Stoll - Heller Ehrman LLP (San Francisco, CA)
 Corey L. Stull - Perry, Guthery, Haase & Gessford, P.C., L.L.O. (Lincoln, NE)
 Jeffrey Swart - Alston & Bird, LLP (Atlanta, GA)
 Ryan Tacorda - Heller Ehrman LLP (San Francisco, CA)
 Stephen Tannenbaum - Alston Hunt Floyd & Ing (Honolulu, HI)
 Connie Tcheng - Heller Ehrman LLP (Los Angeles, CA)
 Ed Tuddenham (Austin, TX)
 Clyde Wadsworth - Steefel Levitt & Weiss (CA) SF A Professional Corp
 Michael Ward - Swidler Berlin LLP (Washington, D.C.)
 Hilary Ware - Heller Ehrman LLP (San Francisco, CA)
 Jeffrey Wicks (Rochester, NY)
 Thomas Wilczak - Pepper Hamilton LLP (Detroit, MI)
 Tobias Wolff - University of California Law School at Davis (Davis, CA)
 Samuel C. Young - Costello, Cooney & Fearon, PLLC (Syracuse, NY)
 Michele Zavos (Washington, D.C.)





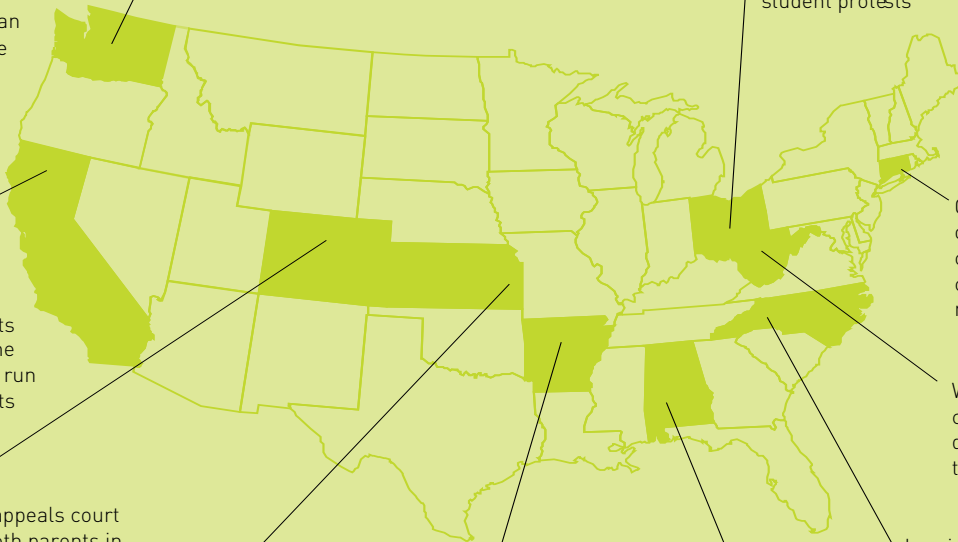
Progress on LGBT Rights and HIV/AIDS in the Last Year



Alaska Supreme Court ruled that gay and lesbian state employees must be given domestic partner benefits

After 29 attempts, a bill to add sexual orientation to Washington's anti-discrimination law finally passed

Dublin, OH high school stopped censoring t-shirts with messages supporting gay marriage after student protests



Connecticut becomes one of the first states to create civil unions for same-sex couples via a legislature not court order

West Virginia court awards custody of the child of a deceased lesbian mother to her surviving partner

Immigration officials ruled that the visa application of an El Salvadoran man cannot be denied because his North Carolina wife is transgender

East Bakersfield, CA high school reverses its decision and allows the student newspaper to run articles on gay students

Colorado appeals court decided both parents in a lesbian relationship have legal rights to their children

Kansas freed a gay teenager imprisoned for consensual sex with another teen and charged as an adult sexual predator

When a beauty college student was expelled after revealing his HIV status, Arkansas affirmed that HIV poses no risk in cosmetology school or practice

Alabama high school changed its policy against allowing students to wear t-shirts with the slogan, "Gay? Fine by me"

