

Lambda
Legal

Impact



INSIDE

Health Care
Fairness: A
Priority in 2009

Notes from the
Frontline



Lambda Legal
making the case for equality

WINTER 2009



New Headline to Come

In the 36 years that Lambda Legal has been fighting for equality, I don't think there has ever been a moment when so many victories and opportunities are before us at the very same time that we face such enormous challenges.

In the last year, we made significant progress, and in the year ahead, opportunities abound. For example, we are waiting for a decision in our marriage-equality case in Iowa, argued before the state's Supreme Court in December; we are working closely with our colleagues at the National Center for Lesbian Rights (NCLR) and the ACLU on our challenge to the validity of Prop 8 in California; and we have pending cases defending the civil rights of workers, parents and children, and people with HIV.

There is hope and expectation in the air as President Obama and his administration take office. There are many states in our country where there is little law to protect LGBT people against discrimination, but that may soon change. We hope that this year we will see enactment of a fully inclusive Employment Nondiscrimination Act (ENDA), a hate crimes law, repeal of "Don't Ask, Don't Tell," and implementation of policies to end governmental discrimination against people with HIV. And when new laws are enacted, Lambda Legal will have the responsibility to make sure they are properly enforced and applied. Strategic legal work must establish precedents that will protect LGBT people and people with HIV for years to come.

But these are also challenging times, not only for millions of individuals and businesses who are facing economic losses, but also for nonprofit organizations like Lambda Legal who depend completely on contributions to support our work. Many people do not realize that we must raise our entire operating budget every year. We rely on thousands of individual donors and many foundations and corporations that support our mission. This model has kept us working and growing for more than 35 years. When people and

organizations make contributions to Lambda Legal, that money goes directly into our work as we make the case for equality.

But when our supporters are hurting, our organization is hurt too. We feel the pinch. As prudent stewards of our funding and our future, we had to make the difficult decision in November to eliminate positions and reduce other expenses by approximately 10 percent. We are committed to protecting Lambda Legal's core mission and winning as many battles as ever. We are letting our supporters know that we are not holding back and asking them to do all they can to help so that we can make the most of the opportunities ahead.

Our strategy is simple: We are keeping our eyes on the long-term effectiveness of Lambda Legal and making short-term adjustments to keep our civil rights work moving forward.

Great opportunities and big challenges — sometimes they come at the same time. We are using all our talent and resources as strategically as we can. And we are moving ahead with a plan to keep our organization strong for the future. Seizing opportunities and overcoming challenges — that's what Lambda Legal does best.

KEVIN M. CATHCART
EXECUTIVE DIRECTOR

Kevin M. Cathcart, Executive Director
Frances J. Goldstein, Deputy Director

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Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

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On the cover:

Lambda Legal plaintiffs After their school district ignored their heinous harassment, Joey Ramelli and Megan Donovan were vindicated in court. (Photo: heidiophoto)

Impact Magazine is published three times a year in February, June and October.

We're ready for our close-up!

Lambda Legal is proud to announce that "Overruled!", our short film about *Lawrence v. Texas*, has made it to the big screen. The film was shown at *Reeling: The Chicago Lesbian and Gay International Film Festival* with other short films under the title "Pushing the Gay Envelope."

MY BROTHER'S KEEPER



(1995)
This television movie starring John Lithgow was based on our case

Bradley v. Empire Blue Cross/Blue Shield, which concerns an insurance company refusing a life-saving bone-marrow transplant between Bob Bradley and HIV-positive brother, Tom.

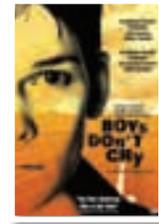
SERVING IN SILENCE THE MARGARETHE CAMMERMEYER STORY



(1995)
Glenn Close received an Emmy for her portrayal of our client Grethe Cammermeyer,

who we represented in *Cammermeyer v. Perry*, a case which sought to reinstate this Army and National Guard Veteran, who was fired because of her sexual orientation.

BOYS DON'T CRY



(1999)
This Oscar-winning film stars Hilary Swank as Brandon Teena, a transgender

man whose family Lambda Legal represented in *Brandon v. Richardson County*. Lambda Legal took action against the sheriff who humiliated and failed to protect Brandon, who was murdered after he reported being raped.

ON THE DOCKET

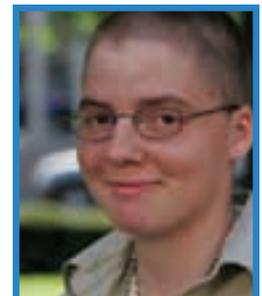
SERVING UP DISCRIMINATION

Korrin Krause Stewart was born with HIV but was not diagnosed until she was 14 years old. Shortly after her diagnosis, Stewart learned that her HIV infection had developed into AIDS. A few years later, Stewart applied for a waitstaff position at Lee's Log Cabin, a restaurant in Wausau, Wisconsin. After the prospective employer found out that Stewart had HIV, "HIV+" was written on her application and the restaurant refused to hire her. The Equal Employment Opportunity Commission (EEOC) filed a lawsuit against the restaurant for violating the Americans with Disabilities Act. The EEOC lawsuit was filed as a case of HIV discrimination. The district court ruled against Stewart and the EEOC and that ruling was upheld by a federal appellate court. The court's ruling was based on a confused distinction between HIV and AIDS--saying that Stewart could not be a victim of HIV-related discrimination if her diagnosis is now AIDS. The case has been appealed and Lambda Legal filed a friend-of-the-court brief on behalf of 11 local, regional and national HIV/AIDS advocacy organizations supporting the EEOC's request that the entire appellate court panel review the decision.

IMPACT: Our friend-of-the-court brief argues that the ruling in this case creates new, inappropriate burdens for people living with HIV and could eliminate protections they have under the ADA. Success in this case would reaffirm these protections.

SCHOOLED!

Nancy Wadington endured antigay abuse at her high school in southern New Jersey until the middle of 11th grade, when she had to leave school to protect her safety. In a lawsuit Lambda Legal filed on her behalf against school officials, Wadington asserted that she suffered verbal and physical attacks from other students over a two and a half year period. In an effort to avoid the attacks, she stayed out of the hallways, walked around the outside of the school building to get to her next class, and stopped using the school bathrooms, which led to abdominal pain during class. Under New Jersey's Law Against Discrimination, school officials that know or should know about discriminatory abuse must take effective remedial action. After a mediation, school officials agreed to mandatory training for administrators, faculty and staff, and agreed to pay Wadington a settlement.



NANCY WADINGTON

IMPACT: This is the first known lawsuit filed under New Jersey's Law Against Discrimination to successfully challenge antigay discrimination in a public school. The training now required of all educators and school staff in the school is a legacy that will serve LGBTQ youth going forward.

THE GOOD NEWS . . . AND THE NOT SO GOOD

The good news is that Congress finally returned authority to the Department of Health and Human Services (HHS) to decide whether HIV should be on the list of diseases that prevent foreign citizens from entering the United States. The not-so-good news is that we are now waiting for HHS to use that authority to take HIV off the list. Until HHS does this, nothing has really changed in the way people with HIV are treated by customs and immigration

officials. HHS indicated that it was considering making the change needed to lift the entry restrictions. Lambda Legal has already asked the Obama transition team to promptly make those changes and will continue to press the new Administration to take immediate action. Stay tuned to learn how you can help push for this important change!



INDECENT EXPOSURE

Following a public sex sting operation in Johnson City, Tennessee, the Johnson City Police Department arrested 40 men and included their pictures in a press release approved by the police chief. The local news then published these pictures. Many of these men lost their jobs, and one committed suicide. Lambda Legal investigated the nearly 600 JCPD press releases from that year and found that no others included a picture of the person arrested. Lambda Legal is representing Kenneth Giles, whose employer explicitly based its termination of him on the notoriety associated with the newspaper publishing his photograph.

Lambda Legal is arguing that the police chief of Johnson City violated federal equal protection laws by singling out these men for unusual public exposure about their arrest.

IMPACT: This case highlights the unequal and often cruel treatment of LGBT people by those whose job it is to “protect and serve.” Gay men are often selectively targeted and charged with lewd conduct charges, sometimes through entrapment.

Though some police departments have improved over the years in their treatment of LGBT people, the Johnson City case exemplifies the need for further protections and education.



IOWA'S BIG DAY

On December 9, Lambda Legal argued before the Iowa Supreme Court, asking it to uphold the 2007 trial court ruling that denying marriage to same-sex couples is unconstitutional. Three years ago, Lambda Legal filed a lawsuit in Polk County, Iowa, Court on behalf of six same-sex couples who were denied marriage licenses. The couples in this case have been together between five and over 16 years. Three couples are raising children, others are planning families, and all want the responsibilities of marriage and the protections only marriage can provide. Lambda Legal co-counsel and former Iowa Solicitor General Dennis Johnson made an emotional and powerful argument in favor of equality.

IMPACT: If the Iowa Supreme Court upholds the lower court decision it will become the fourth state Supreme Court to rule that banning same-sex couples from marriage is unconstitutional, after Massachusetts, California and Connecticut.





Health Care Fairness

A Priority In 2009

A gay man is denied medical care because the doctor disapproves of him and his partner having a child with a surrogate mother.

A young transgender woman is denied her hormone medication while in the custody of a juvenile detention facility.

A man with HIV is refused back surgery because the surgeon is unwilling to operate.

An older lesbian couple is unable to find an affordable nursing home where they can live together in dignity.

A disabled man with HIV is turned down by six nursing homes before he can find a place to live and receive care.

A lesbian is not allowed to sit by the bedside of her partner who lies dying in the hospital, because hospital employees don't recognize their relationship as valid.

At Lambda Legal, we receive hundreds of calls every year from LGBT people and people with HIV facing prejudice and unfair treatment from health care providers and facilities. The examples cited above are, in fact, actual Lambda Legal cases. Our HIV Project has been representing people with HIV for more than 20 years to help them secure equal access to care, affordable medications and unbiased treatment. By taking on certain cases and addressing many others through our Help Desk, we have been helping LGBT people and people with HIV fight back when they are denied coverage or care or when their relationships or health care choices are not treated with respect. And we've been out in the community sharing our new *Take the Power* toolkit and educating people about the importance of preparing legal documents that help protect them during a medical emergency or in a hospital setting.

Our caseload reflects the injustices our community members face every day. Just last year, we won a legal victory for Lupita Benitez, a lesbian in California who was denied fertility treatment by doctors who claimed that their religious beliefs gave them the right to ignore discrimination laws. We are also seeking justice for Janice Langbehn and her children, because a hospital in Miami refused to recognize her and her children as family and prevented her from visiting her partner as she lay dying. And we are representing Dennis Barros in his fight against a Florida fertility clinic that refused to provide medical care to him because he is gay.

Lambda Legal's National Campaign for Health Care Fairness
Solving problems one at a time is important, but we are ready to raise our voices even louder and build a powerful campaign for health care fairness. As a new president takes office, health care reform is near the top of the national agenda. We want to make sure that equal access and fairness for LGBT people and people with HIV are part of the vision for the future of health care in our nation.

What does health care fairness for LGBT people and people with HIV look like? We plan to work together with advocates, partners and consumers to build a platform for health care reform that addresses issues across the spectrum of health and wellness.

Finding decent, affordable health care is not always easy, but when LGBT people and people with HIV face prejudice and discrimination, it makes a difficult situation a lot worse. Reform of the health care system was a key issue in the presidential campaign, and health care fairness is a high priority for Lambda Legal, too. People are most vulnerable when they are sick or have medical needs. That's when every person needs care, compassion and fairness — not extra barriers and obstacles to overcome.



We seek full, equal access to all medically appropriate health care services for all LGBT people and people with HIV, including access to reproductive health care without bias based on sexual orientation, gender identity and expression, HIV or family status; privacy and confidentiality for all patients, including transgender people and people with HIV; recognition and respect for all of our families, including respect for decision-making and visitation rights for same-sex partners and their children; equal access to affordable health care insurance for same-sex spouses, partners and their children, and elimination of insurance policy exclusions for transgender care; fair and comprehensive health care services for incarcerated youth and adults or others in state custody, particularly transgender people with a medical need for gender transition and people living with HIV; policies and practices that protect informed consent for HIV testing; protection of the freedom and individual liberty of patients to seek and obtain all medically appropriate care without discrimination based on the religious views of health care providers; equal access to mental health and substance abuse treatment and services that are medically appropriate and nondiscriminatory for LGBT people and people with HIV; fair, secure and compassionate medical care and services LGBT seniors and older people with HIV.

Lambda Legal's national campaign for health care fairness will include a survey, available on our website and at Pride celebrations around the country, so that we can learn more about the obstacles and discrimination faced by LGBT people and people with HIV. We will also work with the Gay and Lesbian Medical Association (GLMA) and other partners to prepare research and policy proposals for advocates and decision-makers to help shape the national health care reform agenda.

The most basic rule that health care providers learn is "First do no harm." But disrespect or denial of care to LGBT people or

people with HIV is very harmful. And a health care system that excludes coverage for partners or dependents of some people because of their sexual orientation, gender identity or family status harms everyone. When health care providers and institutions discriminate, they are failing to meet the basic standard of care.

What You Can Do

First, take care of yourself and your loved ones by taking stock of your situation and planning accordingly. Our *Take the Power: Tools for Life and Financial Planning* publication gives detailed information on how to begin (<http://www.lambdalegal.org/takethepower>). Then, join with Lambda Legal, GLMA and others to make sure that every person has access to fair and equal health care without bias based on sexual orientation, gender identity or expression, HIV or family status. Sign up online as a "Partner for Health Care Fairness" so we can build a broad base of support.

Health Care Fairness is Basic

It can be hard to fight for your rights when you are sick or facing an emergency — the most important thing is to get the best care and get well. That's why we all need to fight together now for health care protections and a system that guarantees fairness. Everyone is entitled to that. **L**

Sign your name to the Partners for Health Care Fairness petition online at lambdalegal.org!

Dear President Obama:

I am joining with Lambda Legal as a partner for health care fairness in the United States. As we reform the health care system in our country, fairness for LGBT people and people with HIV must be addressed.

The United States' health care system must include:

- full and equal access to all medically appropriate health care without bias based on sexual orientation, gender identity or expression, HIV or family status
- privacy and confidentiality for all patients, including transgender people and people with HIV
- recognition and respect for all our families, including same-sex couples and their children
- equal access to affordable health care insurance for same-sex spouses, partners and their children, and

elimination of insurance policy exclusions for transgender care

- fair and comprehensive health care services for youth and adults in custody
- informed consent for HIV testing and appropriate educational and medical services
- freedom and individual liberty for patients to seek and obtain all medically appropriate care without restrictions based on the personal or religious views of providers
- equal access to mental health and substance abuse treatment and services for LGBT people and people with HIV
- fair and compassionate services for LGBT seniors and older people with HIV

Sincerely,
Lambda Legal's Partners for Health Care Fairness



BY NATALIE CHIN, STAFF ATTORNEY



NOTES FROM THE FRONTLINE

When I worked as a legal services attorney, I was accustomed to a hefty docket with as many as two dozen cases requiring immediate attention because people faced eviction, the loss of Medicaid or food stamp benefits and other crises. Several of the individuals I represented shared common traits: they were over the age of 60, lived alone and on a fixed income, and did not maintain close ties with family or friends.

When I left legal services to work for Lambda Legal, I wanted to continue the advocacy work around senior issues that I had started as a legal services attorney. I was excited to shift my focus from the general aging population to LGBT seniors, and from direct legal service to impact litigation.

So just a couple months into my new position, I traveled to Albany, New York for the Statewide LGBT Senior Issues Summit. Held on the eve of Equality and Justice Day when LGBT New Yorkers and allies descend upon the state capitol to lobby lawmakers on issues that are most important to the community, the Summit was a forum for seniors, their families and friends to discuss the concerns and issues facing the LGBT aging community. It was the first time that a town hall meeting specific to LGBT senior issues was organized at the state capitol.

I traveled to the Summit with members of the Griot Circle, a Brooklyn-based organization that supports LGBT elders of color. As I nestled into my seat in the large conference room, members of the Griot Circle were seated to my left and right as introductions were made by individuals from the New York State Office for the Aging and the Family Caregiving Council, the organizers of the Summit. The director and staff from the New York State Office for the Aging were present, sitting at a table in the front of the room, there to listen to the thoughts and concerns of LGBT seniors, families and friends.

Following introductions, individuals were given the opportunity to come to the front of the room to speak about LGBT aging issues. Mary and Sandy, both in their late 60s, stood up and walked to the microphone. Standing side by side before the crowd of about 75 people, they held hands and began to talk.

Mary talked about how long-term care facilities could provide a more welcoming environment for LGBT seniors. She stressed the need for LGBT sensitivity training and the need for service providers to understand that “our sexuality is a basic element of who we

are.” In a voice much larger than her small frame, Sandy closed with words that moved the crowd. She said that LGBT seniors have a right to live with dignity and respect. It is the responsibility, she said, of long-term care providers to “encourage [LGBT seniors] to dance that last waltz together.”

Bolstered by Mary and Sandy’s opening statements, more seniors streamed to the front of the room offering story after story about friends, family and loved ones who had suffered from discrimination, abuse or neglect because of their sexual orientation or gender identity. One man described visiting his 90-year-old friend, a normally gregarious, openly gay man, at a nursing home. His friend had become withdrawn and was often tearful during his visits. The man learned that his friend was placed in a room with another person who verbally abused him, calling him names like *faggot* and *queer* day after day. The concerned friend advocated on his friend’s behalf to get him transferred to another nursing home.

For days after the Summit, I replayed Sandy’s words in my head. Aging LGBT individuals have a right to maintain individuality and free expression without fear of discrimination. This simple notion, however, is far from the reality that exists for some LGBT seniors who can no longer live independently and must rely on caregivers, nursing homes, adult-care facilities or home health aides to go about their day-to-day lives.

“The challenge is that seniors who are most in need of help are living closeted lives out of fear about safety and security,” says Karen Taylor, Director of Advocacy & Training for Services & Advocacy for GLBT Seniors (SAGE), a national organization that advocates for LGBT seniors. “I recently heard a tragic story about a woman who was locked in her room by staff and isolated from other nursing home residents because she was perceived to be gay. She reached out to mainstream agencies but could not find help, so she called the only gay phone number she could find, which was a local LGBT Community Center.”

Stories such as these are not uncommon. There are stories of seniors who would like their partner or same-gendered friend to visit but choose to remain in isolation rather than be perceived by staff or other long-term care residents as LGBT. Others choose to destroy photographs and letters from loved ones out of fear that their sexual orientation may be disclosed.

The concern of LGBT seniors in long-term care, says Jean

LGBT seniors who rely on long-term care facilities to help with daily life activities are most at risk for discrimination, abuse and neglect.



©JANETTE BECKMANN, COURTESY OF SAGE

Quam, a professor at the University of Wisconsin and a consultant on *The MetLife Study of Lesbian and Gay Baby Boomers*, is whether they are going to be hurt, neglected or openly discriminated against by staff or other residents because of their sexual orientation or gender identity. LGBT seniors who must rely on caretakers in long-term care facilities to provide hot meals, assist in bathing and help with other daily life activities are most at risk for discrimination, abuse and neglect.

After listening to seniors, activists, social workers and advocates in the LGBT aging community, I quickly learned that a challenge unique to antidiscrimination litigation is how to effectively advocate for LGBT seniors when those who need legal protections risk further discrimination, abuse and neglect if they come forward. At my former post, I was accustomed to clients willingly coming to the office for assistance. I worked with seniors who generally felt safe enough to sit down with me and tell their stories — sometimes with exacting detail — because disclosure of their sexual orientation or gender identity rarely had a legal impact on their cases, which did not concern discrimination based upon their sexuality.

As Lambda Legal seeks out cases that will help LGBT seniors, we consider how LGBT antidiscrimination laws and other laws can be used to protect individuals like the woman who desperately called the LGBT Center seeking help, or the gay senior living in a nursing home who destroys letters and photographs for fear of being mistreated.

Michael Adams, Executive Director at SAGE and a former Lambda Legal attorney, equates the challenges presented in doing successful LGBT senior work to the difficulties that existed when Lambda Legal began its work with youth and schools. Although the youth and school work started in the 1970s, a climate of fear existed for students who were being harassed and bullied at school because of their sexual orientation. Too fearful to seek help, many students suffered in silence. It was not until 1995, about 20 years after the initiation of this program area, that a Lambda Legal case successfully brought the issue of anti-LGBT bullying in schools to national attention.

In talking with Adams about how to break through in LGBT aging work, he repeatedly said, “We need a *Nabozny*-type case.” Jamie Nabozny was subjected to relentless antigay verbal and physical abuse by fellow students at his public high school in Ashland, Wisconsin. Our victory in *Nabozny* resulted in the first judicial opinion in the nation’s history finding that a public school could be held accountable for not stopping antigay abuse.

For the years between the genesis of the youth and schools program area and the *Nabozny* case, Lambda Legal thought creatively about how to address the systemic problem of anti-LGBT bullying in schools with an approach that combined legal work with education, outreach and non-litigation advocacy. We created *Know Your Rights* brochures, toolkits and materials, letting LGBTQ students know that they have legal protections. We forged relationships, built trust, and ultimately the *Nabozny* case succeeded and changed the history of LGBTQ student rights.

LGBT senior work may take the same path. As we approach this work, Lambda Legal will continue to build relationships with partner agencies, reach out to social workers and inform members of our communities about the legal protections for LGBT seniors. All of this to arrive at that day where Sandy, Mary and others will be left to gracefully, freely dance that last waltz together. 

LAMBDA LEGAL: 2009 EVENTS CALENDAR

JANUARY

1.28.09 Bon Foster Kick-off — Chicago, IL

MARCH

3.1.09 Lambda Legal Love Lounge — West Hollywood CA
3.29.09 Lambda Legal in Fort Lauderdale — Ft. Lauderdale FL
3.09 San Francisco Kick-Off Party — San Francisco CA

APRIL

4.19.09 Lambda Legal in Philadelphia — Philadelphia PA
4.23.09 Bon Foster — Chicago IL
4.09 Dallas Women's Brunch — Dallas TX
4.09 Mad Hatter Garden Party — Dallas TX
4.09 Jeffery Fashion Cares — New York NY

MAY

5.4.09 Liberty Awards NYC — New York NY
5.6.09 Lambda Legal's San Francisco Celebration — San Francisco CA
5.09 Lambda Legal in the Desert — Palm Springs CA

Save the Date: Lambda Legal Liberty Awards



May 4, 2009 at Pier 60, Chelsea Piers.
New York, NY. For more details and for
a complete up-to-date list of our events,
visit www.lambdalegal.org/events.



A Closer Look

STEFAN JOHNSON, HELP DESK ATTORNEY

What is the Help Desk? What is your role as Help Desk Attorney?

Lambda Legal's Help Desk functions as a conduit between our communities and our legal department. The Legal Help Desk receives over 5,000 calls per year from the public seeking legal assistance and information on issues of discrimination based on sexual orientation, gender identity and expression, and HIV status. We have Help Desk staff in each of Lambda Legal's five offices who answer legal inquiries by telephone, e-mail, fax and mail. Staff in each of our offices can also field calls in Spanish. While we do not dispense legal advice, our goal is to leave callers better off than when they first contact us. We try to direct them to one of our cooperating attorneys, or provide enough information so they can begin to find a solution to their legal problems. In a small number of cases, Lambda Legal will take on direct representation, provided the case

has potential for broad impact. Such a case may also serve as a vehicle for education work on particular forms of discrimination our communities face.

My role as Help Desk attorney is to review all 5,000 calls, ensuring that the Help Desk staff provides consistent information that is current and relevant to callers' particular needs.

Why is the Help Desk important?

The Help Desk is one of the key vehicles available to Lambda Legal to measure the legal pulse of the LGBT/HIV community. The Help Desk gauges what areas of discrimination are particularly urgent in a given state, region or nationwide. Lambda Legal will often look for particular types of cases based on the particular problems that present themselves to the Help Desk. In addition to litigating, Lambda Legal may create educational guides addressing

particular legal problems within the LGBT/HIV community based on problems we encounter at the Help Desk. Moreover, as a free service, the Help Desk provides Lambda Legal direct interface with the very communities we are here to represent.

What are the benefits and challenges to working on the Help Desk?

Undoubtedly, the hardest part for all the Help Desk staff is to receive a call from someone who is obviously experiencing difficult and often painful legal problems, and telling the person that because of our limited resources, we cannot directly represent them. Conversely, the best part of the job is seeing a Help Desk call mature into an actual Lambda Legal case, and the ultimate is to see that case come to a successful outcome for the caller. **L**

Get It In Writing

Lambda Legal's LGBTQ Youth Publications

Our cover story features the case of two high school students who faced harassment and trauma at their California high school. Years later, they have finally been vindicated in court, their school held responsible for neglecting their welfare. Unfortunately, this case is just one of many such examples across the country — young LGBTQ people dealing with hardship and discrimination, with too few resources to turn to for help.

Working to protect and empower LGBTQ youth is one of Lambda Legal's biggest priorities. Part of that is accomplished by creating and distributing educational material in schools, libraries and drop-in centers. This fall, we published updated versions of two valuable toolkits for youth. *Out, Safe and Respected* addresses the needs and concerns of LGBTQ youth in middle and high schools, and *Bending the Mold* is geared specifically towards transgender and gender nonconforming youth and their allies. Both publications offer guidance to LGBTQ youth and their allies in how to be advocates for themselves and their friends, and they also assist adults who work with young people to better understand and advocate for LGBTQ students.

Our publications target issues that we see in our

casework involving youth in schools and in out-of-home care. Many of these cases aim to protect free speech rights, as in the landmark case *Colin v. Orange Unified School District*, where the court ruled that schools receiving federal funding must allow gay-straight alliances to meet on campus if other student groups are allowed to do so. Other cases have protected students' rights to be out on campus or to dress in a way they feel comfortable with. A recent example is the case of K.K. Logan, whose principal denied him entrance to his high school prom because he was wearing a dress. Lambda Legal has filed a complaint on K.K.'s behalf, arguing that the school restricted K.K.'s First Amendment rights.

Some of the most troubling cases are those that involve bullying and harassment of LGBTQ youth. One of Lambda Legal's landmark cases on antigay bullying in schools was *Nabozny v. Podlesny*, where a gay student faced such relentless and violent harassment that he attempted suicide and dropped out of school. The court found school officials can be held liable for failing to address peer abuse.

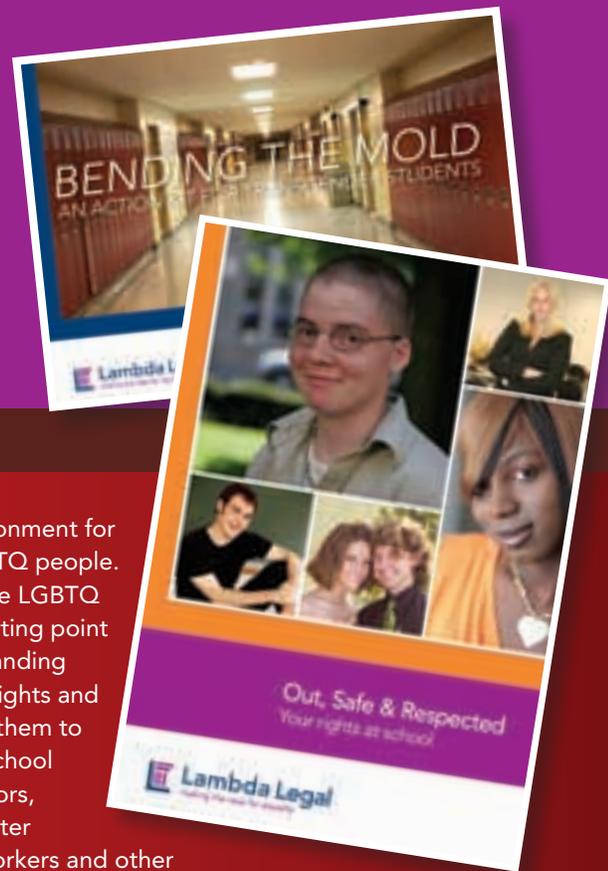
The goal of our publications and our other educational work is to prevent such events from happening by promoting a respectful institu-

tional environment for young LGBTQ people. We also give LGBTQ youth a starting point on understanding their legal rights and encourage them to approach school administrators, parents, foster care caseworkers and other involved adults to ask for help. This is the motivation behind *Out, Safe and Respected*, *Bending the Mold* and our forthcoming toolkit paired with *Out, Safe and Respected* — written specifically for school administrators, faculty and staff.

LGBTQ youth are not just vulnerable at school: They often face abuse and discrimination from peers and adults in out-of-home care. Our Youth in Out-of-Home Care Project has reached out to child welfare services and homeless systems of care in order to raise awareness about the needs of LGBTQ youth so that those whose job it is to serve and protect them can do so with knowledge and compassion. Two of our publications, *Out of the Margins* and *Getting Down to Basics*, are designed to educate LGBTQ youth in out-of-home care and the adults who work with them. In 2003 we developed listening forums in which youth and adults came together to address the

needs of LGBTQ youth in out-of-home care. These were so successful that in November 2008 we launched more listening forums in the Chicago area to discuss how to support black LGBTQ youth in schools.

Growing up is hard. Lambda Legal's working for the day where sexual orientation or gender identity and expression isn't a factor that makes it harder. Whether in a classroom, a shelter, at prom or at the mall, our hope is that by giving youth the resources they need to advocate for their rights, and by educating the entire community of adults about how best to help and protect the LGBTQ youth they work with, we will see fewer cases of harassment of and discrimination against the youngest members of our communities. L



The POWER of Lambda Legal's AMICUS WORK

In the ritualized battlefield of the courtroom, the word friend may not immediately leap to mind. But Lambda Legal treasures the friendship extended by other groups filing *amicus curiae* (friend-of-the-court) briefs when we are on the frontlines. And, in turn, we have been an influential “friend,” submitting *amicus* briefs in some of the most heated civil rights battles of our time.

CONTEXT

Amicus work lets us provide critical context. We confronted HIV stigma with real-world medicine and science through our public-health brief to the Kansas Supreme Court in *State of Kansas v. Limon*. The case involved prosecution of a young mentally disabled man on charges related to consensual sex with another teen. Kansas law would have punished him with no more than 15 months of jail time had he been involved with a female. But because Matthew Limon had sex with another male, he was sentenced to 17 years in prison. In this case, litigated by the ACLU, a lower court had justified its harsher treatment of Limon by claiming “public health” concerns about gay sex.

When Limon appealed, Lambda Legal wrote an *amicus* brief on public health and gay sex, representing the foremost local and national experts in public health and HIV medicine, including the Kansas Public Health Association and the American Foundation for AIDS Research. We sought to overturn the conclusion of the lower court “that certain health risks are more generally associated with homosexual activity than with heterosexual activity” such that criminal laws should be enforced with more severe penalties for same-sex couples.

The Kansas Supreme Court reversed the Kansas Court of Appeals in 2005 and denoted one section of its decision “Public Health”:

“[W]e have the benefit of additional arguments, including the *amicus curiae* brief of a number of public health organizations which provided scientific and statistical information. These studies persuade us”

By Hayley Gorenberg,
Deputy Legal Director

The court went on to discuss details of HIV-related infection risk, using what we had presented as *amici* to strip away stereotypes and misinformation. Our material gave the court the chance to be unusually specific, accurate and even educational in its decision:

“There is a near-zero chance of acquiring the HIV infection through the conduct which gave rise to this case, oral sex between males, or through cunnilingus. And, although the statute grants a lesser penalty for heterosexual anal sex, the risk of HIV transmission during anal sex with an infected partner is the same for heterosexuals and homosexuals....”

Thus, resting heavily on the facts about public health, the court ruled the statute unconstitutional and overturned the result.

COMPLEMENT

Our marriage-equality cases often grab headlines, but we complement our direct cases with our *amicus* work. When the Connecticut high court handed down a big win in *Kerrigan v. Connecticut Department of Public Health* in October, litigated by Gay and Lesbian Advocates & Defenders (GLAD), we were pleased that our *amicus* work had moved the court to conclude:

“We agree with the following point made by the Lambda Legal Defense and Education Fund, Inc., in its *amicus* brief: ‘Any married couple [reasonably] would feel that they had lost something precious and irreplaceable if the government were to tell them that they no longer were ‘married’ and instead were in a ‘civil union’ ... If the tables were turned, very few heterosexuals would countenance being told that they could enter only civil unions and that marriage is reserved for lesbian and gay couples. Surely there is [a] constitutional injury when the majority imposes on the minority that which it would not accept for itself.’”

The only way to have a friend is to be one.

RALPH WALDO EMERSON

As we've gained additional legal protections for relationships, it's become even more important that we weave this message throughout our marriage work. At oral argument before the Iowa Supreme Court in early December, we used this powerful point to make real for the court the dignitary harm of being relegated to second-class citizenship, when Former Solicitor General Dennis Johnson told the court that he and his wife certainly wouldn't want to trade in their marriage for a certificate of partnership — especially if they learned that other people got to have marriage.

CONNECTION

Some of our most satisfying *amicus* work provides connective tissue throughout the range of civil rights movements.

Earlier this year, several school districts ramped up assaults on the New York Human Rights Law's protections in public schools. In case after case, the districts asked courts to read the Human Rights Law as exempting public schools from coverage (though they did not object to extending its protections in private schools).

The underlying allegations varied. A young black girl in upstate New York claimed unrelenting race-based abuse on the bus to and from school. A hearing-impaired student from Long Island objected that he'd been discriminated against when school officials prevented him from bringing his service dog to school.

In none of the cases did students claim harassment or discrimination in connection with their sexual orientation or gender identity. But the New York State Human Rights Law provides the most specific and comprehensive antidiscrimination protections for the state's LGBTQ school children. In addition to the strength of the law with regard to its specified protections for LGBTQ youth, the law offers procedural and financial advantages. As the state's high court has noted, proceeding before the New York State Division of Human Rights, the

agency that rules on the claims, is "designed to be affordable; it allows a complaint to avoid filing fees and other expenses related to commencement of a civil action and facilitates prosecution of the claim without hiring an attorney." The agency can address discrimination claims with flexible remedies and mediations unavailable through traditional litigation.

As we wrote in our *amicus* brief, the school system's construction of NYHRL would render the law "an empty promise" for students throughout New York, setting the state apart by reserving the most powerful civil rights protections for children whose families can pay for private schools. Upstate, the school district dropped its challenge to the NYHRL after our legal advocacy letter; we await court decisions elsewhere in New York.

COLLABORATION

The significance of our work to a broad swath of communities traditionally sheltered by civil rights laws allowed us to assemble a stunning array of signatories to our friend-of-the-court efforts. Our East Meadow brief was joined by Advocates for Children of New York, Inc., the Anti-Defamation League, Canine Companions for Independence, Disability Advocates, Inc., the Empire State Pride Agenda, Guide Dog Foundation for the Blind, Inc., Guiding Eyes for the Blind, NAACP Legal Defense and Educational Fund, Inc., the New York Civil Liberties Union, and Parents, Families and Friends of Lesbians and Gays.

The broad view of interconnectedness in civil rights efforts has played out similarly across the country, where the morning following Election Day we brought our litigation (with the National Center for Lesbian Rights and the ACLU) to challenge Prop 8, which was designed to strike the equal marriage rights we'd won in California.

Our new lawsuit disputes Prop 8 because it endangers the core constitutional principle of equal protection by allowing a

slim majority to wipe out basic rights for a minority group. Who could deem "protections" to be "equal" for any minority in such terrain?

The question resonated with our friends. Five additional lawsuits followed on the heels of our filing, including cases by leading racial and ethnic civil rights groups like the NAACP and MALDEF, women's rights groups, and prominent clergy and religious groups such as the California Council of Churches.

Many more groups raised their voices with supporting *amicus* work, including 44 members of the state legislature; numerous bar associations; leading California constitutional law professors; the Southern Poverty Law Center; and the Japanese American Citizens League, to name just a few.

CLOUT

We aspire to write *amicus* briefs with big impact. We were gratified to learn the results of a survey of 70 former U.S. Supreme Court law clerks that asked, "Are the [*amicus curiae*] briefs of any particular groups always considered more carefully than others?" In addition to the U.S. Solicitor General, state and local governments, and professional associations, the clerks named the briefs of eight organizations as the most carefully reviewed, including the ACLU, the NAACP, the AFL-CIO and Lambda Legal.

Lambda Legal pursues its mission through an impact litigation strategy that carries us closer to equality, victory by victory. We seek to lead in that work, describing much of what we do as "cutting-edge." But in some cases contributing to the knife's spine, rather than the very tip of the blade, is what best serves our rights. That's when we look for opportunities to support the efforts of others, and we strive to give that support intelligently, strategically and with care. Throughout the civil rights movement for LGBT and HIV-positive people, which we so often write about in terms of battle, we know the power Lambda Legal brings to bear as a trusted friend. **L**

Q&A

Minority Report

It's been, at turns, an exhilarating and exhausting year. We saw the election of the first African-American president but also saw LGBT rights diminished in a number of states through a majority vote. Now, as advocacy organizations struggle with a failing economy, Executive Director Kevin Cathcart and Kathryn Kolbert, Executive Director of People for the American Way, talk about the lessons learned from the elections and discuss what's next.

KATHRYN KOLBERT: People For the American Way's (PFAW) primary mission is to promote constitutional values under attack by the Religious Right. The Religious Right uses wedge issues to rile up their base and build coalitions across the conservative spectrum. Recently, attacks on LGBT Americans have taken high priority. We feel strongly that we need to be there to protect equality for all Americans — to counter extremists' resources and to articulate constitutional values so that all Americans can join in to preserve them.

KEVIN M. CATHCART: Both Lambda Legal and PFAW have respect for these constitutional values as well as respect for independent and fair courts that



KEVIN M. CATHCART AND KATHRYN KOLBERT

can interpret constitutions and protect minority rights. The separation of church and state is critical to our work because of the role that the Religious Right attempts to play in politics. It's enormously important that we have a broader range of organizations making LGBT civil rights a priority.

KK: We make it a priority. And because we work on many issues at the same time, we have relationships with constituencies that the lesbian and gay groups don't always have. For example, we maintain a group called the African-American Ministers in Action, a group of 5,000 African-American ministers across the country committed to progressive values. We also work with young elected officials in every state and with others on voting rights and for fair and just courts. As an ally, I hope we can bring some of these additional voices with us in the struggle for LGBT rights, especially on the edge of the new Obama administration. President-elect Obama has committed to four important federal policy changes: hate crimes, the Employment Nondiscrimination Act, repeal of the "Don't Ask, Don't Tell" policy and of DOMA. We need to hold him to those promises and we need to be out there fighting for all of those changes.

KC: I agree. In the LGBT community, there is pent-up desire for change after a long period of time when it was hard to achieve policy change. We should keep in mind that it is going to be challenging to get people to come together on a broad set of issues,

because so many have become single-issue in their focus.

KK: Yes, a potential problem is everyone pushing "their" issue to the exclusion of others, and splintering off rather than organizing a strategy that has more political power. The other critical issue for the LGBT community is that while this election was great for returning progressives to power at the federal level, the initiative wins in California, Arkansas, Florida and Arizona sent a mixed message.

KC: Yes, it's tricky, from an LGBT-community point of view, to summarize this election, because results were mixed. But it was exciting to see a surge of activity afterward, this "Stonewall 2.0." I was afraid there would be bitterness and resignation around the passed initiatives, but instead we saw righteous anger and indignation. We need to remember that, going forward, we need to count on as many alliances as we can get. We can still be picked off if we go it alone. The LGBT civil rights movement is targeted now in the way the pro-choice movement was for many years.

KK: Yes, the Right is not going away despite the fact that they've lost power at the federal level. They will be back with a vengeance at the state level, and they will focus primarily on LGBT issues. The current challenge in California is an opportunity

“How do we empower, activate and keep people engaged, so that we aren’t losing strength even as we’re struggling with finances and capacity?”

- KATHRYN KOLBERT

for the Court to reassert its appropriate role in the process of protecting, as all courts should do, the rights of the minority against majority rule. I’m thrilled that the matter went back to the Court and that there’s an opportunity to have that Court protect minority rights. But Prop 8 has also raised a series of questions about appropriate strategies and tactics for involving communities who are inadequately represented. There were a number of disturbing comments by LGBT people blaming African-Americans, who are under six percent of California’s population, for the passage of Prop 8 after the election. There’s no evidence that that vote was a significant factor in Prop 8’s passage.

KC: There were also commentators and other voices who jumped on one bad set of exit polls. In contrast, there was little focus on the accurate numbers reported for Republican voters, for voters over the age of 65, for people who defined themselves as religious — and I’m not even talking about Mormons here, because while Mormon money, much of which was from out-of-state, factored highly in this election, Mormon votes did not. There were several different narratives going on. One, after the Obama election, was a narrative about a “post-racial society,” and then there was another narrative about what happened in California, which tried to blame the loss on a very small community.

KK: We all have a responsibility to deal with our own biases and bigotry, and we all have a responsibility to ensure that our movement is inclusive. I hope that we will take a strong look internally and begin to break down some of our prejudices. But when it comes down to what happened in California, it’s about the people behind Prop 8 putting out the necessary money early on in a very strategic organizing effort. We didn’t pay enough attention to their game plan. Going forward, we need to reach out and change minds well before we have a political battle in place. We were in California over a year ago running focus groups around issues of discrimination against LGBT Americans in the black church. We found tremendous support for the political rights of LGBT Americans, but the support broke down over confusion about the difference between religious and civil marriage. There was concern that voting in support of gay marriage would require churches to marry people, and that churches’ ability to define their own religious beliefs would be circumscribed. We need to be clear that support for gay marriage doesn’t mean that we don’t also believe in separation of church and state.

KC: Yes, the distinction between civil marriage and religious marriage is key. As soon as our opponents wrongly assert that churches will be forced to do this or that, people freeze. Educating the public and refuting these claims will be a major piece of the political work in the coming years. I think the sad irony now is

that we have these important agenda items and great opportunities to move forward, but so many nonprofits are stretched thin. How do we empower, activate and keep people engaged, maybe not in a financial way but in a politically active way, so that we aren’t losing strength even as we’re struggling with finances and capacity? We have to figure out how to work together, how to amplify voices and how to keep people in the game when many may have taken cues from some of us that being in the game meant writing checks. We need to make sure that for however long they can’t be doing that, there are other ways to be involved.

KK: Our opponents aren’t disappearing. Our community still needs to support our organizations, because even though we won an important battle, we’re still necessary in this ongoing fight. How might we mobilize and use the resources of our membership in a more active and creative way? What we saw in the aftermath of Prop 8 was that there are huge numbers of people who will work with us in a host of ways — in the streets, in the legislatures, in the policy arena or by writing letters to the editor. I look forward to working with Lambda Legal in the future to see where we can collaborate, because together, we’ll be much more effective. Lesbians and gay Americans are on a path toward equality. All you have to do is to look at who our friends are: younger Americans. We will win this fight. We just need to be strategic about how we get there. **L**

In My Own Words

DONOVAN AND RAMELLI V. POWAY UNIFIED SCHOOL DISTRICT

Joey Ramelli and Megan Donovan were forced to drop out of high school and complete their education at home after being harassed by their classmates over the course of their sophomore and junior years. Lambda Legal sued the school district. Recently, the California Court of Appeal, the state's mid-level court, upheld a jury decision that holds Poway High School responsible for failing to protect them. Joey Ramelli tells his story.

I have always thought of myself as a lucky guy. My mother and grandmother always taught me to be myself, and that I could accomplish whatever I wanted. For that reason, coming out to my parents at 13 was the easy part; entering Poway High School that same year was much more difficult.

The trouble began with the hesitation and discomfort I noticed from students, teachers and administrators when I tried to be upfront and honest about my sexual orientation. I was one of the first students to ever be out on campus, and administrators quickly labeled me — and not the hostility I encountered — as the problem. When I was called names like *fag*, *fudge packer* and *queer*, I was told I wasn't welcome on campus; but when I went to teachers for help, they told me to avoid the people and places where the hostility was happening — and to stop bothering them.

By the time I entered junior year, it wasn't just about being called names on campus; it had begun to turn violent.

Students spit on me, threw fruit and other objects, even made death threats. My grades dropped as I began to ditch classes — anything to get myself away from the abuse.

My mother noticed the change in my behavior, and finally I broke down, telling her about what I'd been enduring. She set up a meeting with assistant principals, whose response was a slap in the face: They said that the problem wasn't other students or Poway in general, it was me. They suggested I stay in the classroom during break, or perhaps that homeschooling would be a better fit. In fact, as I began my senior year, they asked me to stay home, and in fear for my safety, I did. That's when I sought legal help.

Lambda Legal's Senior Staff Attorney Brian Chase, along with San Diego attorneys Paula Rosenstein and Bridget Wilson, handled my case against the Poway High School administrators who failed to protect me and my co-plaintiff, Megan Donovan, a friend who was experiencing the same sort

of harassment and neglect. The courts ultimately held that the administrators failed in their duty to take adequate steps to deal with anti-LGBT harassment and bullying. Both Megan and I wanted to make sure that this will never happen to another student and that the people who are supposed to help students grow into well-adjusted adults aren't actually stunting them.

The case is over, and Poway lost. The most important lesson I learned in high school — the hard way — was how important it is for young people to stand up for their rights and to hold educators to the highest possible standards. I'm 22 now. I missed the happy high school experiences people remember for the rest of their lives: no prom, no senior trip, not to mention no college straight out of high school. But thanks to Lambda Legal taking my and Megan's case, other gay, lesbian, bisexual and transgender students can have those opportunities we missed. **L**





Matching gift programs can double or even triple the impact of your contribution!

double your impact

Lambda Legal's partnerships with the business community have played an integral role in our successes. Thousands of companies nationwide help support our litigation, education and public policy work through workplace-giving and matching-gift programs.

Workplace-giving programs make it easy to support Lambda Legal. If your employer offers this program, you can sign up to have a contribution deducted from your paycheck and sent to Lambda Legal on a regular basis. You will receive a tax deduction for your charitable contribution as well as the satisfaction of helping Lambda Legal remain at the forefront of the fight for equality.

Some employers also offer matching-gift programs, which can double or even triple the impact of your contribution. If you work for a company that offers a matching-gift program, be sure to include a matching-gift form (available from your employer) when you make your contribution to Lambda Legal.

To learn more about how you can participate in your workplace-giving programs, check with your employer or contact Sarah Ogden at 212-809-8585, ext. 226 or sogden@lambdalegal.org. For a list of companies that have matched gifts to Lambda Legal in the past, visit www.lambdalegal.org/matching-gifts.

In the News

"There has been a steady drumbeat of courts recognizing longstanding New York law as it applies to same-sex couples."

Senior Counsel Susan Sommer quoted in "Court Backs Paterson Regarding Gay Unions," *New York Times*

SEPTEMBER 3, 2008

"The Johnson City Police Department did extraordinary measures to publicize their arrests in a way they didn't do for other crimes. [...] There was a whole range of offenses that were similar or much more serious but for none of them did they publish the photos of the arrestees."

Senior Staff Attorney Greg Nevins quoted in a Tricities.com article about Lambda Legal's lawsuit on behalf of a man arrested in a public sex sting operation

SEPTEMBER 30, 2008

"Far from showing that California's Supreme Court was wrong to extend the right of marriage to gay people, the passage of Proposition 8 is a reminder of the crucial role that the courts play in protecting vulnerable groups from unfair treatment."

New York Times editorial, "Equality's Winding Path," a response to Prop 8

NOVEMBER 6, 2008



Legal Landscape

A Dangerous Proposition

How easy should it be to take away fundamental rights secure for the majority from a historically discriminated against minority? That's the question raised by the lawsuit filed November 5 by Lambda Legal, the National Center for Lesbian Rights, and the ACLU to overturn Prop 8, the initiative designed to eliminate gay people's ability to marry in the Golden State.

The constitution makes it quite difficult for the legislative or executive branches to deprive a vulnerable minority, and them alone, of a core constitutional right. Such efforts are treated as suspect and, to be valid, must pass strict scrutiny by the courts. Discriminatory treatment of this sort is not permissible unless it is demonstrated that eliminating a minority's exercise of a basic right is necessary to further a compelling government interest. In other words, a high hurdle exists to taking such dangerous action and it is the responsibility of the courts to guard against it.

What about when a minority's core constitutional rights are sought to be eliminated by changing the constitution itself? We contend this should be equally difficult and that the California Constitution supports that essential safeguard.

California's Constitution can be changed in two ways. The voters are allowed to amend the constitution by gathering sufficient signatures to place an initiative on the ballot that then needs only a simple majority to pass. But certain kinds of changes to the state constitution are considered a revision that must first pass two-thirds of each house of the legislature before being placed on the ballot.

Past cases explain that a measure that would substantially alter the underlying principles of the state constitution or that would make far-reaching changes in the nature of the state's basic governmental plan are revisions that must go through the more deliberative process of super-majority legislative approval before being submitted to the voters. Because Prop 8 did not follow that procedure, we contend that it is invalid.

In the Marriage Cases, the California Supreme Court held that discrimination against lesbians and gay men is as suspect as discrimination based on race, national origin, religion or sex. The Court also held that the right to marry is fundamental and cannot be deprived based on the sexual orientation of those who would marry. In trying to change this, Prop 8 would inscribe discriminatory treatment into the state's constitution, punching a hole in the foundational constitutional principle that fundamental rights belong equally to everyone. Prop 8 would also undo the essential role that courts play protecting minorities against an overreaching majority.

If the right to marry can be taken away from gay people so easily, then nothing would keep a majority of voters from taking away any fundamental right — not just from gay people but from racial, ethnic and religious minorities or women as well. That's why groups such as the California NAACP, the Mexican American Legal Defense and Education Fund, the California Council of Churches and the California Women's Law Center filed their own lawsuits challenging Prop 8.

A constitution is supposed to be a safeguard against the "tyranny of the majority," and courts have a primary responsibility to ensure that that safeguard remains strong. California's Supreme Court should fulfill that responsibility and hold that the discrimination inherent in Prop 8 cannot be so easily made part of California's charter.

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May 4, 2009 at Pier 60, Chelsea Piers. New York, NY.
For more details and for a complete up-to-date list
of our events, visit www.lambdalegal.org/events.

