

Lambda
Legal

Impact



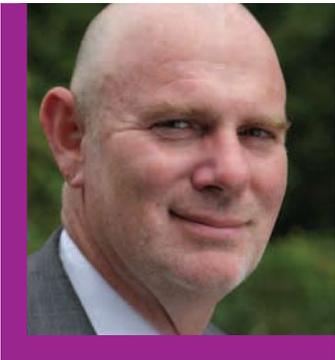
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Kristina Wilfore



Lambda Legal
making the case for equality



Making Change Happen

We believe in social change. We keep fighting for equality because we have seen so much achieved for LGBT people and people with HIV. Some days, the change around us seems so remarkable, it takes my breath away. Some days it comes far too slowly and we dig in and push harder.

Doors are beginning to open for discussion of LGBT and HIV rights in our nation's capital. I have had productive meetings in recent months at the White House and the Department of Justice during which we discussed issues ranging from marriage equality and repeal of DOMA to "Don't Ask, Don't Tell" and passage of an inclusive Employment Nondiscrimination Act (ENDA). Real progress has already been made in publishing proposed rules to finally lift the travel ban on people with HIV and in reinforcing the law that prohibits discrimination against people with HIV who are seeking licenses in certain professions.

We need a strong, inclusive federal law that protects all LGBT people from employment discrimination, no matter where they live. This is a change in the law that has not come fast enough. Wisconsin passed the first state law prohibiting job discrimination on the basis of sexual orientation in 1982 — more than 25 years ago. But only 21 states and the District of Columbia have statewide laws expressly prohibiting such discrimination and only 12 of those states prohibit discrimination on the basis of gender identity and expression. Lambda Legal's attorneys need stronger laws to fight for LGBT people in every state when they are denied a job or fired because of prejudice.

This year we all have a very good chance to make this change happen. Rep. Barney Frank and 152 co-sponsors introduced a trans-inclusive ENDA in June. Year after year, we spoke out, stood firm and fought for an inclusive ENDA. Now we have a congress and a president who support equality in the workplace. Congress will soon hold hearings. We can't wait patiently for change to come: We have to keep fighting to see ENDA enacted into law.

Meanwhile, Lambda Legal keeps fighting for workplace fairness. For example, when Vandy Beth Glenn was fired from her job as a legislative editor by the Georgia state legislature after she informed them that she was transitioning from male to female, we agreed to represent her as she fought back. A federal judge in Georgia has now ruled that Glenn should have her day in court, making clear that the "...anticipated reactions of others are not a sufficient basis for discrimination."

And in 2007, when three public safety employees in Bellevue, WA — including two firefighters and a 911 dispatcher — were told that they would not get all the same benefits as the non-gay employees with whom they worked side-by-side, Lambda Legal helped them fight back, too. We filed suit against the city seeking equal family benefits as a basic issue of fairness, and soon thereafter, they changed their policy to provide equal benefits to gay and lesbian employees.

Change was the inspiring theme of the last election. But social change doesn't just happen — people must fight for it. We and our allies must continue examining our hearts and our minds and voice a strong commitment to equality for everyone in our communities — lesbian, gay, bisexual, same-gender loving, transgender, intersex, living with HIV; though we may identify differently, we are linked by a movement. Lambda Legal and many partners and friends across the country have not gotten results by waiting for change — we go out and make it.

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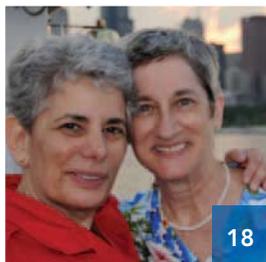
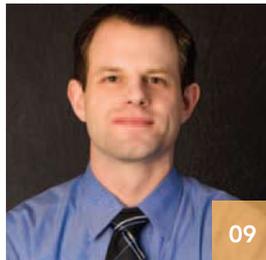
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Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

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On the cover:

Plaintiffs Sara Bowling Franke and her father, Dr. Robert Franke, evicted from an assisted-care facility for having HIV, are fighting for justice. (photo: Dixie Knight Photography)

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Lucky 7s

This summer the Sacramento Superior Court dismissed a lawsuit against SB777, the Students Civil Rights Act. Authored by former California Senator Sheila Kuehl — the state's first openly gay state legislator — the act was signed in 2007 and strengthened existing antidiscrimination protections also authored by Senator Kuehl, by making explicit the bans on discrimination on the basis of sexual orientation and gender identity in schools. Antigay legal groups mounted repeated attacks on the new law, arguing that concepts like “sexual orientation” are too vague to understand. In this third challenge, filed in 2008, the state Superintendent of Public Instruction, represented by California's attorney general, asked the court to dismiss the case. In 2009, Lambda Legal collaborated with the National Center for Lesbian Rights, the Transgender Law Center, Equality California and Gay-Straight Alliance Network on a friend-of-the-court brief reinforcing that these concepts are established and clear. The court agreed and upheld this important law.

IMPACT: This victory furthers Lambda Legal's commitment to ensuring that all states adhere to the principles of equality and personal safety by including sexual orientation and gender identity in their antidiscrimination protections.

Transgressed



Vandy Beth Glenn was an employee for the Georgia General Assembly's Office of Legislative Counsel for two years. Diagnosed with Gender Identity Disorder and undergoing gender transition, Glenn had been privately struggling for years with mental distress as a man. After making her decision to transition from male to female known to her direct supervisor, Glenn confirmed her decision to Sewell Brumby, head of her department — who fired her on the spot. Lambda Legal filed a federal lawsuit on behalf of Glenn against the Assembly last summer, claiming the termination had violated her rights under the equal protection clause of the U.S. Constitution. Although no federal statute exists that explicitly protects transgender people from discrimination in employment, the court denied an early motion to dismiss the case. With the lawsuit now set to move forward, a victory would send the message that discrimination against transgender employees will not be tolerated.

IMPACT: This lawsuit provides a much needed platform for the voice against ongoing discrimination on the basis of gender identity within public employment.

Stern Reprimand

On August 18, 2009, a federal court in New York State rejected Howard K. Stern's claim that he was defamed per se by being described as gay. The decision ended the 2007 challenge Mr. Stern made to passages found in *Blonde Ambition: The Untold Story Behind the Death of Anna Nicole Smith*. The judge recounted the progress made by gay men and lesbians, particularly since Lambda Legal's landmark Supreme Court victory in *Lawrence v. Texas* in 2003, and reasoned that being described as gay or lesbian does not expose an individual to public hatred and contempt. Lambda Legal filed a friend-of-the-court brief in March 2009, arguing that allowing this type of defamation claim would categorically demean the LGBT community in ways that are inconsistent with the *Lawrence* decision and with the progress we have made under the law and in society.

IMPACT: Our friend-of-the-court brief argued that Stern's claims that being described as gay or lesbian is defamatory are invalid. This victory, alongside other groundbreaking work of Lambda Legal, means we are eliminating harmful laws based on prejudice.

We Asked. You Answered.

This summer, Lambda Legal launched an online national health care survey with the ambitious goal of getting 5,000 respondents. We exceeded this goal, with well over 5,000 individuals reporting their experiences with the health care system in the United States. As the Obama Administration and Congress consider key changes to our health care system, they must understand and include the experiences of lesbian, gay, bisexual and transgender (LGBT) people and those living with HIV in their deliberations. Discrimination against LGBT people and individuals living with HIV seeking health care must be addressed and eliminated.

IMPACT: With health care reform at the forefront of current political debate, it is crucial that the voices of LGBT people and those living with HIV are heard. Their experiences demonstrate that health care discrimination is real and harms people and families.

A Much Needed Lift

The Centers for Disease Control and Prevention (CDC) of the Department of Health and Human Resources (HHS) announced it will issue proposed new rules that would lift the HIV travel and immigration ban by removing HIV from the list of communicable diseases of public health significance for immigrants to the United States. The tentative new rules would embrace the consensus among scientific and medical professionals that individuals living with HIV do not pose a threat to U.S. citizens. The proposed rules would go into effect near the close of this year and end the discriminatory and restrictive HIV-related policies that have been in place in the United States since 1993.

IMPACT: Dropping discriminatory restrictions on immigrants and visitors living with HIV would mark a sea change in political perception of those with the disease. It is one more step toward protecting their dignity and equal protection under the law.

American Airlines is the official airline of Lambda Legal. American Airlines has been a national sponsor of Lambda Legal and a travel partner since 2004. As a Lambda Legal member, you can help and support Lambda Legal every time you travel on American Airlines, at no cost to you! It is very simple. When making a reservation on www.AA.com/rainbow or through a travel agent, all you need to do is provide Lambda Legal's unique Business ExtrAA Account number and you will help earn valuable points for Lambda Legal. The best part is that you still earn your own AAdvantage Miles! When booking on www.AA.com/rainbow, simply enter 541544 at the bottom of the Enter Passenger Details section, in the field for Business ExtrAA Account Number.

Building Coalitions



DENNIS COLEMAN

South Central Regional Director Dennis Coleman, Marriage Project Director Jenny Pizer, and Help Desk Staff Attorney Stefan Johnson represented us at this year's National Bar Association (NBA), the nation's largest organization of African-American lawyers and judges. Coleman facilitated a Continuing Legal Education (CLE) program with Pizer and Johnson as panelists, addressing Prop 8, California's antigay constitutional

amendment, giving an overview of where LGBT civil rights are headed and spotlighting the needs of black LGBT people. As the first CLE panel on LGBT rights at an NBA conference, the program inspired lively discussion and was a key first goal of the collaboration between the NBA and Lambda Legal. We shared our educational publications including the special marriage issue of Impact magazine. Our team was hard at work sharing information about our fight for equality for the LGBT community and people living with HIV and learning from other colleagues about the fight for justice around the country.

IMPACT: Sharing ideas and forming partnerships with other people and groups fighting for civil rights strengthens Lambda Legal's work and is vital to achieving our mission.

The Other

President Woodrow Wilson once said, “If you want to make enemies, try to change something.” The effort to change how LGBT people are treated under the law has certainly proven President Wilson’s quip to be true. While gay rights cases once pitted Lambda Legal against either government agencies and officials or private businesses, it is increasingly the case that our opposition is represented by a cadre of arch-conservative nonprofit organizations that have been formed to oppose LGBT rights as a centerpiece of their work.

Most of these groups came into existence within the last 20 years with the express goal of countering the success in the courts of impact litigation organizations like Lambda Legal. While decrying what they call “judicial activism,” they frequently ask courts to strike down laws that protect lesbians, gay men, bisexuals and transgender people. In addition, these groups also seek to limit reproductive choice and stem cell research, promote prayer in schools and the teaching of creationism and “intelligent design,” and defend those who seek to excuse discrimination on religious grounds.

Who are these adversaries? While dozens of organizations have filed lawsuits opposing LGBT rights or sought to support the parties Lambda Legal has sued, there are four groups we consistently have found ourselves up against.

The prime opponent is the Alliance Defense Fund (ADF). This organization was established in 1994 by the founders of Focus on the Family, Campus Crusade for Christ, the American Family Association, and more than two-dozen churches. ADF has an annual budget of over \$32 million dollars, more than three times that of Lambda Legal’s. ADF’s major donors have included the Helen DeVos Foundation (formed by the founder of Amway, which has been called a “quasi-religious corporation”), the Lynde and Harry Bradley Foundation (established by a former member of the extreme right-wing John Birch Society), and the Edgar and Elsa Prince Foundation (whose vice-president previously headed the infamous Blackwater Worldwide corporation, a

mercenary organization deployed in Iraq by the Bush Administration). ADF’s President and General Counsel is Alan Sears, author of *The Homosexual Agenda: Exposing the Principal Threat to Religious Freedom Today*. In addition to its in-house lawyers, ADF claims to have trained more than 1,200 allied attorneys and 400 “Christian law students” in exchange for commitments to provide ADF with legal assistance.

Over the last several years, ADF filed four separate cases seeking to stop New York’s recognition of marriages lawfully entered by same-sex couples in other jurisdictions. Lambda Legal intervened and defeated each of these challenges, two of which are now before New York’s high court. Lambda Legal also turned back ADF’s legal challenges to California’s comprehensive domestic partner law, New Orleans’ domestic partner registry, the domestic partner benefits offered by an Ohio public university and an Iowa court order obtained by a same-sex couple declaring that the civil union they had entered in Vermont was no longer in effect. ADF was also on the losing side of the case in which Lambda Legal and our sister organizations initially won the freedom to marry in California, our case holding that doctors may not deny a lesbian medical care based on religious objections, a Supreme Court ruling allowing a university to use student fees to provide a forum open to an LGBT student group, efforts to place a referendum on the ballot to repeal Montgomery County, MD’s gender identity nondiscrimination ordinance, and a case where ADF unsuccessfully represented a woman who sought to take child custody away from our client based on the same-sex relationship he was in after the couple’s divorce. ADF further worked behind the scenes assisting the local government we successfully sued to win marriage victory in Iowa. It also has intervened in the federal challenge to Prop 8 to defend the measure when the government defendants announced they would not.

Mimicking Lambda Legal’s important work filing friend-of-the-court (“amicus”) briefs in LGBT rights cases, ADF has likewise submitted *amicus* briefs in a number of Lambda Legal cases on

Side

A Quick Summary of Major Anti-LGBT Legal Organizations

behalf of conservative politicians, clergy and right-wing organizations such as the Family Research Council. ADF further promotes the so-called “Day of Truth” to counter the annual “Day of Silence,” in which Lambda Legal has provided assistance to students calling attention to the silencing of those who are gay.

A second group Lambda Legal is often opposing is Liberty Counsel, whose tagline is “Restoring the Culture One Case at a Time.” Liberty Counsel was founded in 1989 by Mathew Staver, who is now its chairman as well as the dean of the late Jerry Fawell’s Liberty University School of Law. Liberty Counsel runs the school’s Center for Constitutional Litigation and Policy, which it asserts exists to “train attorneys, law students, policy-makers, legislators, clergy and world leaders in how to view the Constitution and public policy through a fundamentalist biblical worldview.” Press accounts indicate that Liberty Counsel’s annual budget was approximately \$2 million in 2007.

Lambda Legal has turned back effort after effort of Liberty Counsel to get around a Vermont custody order in the Virginia courts. We have also defeated Liberty Counsel’s attempt to maintain a restriction on a father living with his same-sex partner and its lawsuit trying to strike down all of California’s domestic partnership laws. Most recently, Liberty Counsel stepped in to help represent the Mayor of Birmingham, in Lambda Legal’s lawsuit challenging the mayor’s refusal to provide Central Alabama Pride the same city services as other groups because of his opposition to their message.

A third frequent Lambda Legal opponent has been the American Center for Law and Justice (ACLJ), which was established in 1990 by Pat Robertson, founder of the 700 Club, the Christian Coalition and Regent University. Press accounts indicate that ACLJ’s annual budget is approximately \$35 million and that it has more than twice the number of staff lawyers as Lambda Legal. Lambda Legal assisted in the efforts that defeated ACLJ’s

attempt to stop New York City from providing its employees domestic partner benefits, as well as ACLJ’s challenge to San Francisco’s equal-benefits ordinance, which required city contractors to provide their employees’ domestic partners the same benefits provided to employees’ different-sex spouses. ACLJ, on the other hand, filed friend-of-the-court briefs opposing Lambda Legal’s efforts to win marriage equality in several states. Additionally, they filed a brief on behalf of Focus on the Family and an arm of the Southern Baptist Convention opposing Lambda Legal’s challenge to the Boy Scouts’ antigay policies.

The Thomas More Law Center (TMLC) is yet another nonprofit legal group that has been an adversary of Lambda Legal in numerous cases. Founded in 1999 by antichoice Domino’s Pizza mogul Tom Monaghan and its current President and Chief Counsel Richard Thompson, TMLC reportedly has a \$2.5 million annual budget and its website proclaims that it currently is handling 259 cases in 43 different states. Lambda Legal helped defeat TMLC’s attack on a Michigan school district’s domestic partner benefit plan and TMLC’s challenge to a school health education program that included medically accurate information about sexual orientation. TMLC, in turn, unsuccessfully sought to intervene in Lambda Legal’s New York marriage case and submitted a friend-of-the-court brief in support of the National Organization for Marriage’s opposition to our state constitutional challenge to Prop 8, as well as one against our California challenge to religiously-based sexual orientation discrimination in health care.

It’s said that imitation is the highest form of flattery. In trying to copy the impact work of Lambda Legal, it’s clear these four well-funded anti-LGBT groups have great respect for what we do. Luckily, however (and as the track records make clear here), copies usually don’t live up to the original. **L**

Being Intersex, Being Whole

BY COLE THALER, TRANSGENDER RIGHTS ATTORNEY

The right to control your own body. Access to unbiased medical care. Resistance to gender stereotyping. Respect for self-identity. All of these principles are critical components of equality for lesbians, gays, bisexuals and transgender people, and they motivate the work of Lambda Legal. But they're also fundamentally important to intersex people, who have a stake in the work we do, but also face legal challenges of their own.

An estimated 1 in 2000 babies is born with reproductive or sexual anatomy that doesn't fit typical definitions of male or female.

Intersex people have the same range of identities that other people do — they may identify as men, women, genderqueer, transgender, gay, straight, and so on. Some use the term intersex as an identity label, while others view it as solely a medical condition.

An estimated 1 in 2000 babies is born with reproductive or sexual anatomy that doesn't fit typical definitions of male or female. The conditions that cause these variations are grouped under the terms *differences of sex development* or *intersex*. Intersex people have lived in all cultures throughout history. In the 1950s, doctors in the United States began routinely performing genital surgeries on babies born with intersex conditions. These surgeries were rarely medically necessary; instead, doctors thought that intersex genitals created a “social emergency” that would lead to peer and familial rejection and had to be “fixed.” They often urged the parents to keep the child's condition a secret. At that time, doctors believed that surgeries and secrecy would help the child develop a “normal” gender identity as either a boy or a girl. The gender assignment was made based on stereotypes and assumptions about adult sexuality: for example, penises considered “too small” for penetration were surgically turned into vaginas, and clitorises considered “too big” were removed.

In the 1990s, intersex adults began coming forward to say that the medical treatment they received in childhood was physically and psychologically devastating, and that forced secrecy led to pain and stigma. Intersex people started organizing for change, calling for an end to unnecessary surgeries and for children to have a voice in their own treatment. Today, the medical community is increasingly attentive to the voices of intersex people. Although elective genital surgeries on infants are still the predominant practice, some mainstream physicians are starting to raise questions about the treatments that historically were uncritically accepted as the standard of care. For example, the Consortium on Disorders

of Sex Development and the International Consensus Conference on Intersex recently released nonbinding standards of care encouraging doctors to give parents complete information about their child's condition.

But legal challenges persist for intersex people. In 2006, Anne Tamar-Mattis — a lawyer and longtime LGBTQI activist — founded Advocates for Informed Choice (AIC), an organization devoted to promoting the civil rights of children born with intersex conditions. Lambda Legal has been AIC's fiscal sponsor since its inception. “My partner of 15 years is an intersex activist, and I have many close friends who are intersex,” Anne says. “I learned in law school that there are strong arguments available to protect intersex children, but no one had ever mounted a serious legal effort. Once I knew that, I had to do what I could to ensure that intersex children born today can grow up free from shame, discrimination and unwanted surgery.”

The medical treatment of intersex people raises a variety of legal and ethical issues. For example, although parents have the legal authority to make many medical decisions for their children, parents of intersex children report feeling pressured into making quick decisions about surgery without full information. This casts doubt on whether current practices meet legal standards for informed consent. It's also uncertain whether parents ever have the authority to choose cosmetic genital surgery for their children, especially when surgeries can cause loss of fertility.

Medical privacy is often compromised for intersex children and adults, and often they face problems accessing their own medical records. Parents of intersex children may have a hard time getting the information they're entitled to receive from their child's health care providers. Parents have the right to know, for instance, that little data exists on how current treatment models impact children.

AIC's work continues to grow and develop as word spreads about its mission. Anne has presented on intersex legal issues at medical forums, hospitals and conferences around the country. And AIC routinely consults with intersex adults and parents of intersex children. Anne recently helped an immigrant with an intersex condition obtain a naturalization certificate properly designating him as male. According to Anne, “In the coming year AIC will be working to ensure that laws protecting children from sterilization are applied equally to children with intersex conditions, and working with the medical community and the intersex community to improve communication between these groups.”

Intersex people have lives and identities as varied as LGBT people — and, of course, those communities overlap, with many intersex people identifying as lesbian, gay, bisexual or transgender. Beyond the wide range of our experiences, some common truths emerge: we all have a stake in bodily autonomy and integrity, in having our identities recognized and honored, and in securing the right to be our whole selves. **L**



MICHAEL KAVEY

Notes

from the

FRONTLINE

Bobbi Petranчук had felt a bit nervous, she told me, about sending her daughter Ashley to school that Thursday. I could understand why. The day before, Ashley Petranчук and her 20-year-old brother Charlie Pratt had, with the help of Lambda Legal and their parents, filed suit in federal court against the Indian River Central School District where Ashley attended the tenth grade — the same school that Charlie had been forced to abandon years earlier to protect himself from relentless antigay abuse. Responding to years of illegal antigay and sexist discrimination, harassment and censorship, Lambda Legal's lawsuit on behalf of Charlie and Ashley asserted 14 different claims against nine school district defendants, including the Board of Education, the Superintendent, Ashley's current principal, and various other school employees. Charlie and Ashley had already interviewed with the local television station about their case, and their photos and stories were splashed across the front page of the regional newspaper. While Bobbi felt enormous pride in her children, she was also understandably uneasy about how students, faculty and staff might respond to Ashley at school on the day right after the lawsuit filing.

Ashley, however, was determined not to hide. When a newspaper reporter asked her whether she was scared of what her classmates would think of her or say, she offered a powerful, one-word response: "No." I smiled when Ashley said this, impressed with her maturity at age 15. The reporter smiled as well, telling Ashley she was a brave young woman.

Maintaining that courage, Ashley attended her classes as usual the next day and



ASHLEY PETRANCHUK AND CHARLIE PRATT

for the rest of the school year, holding her head up high, undeterred by the school's antigay climate. And in the following days and months, she and Charlie have retained their remarkable courage and poise as they've publicly told their story and raised awareness about the harms and unfairness of discrimination, harassment and censorship of lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth and their allies.

I know I am not alone in feeling inspired by the strength, determination and grace that these young plaintiffs have demonstrated as they've stood up so publicly to injustice — particularly in the case of Charlie, who suffered through years of hostility and peer abuse. Given how many calls we receive at Lambda Legal about the unfairness and outright cruelty that LGBTQ youth and their allies face at schools

around the country, it can sometimes take some effort to keep a bright outlook and to remember how far we've come in ensuring safer school climates for all students. Still, even in cases with the most infuriating and frustrating underlying facts, like Charlie's and Ashley's, I find encouraging signs of progress, both in the young people's demonstration of courage and in the very substantial changes that they are able to create, sometimes surprisingly quickly, in the hostile environments in which they've attended school.

A Family Fights

Painful facts lie at the heart of Charlie and Ashley's case. Charlie suffered horrific and relentless harassment in the Indian River Central School District based on his sexual orientation and perceived non conformity



to sexist stereotypes — harassment that forced him to forsake his high school education at the age of 15 to protect his own safety. For years, students called him *faggot*, *queer*, *fudgepacker* and *sissy*, often multiple times in the course of a day and often in the presence of school employees who failed to intervene. Students also tripped him and shoved him into lockers and walls, hurled food and other objects at him, threw his belongings across the floor, spat on him, carved antigay slurs into his locker, grabbed his buttocks, purported to imitate him with exaggerated effeminate gestures, and taunted him with sexually explicit comments. Even some school employees joined in on the harassment, calling Charlie a “sissy,” and telling him he was “disgusting” and “shouldn’t be gay.” Other school employees, including the high school principal, deliberately turned a blind eye to the peer harassment and suggested that Charlie had brought it on himself. When Charlie sought to form a student gay-straight alliance (GSA) to help reduce his isolation and educate his peers, the principal refused to allow it.

Midway through Charlie’s second year in high school, the principal told Charlie’s parents that he could not ensure their son’s safety at school. Left with no other choice, they withdrew him. A second gay student also withdrew from Indian River that year to escape harassment, and we later learned that several other students had suffered similar harassment in the district’s schools.

Outraged by the mistreatment her brother and others had endured, Charlie’s younger sister Ashley, currently a high school junior, attempted last year to form the GSA that Charlie and others had been denied, hoping to help create a more inclusive school environment. Following in his predecessor’s footsteps, however, the principal refused to allow the GSA, telling Ashley that the organization would bother members of the community. After years of well-known antigay and sexist harassment in the district and the withdrawal of at least two students to escape the hostility, the school still insisted on banning a supportive group for LGBTQ students and their allies. Ashley turned to Charlie for advice, and Charlie contacted Lambda Legal. Listening to their

story, I could tell immediately that we had a powerful case. On April 8, 2009, we filed suit on their behalf, asserting violations of the federal and state constitutions and civil rights statutes.

Sea Change

The inspiration that I and countless other advocates of LGBTQ youth can draw from Charlie and Ashley’s case rises not only from our young clients’ bravery, determination and willingness to tell a painful story — though that is certainly fundamental. We also see inspiring signs of progress in the way the school district and its officials have responded to the lawsuit. As we’ve seen in several other cases across the county, many school officials, along with their attorneys, are starting to realize that there’s just no excuse for antigay discrimination. So when students and families stand up to expose biased conduct by school officials, a growing number of these officials rush to defend themselves not by claiming that the discrimination was somehow justified, but by insisting that they are and have always been committed to equality for all students — effectively embracing Lambda Legal’s mission rather than resisting it. Even where these claims of innocence are implausible and false, the significance in the shift in their language — from something like “we can discriminate” to “we would *never* discriminate” — should not be overlooked. Thanks to heroes like Charlie, Ashley and their parents, the terms of the public debate about LGBT issues in schools are being transformed, and young children in places like Indian River Central School District are watching and listening as their community’s leaders are finally forced to recognize—publicly and emphatically—that antigay discrimination is wrong. These changes both reflect and contribute to the enormous strides we are making in the march toward equality for the youngest members of our community.

In Charlie and Ashley’s case, for example, the school district made no attempt to justify a prohibition on GSAs, presumably because it knew that a prohibition could not be justified. Just five days after we filed suit, the school sent a letter assuring us that



Outraged by the mistreatment her brother Charlie had endured, Ashley attempted to form the GSA that Charlie and others had been denied.

Ashley would be permitted to form a GSA right away. “I’m very excited,” Ashley told the local paper. “It’s been a long time and it’s finally happened.”

In a more suspect part of the same letter, the school district suggested that the timing of all of this was just a coincidence. According to the letter, the district had already been planning to form a GSA (apparently without informing any students). Our recently filed lawsuit, the letter claimed, had nothing to do with the fact that Ashley would be able to form the group the very next Monday. Evidently, the school (or its attorneys) had decided that this highly implausible story was preferable to any admission of antigay censorship. This speaks volumes about how far our movement has come.

The school also issued a press release proclaiming its dedication to “programs which promote tolerance and inclusiveness in all of its schools,” specifically including programs addressing discrimination based on sexual orientation. Seemingly eager to emphasize and re-emphasize its purported commitment to equality, the district claimed in the press release that it supported “[a]ssemblies, after school discussions, poster campaigns, classroom debates/projects, positive morning announcements, and many other ‘small’ acts [to] reinforce the idea of tolerance and acceptance.” Regardless of whether one believes every (or any) detail of these statements to the press, it is startling and refreshing to see such a vigorous endorsement of LGBT-inclusive school programs coming from a district that had openly and shamelessly discriminated against LGBT youth and their allies for so many years.

Not all of the district’s statements point to progress. Its court papers have advanced specious and offensive arguments, and some of its public statements are misleading or outright false. Ultimately, of course, the district’s actions in the future will speak much more loudly than its words. Lambda Legal will continue to represent Charlie and Ashley until we have a full and fair resolution of their complaints.

Nevertheless, we shouldn’t underestimate the significance of the tone set in public debate by a school’s endorsement of an LGBT-inclusive message. It is an uplifting sign of progress that the district’s children are finally hearing their school officials publicly acknowledge that antigay discrimination is wrong and shouldn’t be tolerated at school. As we push forward with claims on behalf of both Charlie and Ashley, we shouldn’t lose sight of this notable advancement in equality for LGBTQ youth in schools.

Catching the Wave

While the trend is hardly universal, we’ve recently seen similar responses in schools in other parts of the country: School officials confronted with allegations of anti-LGBT bias scramble to demonstrate their pro-LGBT bona fides, particularly in matters involving GSAs and student expression. When Lambda Legal called an Oregon school district to task earlier this year for its unfair treatment of a GSA, the district responded within days, assuring the students and the public that it had policies to protect students from discrimination and would correct any procedures that denied GSA members their equal rights. Last year, officials at a Florida school responded quickly when Lambda Legal sent a letter denouncing the censorship of a middle school student’s T-shirt in support of the Day of Silence; the district pledged that its students would not be censored based on the LGBT-supportive content of their speech.

Though the unfairness lying at the root of these cases shows an ongoing need for vigilance and advocacy on behalf of LGBTQ youth and their allies, the increasing tendency of school officials to endorse our mission rather than resist it shows us how far we’ve come. The debate over LGBTQ issues in schools sounds nothing like it did years ago. And as the terms of public debate continue to evolve, the movement to ensure the rights of LGBTQ youth accelerates and grows stronger. **L**

Q&A

Measure for Measure

Kevin Cathcart and Kristina Wilfore, Executive Director of the Ballot Initiative Strategy Center, discuss how the LGBT community can defend itself against anti-LGBT ballot measures.



KEVIN M. CATHCART AND KRISTINA WILFORE

KRISTINA WILFORE: The Ballot Initiative Strategy Center began with the intent of becoming a sort of clearinghouse nerve center for progressive ballot-measure activity. We felt that we needed to take a page out of the right-wing playbook and engage with initiatives more strategically. In those early years, LGBT equality was high on our list of priorities because of the ways in which ballot measures were being used — and certainly continue to be used — to roll back rights.

KEVIN M. CATHCART: Our work with ballot initiatives goes back to the early '90s. There was Amendment 2 in Colorado and the ballot issue in Riverside, CA. You can go back further in California to things like the Briggs initiative, but I think it was in the early '90s when our opponents on the right realized that they could get some traction here and they kicked it up a notch. Before then, it had primarily been an issue in California, which has a very accessible system for those who would use ballot initiatives as a tactic to attack LGBT communities.

KW: We try to create protections around a wide variety of issues under attack. It's important to build a bigger, brighter coalition where we can connect these issues to each

other, where we can weave together stronger cross-connections and intersections between the elements and organizations on the left. That leads to a better long-term outlook for things that go beyond these ballot measures, like coming together to create legislative campaigns.

KC: It's incredibly important to build coalitions and to have endorsements and to build support from a whole range of organizations and people. Yet those endorsements don't seem to translate into votes in the same way they might in electoral politics.

KW: Well, the challenge with ballot measures is that they often serve as a proxy for other tensions. So, for instance, tax measures, in many voters' minds, are about wasted tax dollars and an inefficient government that doesn't touch their lives. Now we know that's fundamentally false, but to educate voters on the costs of a civil society requires a conversation needing more time than the six months you have to win a ballot-measure campaign. Building the kind of world that is based on a better sense of equality and opportunity takes time and we shouldn't look at the short-term trajectory of these votes as the end. We still have these 30 or so states with constitutional provisions that prevent us from actually getting the law and legal structure in place to ensure equal marriage rights. But if we look at hearts and minds, we are winning in the long-term.

KC: I do believe the polling data showing how we are winning with younger people is encouraging. But constitutional amendments are much bigger barriers than legislation or even bad court decisions. I don't think anyone

has figured out yet how we get over this hurdle of 30 state constitutional amendments, some passed by staggering majorities. Even in a world with changed attitudes, they're going to be very difficult to undo. Another problem is that we often don't have even the six months you mention for winning a ballot-measure campaign. In Maine, for example, the signatures were certified at the beginning of August and there is about three months for a campaign. In Washington State, a ballot question has been certified that attempts to repeal the state's domestic partnership law, but the secretary of state's office just finished counting the signatures in September and the LGBT groups are challenging their validity. If the ballot question goes to a vote, that leaves us less than two months. The system is set up to make it extremely difficult to win. This raises questions about setting a fair and reasonable standard for ballot measures: how many signatures are a reasonable amount of signatures, what's the process for deciding on ballot language? In Montgomery County, MD, we worked with the state LGBT group there to successfully block a ballot measure that sought to repeal a transgender rights law because they didn't have enough valid signatures to get the question on the ballot. The rules have to be fair, and people have to be held accountable to them. And we have to challenge fraudulent signature-

I see the extreme right-wing as a very desperate movement holding on to the past without any vision for the future.

- KRISTINA WILFORE

gathering.

KW: We are very concerned about how these ballot measures are dependent on archaic systems in many states. We have a fundamentally broken system and one of the most important things we can do is to ensure that the things that are meant to be on the ballot get there in a fair way. We are not going to eliminate ballot measures altogether. We see a major point of abuse among right-wing conservative organizations in how they gather signatures. Eliminating that is one way to level some of the playing field. Massachusetts has created some exemptions around anything that deals with religion but I think that we would be hard-pressed to create more subject-matter limitations. We need to run better campaigns and have more honest reflection. There's a reason to invest heavily in Maine and Washington, where victories are absolutely possible. There should not be this overall fatigue because of Prop 8. We can't just figure that if something happens in one state, it's going to happen everywhere.

KC: I believe the LGBT movement has always been successful because it has been decentralized. There are a wide range of organizations with a wide range of strategies — some political, some legal, some more broadly social — that have engaged a large, diverse pool of people. So that's worked in many areas, but it doesn't work in political campaign mode. So when we consider that there are always going to be a lot of different players and strategies, how do we structure our campaigns? Do campaign professionals understand the challenges unique to — or at least specific to — LGBT work?

KW: We can come up with a unified strategy.

The labor movement, which is very different obviously, also has some important similarities. It doesn't have to be a top-down approach. This is about people understanding that there are similar goals even if there are different tactics by which to get there. Ultimately, we still need a ballot measure conversation on an on-going basis from the national and appropriate state organizations to be able to evaluate where and why we've won and lost in order to anticipate what's ahead. It's possible to put that structure together.

KC: I agree that much more of that conversation has to happen. When you're dealing with issues on sexuality and LGBT rights, people's reactions are based on a whole range of other feelings and issues. The LGBT community has faced more than 30 or 40 ballot initiatives in the last decade. People are overwhelmed by the number of questions on the ballot in a given time, and then further overwhelmed by the political and emotional fallout of losing somewhere, which makes it extremely challenging to have balanced and nuanced conversations. There tends to be a lot of finger-pointing and in-fighting in crisis mode. So I agree that we need a ballot measure conversation. But I think the fact that these initiatives are going forward again and again so quickly is also part of the reason why it hasn't been possible for it to happen.

KW: If we can agree on some of the overarching strategies and some things that are obstacles to true coordination and smart use of resources, and if we're serious and want to change the fundamental infrastructure on which the right-wing is reliant, then we need to focus now on a 10-year

and five-year trajectory. We need to paint a larger picture of this extreme right-wing movement and expose how disconnected the people behind these efforts are with the kind of agenda that we know Americans want. I see the extreme right-wing as a very desperate movement holding on to the past without any vision for the future. Their fundamental intent is to organize hate, fear and prejudice. You don't hear much about the fact that they aren't winning elections on the backs of these ballot measures any more — and that's important. Maybe they've rallied their base, but if they're just talking to each other, that's not a winning strategy for the future.

KC: The support that we have among younger voters shows that we are changing the debate and reaching people who are approaching voting age. I don't believe that these are the kinds of issues that people change their minds about simply as they grow older. There are analyses that show that every year that goes by, we pick up one or two percentage points even if we don't do anything else but hold on to our people, because of changes in who's going to be voting. If you look 10 years down the road, the electorate is very different on these issues. Ten years is a long time for people who are waiting for civil rights that they had very briefly and then were taken away. But it gives us a strong platform to build on for the future because it is trending in our direction. If we can crack the question of what it takes to trend it faster, then we're absolutely going to win. **L**

PROTECTING

FAIR COURTS



“[T]he fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice.’...[Those who ratified the Constitution] knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.”

Lawrence v. Texas, 539 U.S. 558, 577, 579 (2003) (quoting *Bowers v. Hardwick*, 478 U.S. 186, 216 (1986) (Stevens, J., dissenting)).

On Monday, October 5, the U.S. Supreme Court began a new term. “First Monday,” as it is called, has been a celebrated tradition in the legal community for years. This year marked a momentous occasion as the Court welcomed its newest associate justice, the Honorable Sonia Sotomayor, as the third woman and first Latina in its history.

When Justice Sotomayor was nominated this summer, Lambda Legal’s Fair Courts Project set to work to analyze all of her decisions, speeches and writings to help us determine if she met our criteria for a fair and impartial justice — one who would uphold the Constitution’s principles of equality for all people, including LGBT people and those with HIV. We’d been laying the groundwork for months. Early this year, we met with White House and Senate officials and sent a letter to President Obama, outlining the legal principles that we expect any appointee to be willing and able to follow. And even further back, we provided information to the Obama-Biden Administration Transition Team with a list of many potential issues that the federal courts will be adjudicating over the course of President Obama’s term in office. We now have an administration that has pledged its willingness to sit down and hear the LGBT community’s concerns. We are in a good position to start regaining balance on the federal level after years of Bush-Cheney administration appointees, many of whom can’t always be counted upon to protect civil rights.

We closely watched and analyzed Justice Sotomayor’s Senate Judiciary confirmation hearings and written responses to questions, during which she stated: “The Constitution promotes and requires the equal protection

of law of all citizens in its 14th Amendment.” We couldn’t agree more. There is no “gay exception” to this protection, and Lambda Legal’s Fair Courts Project is here to help remind our community to stand up for fair courts, so that they can stand up for us.

Though our work at the Supreme Court level is prominent and often headline-grabbing, there is equally important work we do at the state level. Much of our work is done on the state level because we need fair and impartial judges at every level of the judiciary. In recent years, we have witnessed unprecedented, organized attacks on our courts — jeopardizing the integrity of the judicial system and its ability to protect the constitutional rights of minorities against the political whims of the majority. State judiciaries continue to be attacked for decisions rightfully made to protect LGBT rights — such as ruling in favor of gay parents on a second-parent adoption decree, ending the exclusion of same-sex couples from marriage or protecting transgender people from being fired based solely on gender identity. It is the mission of the Fair Courts Project to make sure these courts can be as insulated as possible from the harmful effects of political strong-arming. We do so, in part, by speaking on panels, at forums, at community centers, law schools and bar association meetings across the country. We talk about the dangers of relying on a court system when the court system can’t rely on the people to remain vigilant and involved. To that end, through our website and educational materials, we advise community advocates on how they can take action if they hear of threats to the proper role of courts, like attempts to impeach a judge following a controversial ruling or

BY HILARY MEYER ,
FAIR COURTS PROJECT MANAGER

RTS

a legislative proposal to limit a court's jurisdiction to hear cases involving an LGBT-specific issue. We've produced a toolkit that we provide at no cost to advocates who would like to learn more [<http://www.lambdalegal.org/fair-courts-toolkit>]. Additionally, 39 states hold some form of elections for their judges. So the Fair Courts Project publishes a Judicial Elections Guide online [www.lambdalegal.org/fair-courts-project] to help inform our communities about the judicial candidates running in upcoming elections. If state voters are deciding which judicial candidates will eventually sit on those all-important benches, we are keenly aware of how crucial it is to make sure voters are informed about these candidates.

We can't do all of this alone, however. Ally groups across the country consistently work with us to spread the message that fair courts are vital to everyone, no matter what your opinion on the social debate of the day. One of these organizations is the Justice at Stake Campaign [www.justiceatstake.org], a nonpartisan, nonprofit organization dedicated to improving and maintaining access to fair and impartial courts for everyone. Justice at Stake brings together groups who have a variety of specialized interests but who have at least one thing in common: a commitment to working together to keep the U.S. justice system in proper working order. When we convene and strategize, Lambda Legal is often the only LGBT organization voice at the table, but a voice that's welcomed in the process of reaching a common goal.

From researching federal court nominees to training community advocates on ways to protect the critical third branch of government, the Fair Courts Project covers much ground. We are a watchdog, an educator and an activist for fair courts in the states and nationwide. Most importantly, though, we need the LGBT and ally communities' involvement to help us to react swiftly and to empower every person who cares about an impartial, effective judiciary to be prepared to take action. **L**

A CLOSER LOOK



MATTHEW ROJAS,
MEMBERSHIP
DIRECTOR

Describe your role at Lambda Legal.

The job of the member services department is to make the work Lambda Legal does accessible to current and potential members. It is imperative to us that anyone who makes a gift of any size knows that they have made an impact. We always make sure our members have easy access to our materials, that they can easily understand our legal work, and on a practical level, that they receive the highest level of customer service if and when they call, email or write to us.

In what ways can becoming and continuing to be a member help in the fight for equality?

Plain and simple: Without the support of our members, Lambda Legal would not be able to accomplish our current level of work. We receive no government funding, we don't charge our plaintiffs and the work we do limits the number of foundations and corporations that are willing to assist us. Our lawyers and public educators rely greatly on individual contributions for the funds necessary to take the cases that will make lives better for all LGBT people and those with HIV. That's what our members are doing when they write a check — changing lives. All of us at Lambda Legal are aware of the impact our members make and we hope they know too.

How are we working to get new people interested in joining Lambda Legal's fight for equality?

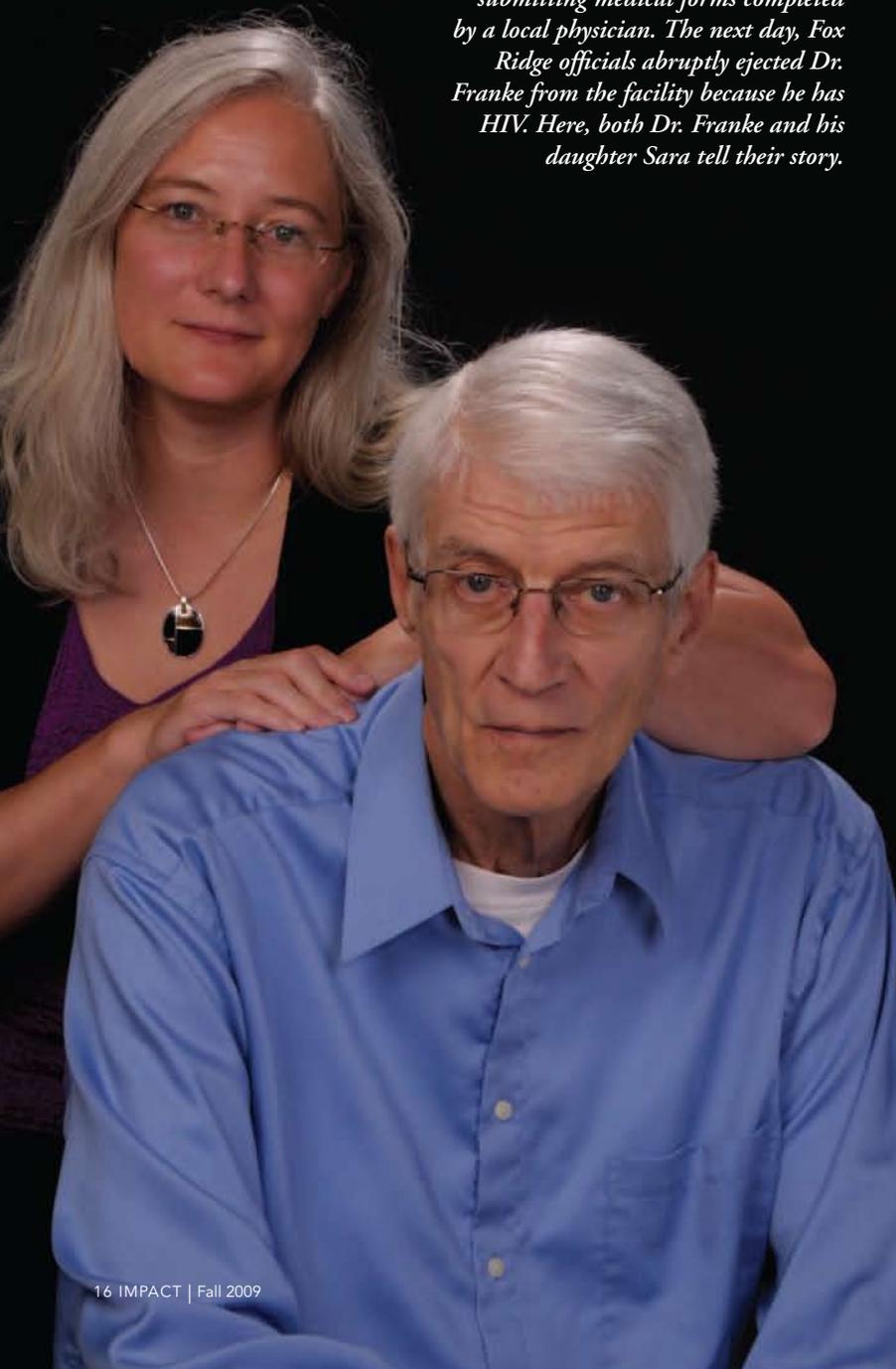
We work closely with every department at Lambda Legal to make sure that we are making the connection between our work and the financial support of individuals. Once people get a taste of what we do — whether they signed a petition, took an action, or ordered some material — they are much more likely to understand its value and join. We have spent considerable time in the last few years building our email and online fundraising presence and turning our mail pieces into informative and engaging material that moves people to join and educates them about their rights. Our current members are also a great source of new members. From registering their weddings, birthdays and anniversaries to passing out membership brochures, our current members put a unique face on the organization. **L**

In My Own Words

FRANKE V. PARKSTONE LIVING CENTER, INC.

BY DR. ROBERT FRANKE AND
SARA BOWLING FRANKE

Dr. Robert Franke, a 75-year-old retired university provost and minister, relocated to Little Rock while still living independently to be closer to his daughter, Sara Bowling Franke. The reverend decided to move into Fox Ridge at North Little Rock, an assisted living facility, after fulfilling all of the residency requirements — including submitting medical forms completed by a local physician. The next day, Fox Ridge officials abruptly ejected Dr. Franke from the facility because he has HIV. Here, both Dr. Franke and his daughter Sara tell their story.



When I made the very difficult decision to move from my home in Michigan to be closer to my daughter Sara and my grandkids in Arkansas, I knew I wanted a place to live that would allow me to be independent but also take care of my basic needs. After looking at assisted care facilities in the North Little Rock area, I chose Fox Ridge. I moved in, happy I could focus on getting on with life. So I was shocked and dismayed when my daughter came to me the very next day and informed me that I had to leave right then. Immediately, I was rushed out of Fox Ridge with some clothes, into Sara's car and taken to her home to live in her kitchen. I didn't have anywhere else to live as I had already left my home in Michigan. It was a very difficult and emotional time. My daughter informed me later that it was in fact due to my HIV status that they didn't want me there—and that is why I was thrown out. I still have trouble believing it.

The administrator at Fox Ridge called me after my father's first night and asked me to come by the office when I visited my father later that day. At my visit, I was happy to find my father happy to finally be settling in after his first night in his new home. I made sure he had his needs met and went to the office to get what I thought would be an update on my father's first night at the facility.

I was stunned, then, to find myself moments later faced with the administrator who insisted that I pack up my father and his belongings and leave that very day. Why? Because, he said, they don't accept people with HIV. I then realized that I had a very difficult thing to do. I had to go to my father's room and tell him he was being evicted. And I had to do it right away, because they also informed me that if I didn't pack him up in the next few hours they would call adult protective services. If I was short on time, my father's personal belongings could remain, but "the body" had to be out by the end of the day. I told my father as best I could, that he had to leave. He was distraught as I packed him up, and with staff watching, I took him out the back door and into my van. I thought of his beautiful home in Michigan, sitting empty. Now, he had a twin bed in my kitchen, for a duration unknown and for a reason unconscionable.

Happily, today my father is in another assisted facility that has accepted him. Meanwhile, Lambda Legal, with co-counsel at the Tripcony Law Firm, filed a federal lawsuit on behalf of my father and myself. Fox Ridge violated both federal and state law by denying my father lodging and services provided there just because he is HIV-positive. Lambda Legal understands the ordeal that we went through. My father and I feel that educating others about HIV-related discrimination is essential to make sure others do not go through the same terrible experience we endured. **L**



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In the News

"Dr. Franke no doubt helped hundreds of other young people like me. It would be a shame for his remarkable life to be defined by this stupid and small-minded eviction. Instead, I'm hoping word of his struggle can become a lesson in tolerance."

Editorial by Chuck Plunkett, *Denver Post* editorial writer and former student of Dr. Frank. Lambda Legal represents Dr. Franke in a case against Fox Ridge, an assisted living facility that evicted him because he has HIV.

MAY 31, 2009

"The day is long past for incomplete, piecemeal fixes that leave hard-working families uninsured and struggling. While ending any of the discrimination against gay and lesbian federal employees is a welcome step, [it] falls far short of our hopes and expectations."

Kevin Cathcart quoted in the *Bay Area Reporter* on the Obama Administration's announcement regarding benefits for same-sex spouses of federal employees.

JUNE 25, 2009

"I think it's important that people understand that the military is the largest employer in the United States. It's also our government and it is openly discriminating against lesbians, gays and bisexuals. It is wrong that our tax dollars go to support that."

Jon W. Davidson, Legal Director, quoted in the *Desert Sun*.

AUGUST 6, 2009



Legal Landscape

Forty Years On

This summer's 40th anniversary of the moonwalk got me thinking about how far technology has advanced in the last four decades. Back in 1969, the internet, MRI's, hybrid cars, genetic engineering and iPhones were hardly even the stuff of dreams.

Likewise, the legal issues posed by some of Lambda Legal's current cases would have been hard to imagine at the time of the Stonewall riots that same year. Who would have thought back then that we would be dealing now with questions such as whether marriages legally entered by same-sex couples in other states or countries must be honored in New York; what the legal effect is in Louisiana of a second parent adoption secured in another state; what obligations schools have to protect LGBT students against peer harassment; whether an Arkansas assisted-living facility can deny someone admission because he is HIV-positive; and whether the Constitution prohibits Wisconsin from categorically denying hormone therapy to transgender inmates in state custody?

Just as today's technological wonders have been developed by combining the lessons learned from prior advances and failures with inspiration about what could lie ahead, Lambda Legal has both first-hand knowledge of our community's past successes and setbacks and a comprehensive vision for the future that readies us for handling the legal challenges of today and tomorrow.

We've been fighting for the rights of same-sex couples for decades and for marriage equality since we first entered the Hawaii marriage case in 1993. We secured the first second-parent adoption in New Jersey that same year. We have been counsel in cases that have set the country's leading precedents about students' rights to be out, safe, and respected at school. We brought the first AIDS discrimination case in the nation. And we have been involved in dozens of transgender-rights cases over the years. Both the wins

and losses have helped us understand what evidence and arguments have the best chances of moving judges and juries who are deciding the new cases that now fill our docket.

And like those who have imagined the technological progress they helped produce, Lambda Legal throughout has had a clear vision of the future that inspires our work. It's a vision of a nation where all people are treated equally, regardless of sexual orientation, gender identity or HIV status. While many of the issues presented by our current caseload may seem complex, at base they are all really just about that. When different-sex couples legally marry in Canada or Connecticut, there's no question that they are legally married when they cross the border to New York. We seek that same treatment for same-sex couples. Just like all other adopted children, those with lesbian and gay parents are entitled to have their adoptions respected in every state. All students deserve to be safe at school and to form student clubs free from discrimination. No one should be denied equal access to services or housing due to baseless fears. And even prison officials should not be able to deny prescribed medical treatment to inmates who need the care.

The world we inhabit today would have been hard to predict four decades ago. Like our modern inventions, terms like *domestic partnership*, *intended parent*, *gay-straight alliance*, and *gender identity* had not even been conceived of at the time of the moonwalk and Stonewall. Luckily, however, Lambda Legal's guiding vision and experience litigating on the cutting edge have us well-equipped to tackle the LGBT civil rights issues of the 21st century.

JON W. DAVIDSON
LEGAL DIRECTOR

SAVE *the* DATE

Lambda Legal's National Liberty Awards Dinner

Monday, May 3, 2010

VIP RECEPTION: 5:00 - 6:00 PM

COCKTAIL RECEPTION: 6:00 - 7:30 PM

DINNER & AWARDS CEREMONY: 7:30 - 9:30 PM

POST-RECEPTION: 9:30 - 11:00 PM

*For more details and for a complete up-to-date list
of our events, visit www.lambdalegal.org/events*

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