

LAMBDA LEGAL

# Impact

**WHAT'S  
NEXT FOR  
DOMA?**  
A LEGAL ROUNDTABLE

The couple behind our  
DOMA challenge, **Karen  
Golinski**, at right, and  
wife **Amy Cunninghis**



YouTube phenom  
**ZACH WAHLS**  
ON GROWING UP WITH TWO MOMS

RELIGIOUS FREEDOM:  
**THE RIGHT TO  
DISCRIMINATE?**

Why immigration reform  
is an LGBT issue

 **Lambda Legal**  
making the case for equality

SUMMER 2011

# POSITIVE I.D.



KEVIN M. CATHCART

**THIS PRIDE SEASON PROMISES TO FEEL ESPECIALLY CELEBRATORY, AS OUR COMMUNITY HAS ENJOYED SOME STUNNING ADVANCES.**

**EVERY YEAR AT THIS TIME**, communities across the United States celebrate Pride. It's a happy time—a time to relax and be ourselves, reconnect with friends and marvel at the astonishing diversity within our communities—sometimes mixed with bittersweet thoughts as we remember the loved ones we lost. There are contingents devoted to every conceivable community within our community: people of faith, people of color, people living with HIV, teens, straight allies, seniors, student groups, company employee networks. The list is endless.

This year promises to feel especially celebratory, as the LGBT and HIV communities have enjoyed some stunning advances. These were hard-won, the result of decades of getting back up and fighting after having door after door slammed in our faces. “Don’t Ask Don’t Tell” may soon be ended, and the so-called “Defense of Marriage Act” is on the ropes (see “What’s Next for DOMA?” p. 10). We’ve seen big steps forward in respect for our families in hospitals and health care settings, and polls show more and more support for LGBT equality.

Perhaps it’s no surprise that our community has come to be seen as a model for effecting dramatic shifts in social attitudes, most notably by our colleagues in the movement for immigration reform (see “Sharing Strength,” p. 14). But it is telling of how far as a nation we still have to go that recently, President Obama endured the repugnant exercise of releasing his birth certificate to the public in order to prove, once again, his American citizenship. It is difficult to imagine this demand being made of a president of European ancestry on both sides of his family. And it underscores the symbolic power of documentation.

Documentation represents recognition and belonging. It’s a dream for millions—including thousands of LGBT and HIV-positive people—who have come to the U.S., contribute billions

to our economy (despite popular misconceptions) and yet live in fear of deportation.

Documentation also continues to be a crucial battleground for the LGBT movement. It’s only last year that the U.S. Department of State issued new passport guidelines which made it easier for transgender people to carry identification which properly reflected their gender identity.

However, in so many other ways, recognition and respect continue to be denied to us. In April, the Fifth Circuit Court of Appeals reversed two prior court rulings won by Lambda Legal and denied an accurate birth certificate to a Louisiana-born five-year-old boy adopted at birth by a gay couple in New York. For 200 years, states have been required to respect the court decrees of other states. The decision, and Louisiana’s recalcitrance, are simply outrageous. It’s even more upsetting to consider the ways in which such a decision upends the day-to-day lives of our plaintiffs Oren Adar, Mickey Smith and their son. Not having a birth certificate complicates enrolling their son in school, putting him on their insurance and even getting him through airport security—all things most American parents get to take for granted.

This Pride season, we have a great deal to celebrate. Look for our fuchsia T-shirts with the Lambda Legal logo and pick up one of our great new drawstring sportpacks at more than 40 pride events across the U.S. When Pride winds down, let’s take that positive energy and continue fighting for the things we believe in, and that still very much need to be fought for: equality, respect and dignity.

A handwritten signature in blue ink that reads "Kevin M. Cathcart". The signature is fluid and cursive.

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

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**ON THE COVER**

*Karen Golinski and Amy Cunninghis, at home in San Francisco, are stepping up with Lambda Legal to challenge DOMA. PAGE 13*

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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.

SEE BACK PAGE FOR OUR  
**PRIDE CALENDAR!**



# Save the Date



### JUNE (National LGBT Pride Month, LGBT Book Month)

- 1 **Lambda Legal in D.C.** Long View Gallery, Washington, DC
- 2 **Life Planning Seminar** Hyatt Regency Jersey City on the Hudson, Hackensack, NJ
- 3 **Membership Party** GYM Bar, New York City
- 5 **Brownsville Event** Chicago
- 7 **Seattle Women's Reception**
- 8 **Monthly Mix and Mingle** DISH Restaurant and Lounge, Dallas
- 16 **Major Donor Reception** Indianapolis
- 18 **Women's Wine Down** Los Angeles
- 23 **Ladies on the Lake** Chicago
- 23 **Summer Associate Event** Los Angeles
- 24 **8th Annual Lawrence Celebration** The Plaza Club, Houston
- 27 **National HIV Testing Day**

### JULY

- 9 **Pines Brunch** Fire Island Pines, NY
- 10 **Orange County Brunch** Santa Ana, CA
- 13 **Monthly Mix and Mingle** DISH Restaurant and Lounge, Dallas
- 16 **Lambda Legal in the Hamptons** The Madoo Conservancy, Sagaponack, NY

### AUGUST

- 4 **Seattle Garden Party**
- 5 **Membership Party** GYM Bar, New York City
- 10 **Monthly Mix and Mingle** DISH Restaurant and Lounge, Dallas
- 13 **Landmark Dinner** W Hotel, Dallas
- 27 **Into the Woods** Lakeside, MI

### SEPTEMBER

- 2 **Membership Party** GYM Bar, New York City
- 4-10 **National Suicide Prevention Week**
- 14 **Monthly Mix and Mingle** DISH Restaurant and Lounge, Dallas
- 14 **Atlanta Garden Party** Atlanta Botanical Garden
- 16 **Indiana Benefit Dinner** Indianapolis Marriott Downtown, Indianapolis
- 30 **Lambda Legal in Miami** Apogee, Miami Beach, FL

FOR MORE INFORMATION ON LAMBDA LEGAL EVENTS, VISIT  
[www.lambdalegal.org/events](http://www.lambdalegal.org/events)

### NATIONWIDE

## FIGHT AGAINST MILITARY BAN CONTINUES

Lambda Legal joined other LGBT and civil rights groups in filing a friend-of-the-court brief with the U.S. Ninth Circuit Court of Appeals urging it to uphold a lower court ruling that declared "Don't Ask, Don't Tell" (DADT) unconstitutional.

"While the ultimate repeal of DADT will allow lesbians and gay men to serve openly," Lambda Legal Staff Attorney Peter Renn said, "the government has not yet addressed the damage it has inflicted upon the thousands of brave men and women who were already discharged. Until the government shows that it has fixed these ongoing problems, this case must proceed." The brief was filed in support of a case originally filed in 2004 by the Log Cabin Republicans.



**TO READ OUR BRIEF VISIT**

[www.lambdalegal.org/impact-2011-dadt-brief](http://www.lambdalegal.org/impact-2011-dadt-brief)

### LOUISIANA

## SETBACK IN BIRTH CERTIFICATE CASE

In a stunning ruling, the full Fifth Circuit Court of Appeals reversed two prior court rulings and denied an accurate birth certificate to a Louisiana-born five-year-old boy adopted by his two fathers in New York. Lambda Legal represents Oren Adar and Mickey Smith in their case against Louisiana State Registrar Darlene Smith.

"We expected that the state of Louisiana would respect the court decrees of other states, just as states have done for over 200 years," said Lambda Legal Supervising Senior Staff Attorney Ken Upton. "We are astonished that Oren and Mickey and their son have been told by this court that it is OK for the government to discriminate against their family."



**FOR UPDATES ON THIS CASE VISIT**

[www.lambdalegal.org/adar](http://www.lambdalegal.org/adar)





Hawai'i residents say aloha to greater rights.

DELAWARE AND HAWAI'I

## CIVIL UNIONS PASSED

Hawai'i and Delaware recently became the second and third states, respectively, to enact civil unions, following closely on the heels of Illinois. In February, Governor Neil Abercrombie signed Hawai'i's civil unions bill into law, while Delaware Governor Jack Markell signed his state's bill into law in May. Both states' laws take effect January 1, 2012.

With the passing of Hawai'i's civil union bill, Lambda Legal dismissed its 2010 lawsuit *Young v. Lingle*, filed after then-Governor Linda Lingle vetoed a previous civil union bill. "Governor Abercrombie removed the need for the lawsuit with the stroke of a pen—approving the Legislature's diligent work and giving thousands of Hawai'i families badly needed protection," said Lambda Legal's outgoing National Marriage Project Director, Jennifer C. Pizer. "I can't think of many occasions when we've been more delighted to dismiss a lawsuit than this."

In Illinois, the civil union law went into effect June 1. Lambda Legal launched Civil Union Tracker to ensure that same-sex and different-sex couples who enter into a civil union are treated fairly under Illinois law.



FOR MORE INFORMATION OR TO JOIN CIVIL UNION TRACKER, GO TO [www.lambdalegal.org/illinoistracker](http://www.lambdalegal.org/illinoistracker)

NATIONWIDE

## SERVING YOUTH IN OUT-OF-HOME CARE

Recently Lambda Legal hosted two Train-the-Trainer sessions in New York as part of its partnership with the National Association of Social Workers. Train-the-Trainer is designed to educate out-of-home care professionals and advocates on how to more effectively meet the needs of LGBTQ youth. Lambda Legal will collaborate with New York-based Master Trainers to train staff in the New York City Department of Youth and Family Justice.

Forty participants in the initial 2009 Train-the-Trainer session became Master Trainers, each committed to training 40 more people. "We have long since surpassed our initial goal and are currently expanding our initiative to widen our pool of Master Trainers and expand our reach," said Flor Bermudez, Youth in Out-of-Home Care Staff Attorney.

Lambda Legal also held a southern region Train the Trainer session in New Orleans in May. "We want to have Master Trainers available in every region of the country," said Bermudez.

## WHAT YOU'RE SAYING»

A sampling of comments from our Facebook fans

### RE: ARKANSAS GAY ADOPTION

**Susan Draag:** Thank you, Arkansas [Supreme Court], for putting children first and giving them a chance with parents who will dearly love them.

### RE: ZACH WAHLS (SEE P. 7)

**Harriett Ali Krein-Hart:** What a brave and articulate young man. My son watched the video of his statehouse address and said, "Mom, he got it right. That is exactly how we feel. I love both of my moms and you should have equal rights."

### RE: DOMA UNDER FIRE (SEE P. 10)

**Dustin Wright:** Long overdue. Go get 'em, Lambda Legal. My donation will be submitted today.

### RE: DELAWARE CIVIL UNIONS (SEE LEFT)

**Mary Beth Yarbrough:** My dad always said to me, "Don't lose momentum!" If we don't speak up again and again, we will be ignored!



## MERRILL LYNCH WEALTH MANAGEMENT IS PROUD TO BE A NATIONAL CORPORATE SPONSOR OF LAMBDA LEGAL.

Merrill Lynch Wealth Management is one of the top national corporate sponsors of Lambda Legal. As a national sponsor of Lambda Legal, Merrill Lynch has assembled a dedicated team of financial advisers to help educate the LGBT community on the financial issues that arise in domestic partnerships, civil unions and marriage. The members of the LGBT Financial Team, with this in mind, offer individual strategies and solutions tailored to meet these unique needs. To help you locate an adviser near you, please call 1-877-MER-LGBT or visit [www.totalmerrill.com/domesticpartners](http://www.totalmerrill.com/domesticpartners).



## AMERICAN AIRLINES IS THE OFFICIAL AIRLINE OF LAMBDA LEGAL.

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 booking on [www.AA.com/rainbow](http://www.AA.com/rainbow), simply enter 541544 at the bottom of the Enter Passenger Details section, in the field for Business ExtrAA Account Number.

# Ask Lambda Legal

Our attorneys field your questions on the issues that matter to you most.



**“GENDER POLICING” IS HARMFUL TO EVERYONE THAT DOESN’T CONFORM TO SOMEONE ELSE’S GENDER STANDARDS**

**Q** I am the human resources manager for a mid-size corporation, where an employee has informed us that she will soon be transitioning from male to female. What bathroom should she use?

**A** A transgender person should use the restroom that corresponds to his or her gender identity. Any employer interested in setting a tone of fairness in the workplace needs to treat transgender employees with respect, and bathroom access is key. When an employee is unable to use the appropriate bathroom, it’s not just their comfort that’s at stake but their success at that particular job.

For starters, don’t assume that your employee must look a certain way to use a certain restroom. Such “gender policing” is harmful to everyone, whether a

transgender person, a butch woman, an effeminate man or anyone dressed or groomed in a way that doesn’t conform to someone else’s gender standards.

Also keep in mind that it’s irrelevant to the situation whether or not your employee has had sex reassignment surgery (SRS). That doesn’t tell you anything about gender identity or someone’s right to use a certain bathroom—and asking about it is a major invasion of privacy. It could also be illegal: If employers were to impose such a “genital standard” for bathroom use, they would need to inquire about the genitals of everyone in that workplace. Imagine the privacy concerns that would raise!

The U.S. Occupational Safety and Health Administration (OSHA) forbids employers from placing “unreasonable” restrictions on restroom access. Also, if an employer were to require someone

to use the wrong bathroom, they would be both violating an employee’s privacy by singling him or her out, and outing the person as transgender.

Your interest in accommodating your transitioning employee appropriately certainly suggests an interest not just in fairness but in good business practices. Employers are increasingly recognizing that they have an opportunity to ensure greater diversity in the workplace and attract the best and brightest for each job by adopting fair, transgender-inclusive policies. **L**



**FOR MORE INFORMATION**, check out our *Equal Access to Public Restrooms* fact sheet at [lambdalegal.org/trans-toolkit](http://lambdalegal.org/trans-toolkit)

## HISTORY

### Public Restrooms Have Always Been a Civil Rights Battleground

Bathrooms have played a role in virtually every civil rights movement in the United States. Controlling the way people use restrooms—or are not allowed to use them at all—has been a tool for degrading people of color, excluding women from traditionally male jobs and keeping people with disabilities from accessing public accommodations and employment.

The public humiliation often involved makes it especially hard to confront bathroom discrimination and educate the general public. But the same basic principle holds true for transgender people and those who have confronted this issue before: Everyone deserves to be treated with respect and dignity, including while involved in such basic human activities as using a public restroom.



# His Mothers' Son

When **Zach Wahls**, 19, pleaded with Iowa lawmakers to preserve marriage equality, his testimony drew 2 million YouTube viewers. Wahls spoke to *Impact* about growing up the son of two moms and about his newfound activism.



**I WAS IN ELEMENTARY SCHOOL WHEN A FRIEND TOLD ME, "WE CAN'T BE FRIENDS ANYMORE."**

best man at my moms' wedding turned out to be a really cool experience.

No one has a "normal" childhood or adolescence. But the things that made my childhood and adolescence challenging were not that I had gay parents. It was that I broke my leg when I was three and I spent two years re-learning how to walk. It was that my mom Terry was diagnosed with secondary MS when I was 14 and I spent most of high school watching her go from a former world-class athlete to wheelchair dependence. It

## WE ALL EXPERIENCE HOMOPHOBIA DIRECTLY EVERY DAY.

There are a lot of very homophobic parts of American culture that are ingrained with this sense of fear about what's different from what is "normal." My moms won't always hold hands out in public, even in Iowa City which is a pretty tolerant place. And that's not right. That's why it's important to stand up and speak out.

When I was growing up, we used to do family values every night. My moms instilled in me a very strong sense of what is right and what is important and what you have to do when what you believe is right is under attack.

I was in elementary school, first or second grade, when a friend told me, "My dad says we can't be friends anymore." And it was just because my parents were gay. It wasn't even the kid's idea. His parents called my parents and said, "Johnny's not coming over anymore." It sucked. It's not very much fun when you're young to lose a friend, let alone to lose one because of who your parents are.

It's hard to tell a kid that his family is different, because you don't really have anything to compare it to. It's just a fact of life. It seemed natural to all the kids I knew, unless they had been very specifically instructed that there was something wrong and abhorrent about a gay couple.

My moms have been together 15 years. They had a commitment ceremony in 1996. Then in 2009, after the Iowa Supreme Court decision in Lambda Legal's case *Varnum v. Brien*, they were able to get legally married. Being the

was that my family was not legally recognized by the government. The sexual orientation of my parents was certainly a part of that, but the thing that stung was that government had labeled us as a bad family unworthy of any support or recognition, and this meant that other people also felt justified in treating us as though we were not a real family and as though we deserved no respect. I understood that we weren't alone in feeling this way—for a long time there were a lot of families that weren't recognized by the government: interracial marriages, interfaith marriages and many others. Those things are not isolated to gay people. But it still hurts when it's your own family.

My moms taught me how to overcome adversity. My mom Terry almost died giving birth to my sister, a month and a half early. She had to have a C-section with no anesthesia. I'd just turned three. I actually remember comforting my mom, telling her it was all right, she was going to die, and I was going to live with my friend Casey and things were going to be okay. But she made it.

It was hard because at the time I was re-learning to walk, so I was way behind my peers. She always stressed how important it was to be physically active and pushed us since we were kids. It was my other mom, Jackie, who helped me with my rehab and made sure I was running every day and get back on course and she worked with me really closely to make sure I was going to be a healthy teenage boy. So I certainly get that work ethic and that athleticism from them and their encouragement.

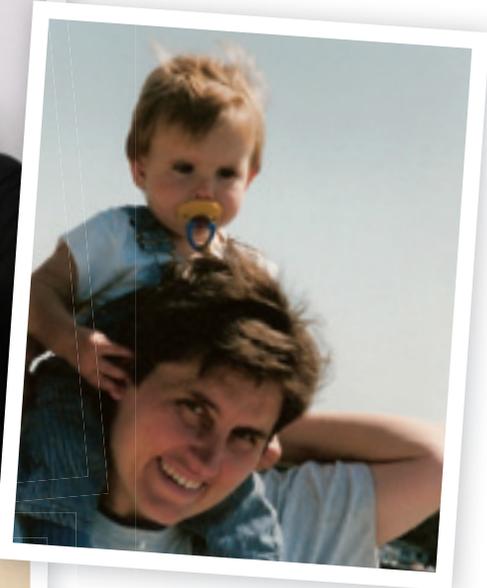
**THEN WE MOVED TO IOWA CITY WHEN I WAS NINE.**

I lost all my friends. I was an outsider. That's when my mom Terry was diagnosed with progressive primary MS, but then later she was diagnosed with progressive secondary, which basically means there's one road and it's downhill. By late 2004, she was in a wheelchair.

Because of my mom's illness, I did all the laundry for everyone starting when I was 10. I made dinner. I was responsible for picking my sister up from her various activities once I started driving. But in retrospect, I'm extraordinarily thankful that I had those responsibilities, because responsibility forces you to grow and in some senses mature. I matured prematurely. In high school I didn't laugh as much as other guys, I was always more serious about things, just because you go home and there's not a whole lot to smile about. I'd come home from my sports practice early so I could start making dinner. She'd stagger through the door, using two canes, and walk to her zero-gravity chair. She couldn't even sit in a regular chair because it was too much work for her back. Even sitting in a wheelchair was really difficult for her. She was at the point where her calves were completely atrophied.

Dealing with something like multiple sclerosis and facing the challenges that our family faced, one of two things is going to happen. The bonds are just going to completely fall apart or they're going to become solid. And we're lucky, the latter is what ultimately happened with us. For a while it seemed like we were going to fall apart just because we had all these things not working in our favor.

At the end of 2009, my mom Terry, despite her illness, adopted some rather radical interventions that she herself designed and researched—she's an internal medicine physician. I was really nervous when she said, a year and a half later, that she was going to attempt to ride her bike. I spent the last eight years of my life making sure she didn't get in situations where she could fall over, and here she was, on a *bicycle*. I ran alongside her so that if she was going to fall over, I'd be able to catch her. She just kept going. We both cried so hard, it was embarrassing. In three years, she mounted the most *miraculous* recovery—and I don't use that



Clockwise from top: Jackie, Terry and Zach clowning in the photo booth at Lambda Legal's Bon Foster gala, May 2011; Zach and Terry; Zach, bottom right, with fellow cub scouts.

word lightly.

**THE DAY THE VARNUM RULING CAME DOWN WAS A HELL OF A DAY.**

I was listening to "Beautiful Day" by U2, on repeat, the whole day. I ran into my high school debate coach, who's gay, and I just wrapped her in a huge hug. I sat down and wrote a column, originally for my high school newspaper, but then on a whim I submitted it to the *Des Moines Register*. People at One Iowa and Lambda Legal read it and reached out to me and invited me to attend the Family Summit. Then last January I got an email saying this hearing was coming up

in the Iowa Legislature. I knew I had to be there.

When I stepped up to the podium, my heart was racing. I've never spoken in front of so many people—so many powerful people—in my life. The gallery was full, the legislative chairs were full. The chairman, a Republican from a very conservative district, was glaring at me. My voice shook for the first 30 seconds. Then I realized I was not going to die. I took a deep breath and I hit my stride.

Iowa House Democrats posted the video online, and next thing I know, I'm getting calls from the Ellen DeGeneres show and *The Last Word* and *The Early Show* and *ABC World News*, and Perez Hilton is talking about me, and Ashton Kutcher is tweeting about me. Oh my God. Most stressful snow day of my life!

I got thousands of messages on Facebook, hundreds of emails, reaction from family, from friends, people I've never met before in my life. Everyone's been incredibly supportive. To know that I can share my story and that it has the power to change minds by showing how boring and how completely average my family is—to know that people can relate to that—is extraordinary.

People call me an inspiration, but no people I've ever met are more inspiring than my moms. To watch my mom Terry literally will herself out of a wheelchair to overcome one of the most debilitating diseases there is, it just proves:

Impossible is nothing. **WAHLS' VIDEO:**  
[www.lambdalegal.org/vid\\_wahls](http://www.lambdalegal.org/vid_wahls)

PHOTOS (CLOCKWISE FROM TOP LEFT): STARBELLY STUDIOS PHOTOGRAPHY (BON FOSTER), COURTESY ZACH WAHLS (OTHERS)

# Bad Counsel

Lambda Legal is arguing that no student is entitled to a degree as a school counselor if he or she refuses to follow the American Counseling Association's ethical rules prohibiting discrimination against LGBTQ clients.

**T**wo years ago, the Alliance Defense Fund (ADF), an antigay legal organization based in Scottsdale, Ariz., filed a lawsuit against Eastern Michigan University (EMU) after school officials dismissed Julea Ward from EMU's counselor training program. Ward, who was training to be a counselor in a high school setting, refused to counsel gay or lesbian people about any relationship issues.

ADF also filed suit in July 2010 against Augusta State University in Georgia on behalf of Jennifer Keeton, who also was studying for a master's degree in school counseling. Keeton had expressed her views on sexual orientation and gender identity both in and out of class. According to her suit, Keeton believes sexual behavior is the "result of accountable personal choice." She also believes gender is "fixed in each person at their creation." Augusta State proposed a remediation plan that included reading literature and attending workshops on counseling LGBTQ people.

ADF recently received a gift of \$9.2 million from an anonymous donor "to defend religious speech and expression at universities and colleges." With ADF matching funds, the organization now has a war chest of twice that to pay for a campaign to pressure public universities to eliminate vital protections against discrimination based on sexual orientation or gender identity.

For Lambda Legal, it's clear what the implications of Keeton's and Ward's positions are. In an environment in which homophobic and transphobic bullying persists, young LGBTQ people remain extremely vulnerable, and school counselors might be their only support. Over the last decade, eight students in Michigan are known to have committed suicide because of bullying, often relating to the students' actual or perceived sexual orientations. In Georgia, in 2009, an 11-year-old boy took his own life after his peers embarked on an unrelenting campaign that mixed homophobia with xenophobia. According to Parents, Families and Friends of Lesbians and Gays (PFLAG), 30 percent of all teen suicides



Are young people getting the right support and information?

in the United States are due to issues with sexual orientation and gender identity. The Centers for Disease Control report that suicide is one of the leading causes of death among teenagers.

Keeton's insistence that a person's sexual orientation can be changed, and Ward's refusal to counsel gay people both conflict with the ethical code mandated for counselors by the American Counseling Association (ACA), which was founded in 1952 and sets professional and ethical standards for the counseling profession.

In training people to become school counselors, universities and colleges must act in accordance with the ACA's guidelines or lose accreditation. According to Camilla Taylor, Senior Staff Attorney at Lambda's Midwest Regional Office, "The Alliance Defense Fund wants the court to tell a public university that this kind of antigay conduct is acceptable behavior, even if it risks students' lives. ADF seeks a ruling that Keeton and Ward are entitled to a degree even though they refuse to abide by the ethical rules governing the profession, and even though they intend to go into a high school setting and either deny mental health services to LGBTQ students, or else tell

**"THE ALLIANCE DEFENSE FUND WANTS THE COURT TO TELL A PUBLIC UNIVERSITY ANTIGAY CONDUCT IS ACCEPTABLE, EVEN IF IT RISKS STUDENTS' LIVES."**

such students that there's something horribly wrong with them."

As stated in Lambda Legal's friend-of-the-court briefs in these two cases, Keeton and Ward, as therapists, would need "to help clients clarify and realize their goals and values, rather than

*continued on page 17*

## *What's Next for*



# DOMIA?

When the Department of Justice decided it would not defend a key part of the **Defense of Marriage Act**, the announcement triggered excitement *and* confusion. Three Lambda Legal attorneys—Camilla Taylor, Susan Sommer and Tara Borelli—weigh in on what DOMA's status means in the courts, in Congress and on the ground.

**IMPACT:** Let's start by talking about the Department of Justice's announcement that it would not to defend Section 3 of DOMA. How did this happen?

**CAMILLA TAYLOR, Director, National Marriage Project, Lambda Legal:** We're glad the DOJ finally took this position—after fighting our client and others in court for years. We were one of the organizations to argue in various publications that there was precedent for the administration to refuse to defend a patently unconstitutional law, and it was heartening to see the administration stake out this position for itself. However, once the DOJ has determined that a law is manifestly unconstitutional and therefore indefensible, Congress has the option to determine whether it will itself defend the statute—and, unfortunately, the House leadership has decided to use taxpayers' money to do just that. Congress has retained a lawyer for this purpose who has already appeared in court in cases around the country to defend DOMA, including our case representing Karen Golinski.

**SUSAN SOMMER, Director of Constitutional Litigation, Lambda Legal:** Both Bush administrations, the Reagan administration as well as the Clinton administration on occasion found laws passed by Congress so clearly indefensible as a constitutional matter that those administrations would not defend them. This is nothing new.

**IMPACT:** Was this announcement a surprise?

**SOMMER:** There wasn't necessarily an expectation that the Obama administration would take this step any second. But it was certainly a step that had been long considered and discussed, certainly by many who were of the mind that DOMA is simply unconstitutional. For the Obama administration to defend the constitutionality of DOMA, it would have to make repugnant arguments that no longer have any place in our jurisprudence.

**TAYLOR:** Yes. The Obama administration was faced with the reality that it's not possible both to defend DOMA, and to maintain at the same time that gay and lesbian parents and their children are equal citizens deserving of a fair shake in this country. For a lawyer to defend DOMA, the lawyer must be prepared to make bogus claims dependent only on junk science, and to demonize an entire class of people and their children.

For example, take a look at what a lawyer defending DOMA would need to say to justify

using a lenient method of review for laws that target people for discriminatory treatment based on their sexual orientation. We have always argued that courts should take a skeptical look at such laws—both because of the history of discrimination against lesbian and gay people, and because we know that a person's sexual orientation has nothing to do with that person's ability to

and finally declare it unconstitutional. The administration is also saying that it's not going to be enough for a trial-level court to declare DOMA unconstitutional. This in fact has already happened in the *Gill* case, brought by GLAD, that had a victory in district court in Massachusetts and is proceeding to the First Circuit Court of Appeals.

“Our Department of Justice has concluded that it is simply impossible to find a credible argument that supports the constitutionality of this law.”



—CAMILLA TAYLOR, Director, National Marriage Project

contribute to society. There's now a growing recognition that arguments to the contrary are offensive on a gut level. I think that we'll look back on the DOJ's decision not to defend DOMA's constitutionality as a watershed moment, not just for what it accomplished in court in our cases, but also because it reflects our nation's growing understanding that discrimination against lesbian and gay people in any context is both shameful and indefensible.

However, people should understand that DOMA remains in effect, and it will remain in effect until Congress repeals it or until a court strikes it down.

**SOMMER:** I completely agree that the Obama administration's legal analysis—that laws discriminating on the basis of sexual orientation should be subject to heightened scrutiny—is certainly a game changer as a psychological matter. It's an extremely strong statement coming from this nation's highest government lawyer, the Attorney General. If the courts adopt that standard—and we've just seen I think a big advance in the ability to persuade courts to do so—it is incredibly difficult to imagine any law singling out gay people for disadvantage that could withstand that level of scrutiny.

However, the administration has also said that it will continue to enforce DOMA unless and until Congress repeals it or the courts definitively

**TARA BORELLI, Staff Attorney, Lambda Legal:** With respect to the Department of Justice's statement about the appropriate level of review, I think that's going to have significant ripple effects for other cases even when DOJ isn't representing the federal government as a defendant. For example, we're currently working on another case in federal court called *Collins v. Brewer*, that challenges the Arizona legislature's attempt to strip domestic partner benefits from the state's gay and lesbian employees. That case is against state defendants, so DOJ isn't participating to make arguments about the level of constitutional review. But when the government discriminates against gay people, that's precisely the type of discrimination that the court should view with significant suspicion, and it's powerful to have DOJ agree.

It's not clear which court in the country will be next to recognize that proposition, but the DOJ's position makes it increasingly clear that the government rarely, if ever, has any adequate reasons for singling out gay people for differential treatment, and the government should have to overcome a very heavy burden to justify the discrimination. We've been making these arguments for years, of course, but this DOJ announcement adds very important momentum.

It's also important to note that if an appellate court agrees that heightened scrutiny is appropriate in a case about DOMA, that holding will apply to government actions across the board in that

jurisdiction. Additionally, we have argued that heightened scrutiny applies to sexual orientation-based discrimination, not just because that's correct, but also because we have long believed that the failure to decide that question sends a signal that discrimination against gay people is less serious than discrimination against others. It's an invitation to private parties to discriminate. It's very important to have DOJ urging that this question be properly decided, as has been done for discrimination against other groups.

**IMPACT:** Can we talk about what's at stake in Lambda Legal's suit *Golinski v. U.S. Office of Personnel Management*? That didn't start out as a DOMA suit.

**BORELLI:** In this case, Lambda Legal represents Karen Golinski, who was denied spousal health benefits for her wife by her employer, the U.S. 9th Circuit Court of Appeals in San Francisco [see sidebar, facing page]. We didn't always think of *Golinski* as a case challenging DOMA. We originally filed the case to get enforcement of a nondiscrimination policy, arguing that there was a way to provide equal treatment that didn't require having to confront DOMA. It's quite a statement about the progress we've made that, when we began the case in 2008, it seemed easier to argue about when one branch of government gets to tell another branch of government to do something. Who could imagine that by this point in the case, DOMA would seem like the easier question?

So for some time this case was argued in the courts as an issue of Karen's employer, the judicial branch, having a right to provide her equal treatment without interference from the executive branch. It was the Obama administration's Office of Personnel Management that decided to reach across the country and insert arguments about DOMA as a justification for withholding benefits from Karen's wife, Amy.

So we filed a motion for preliminary injunction in federal trial court in Northern California to try to get access to the plan for Karen, because she's been waiting for a long time for health benefits for Amy. However, in March—in the midst of some complicated questions about intergovernmental power struggles—the judge dismissed our case, inviting us to re-file the case and to make it squarely about DOMA this time.

Judge White said that Karen has a clear right to relief and that the Court would, if it could, address the constitutionality of DOMA. We were only too happy to give the Court that opportunity, and we filed the complaint in mid-April. We're eager to press the case forward.

“For the Obama administration to defend DOMA, it would have to make repugnant arguments that no longer have any place in our jurisprudence.”



—SUSAN SOMMER, Director of Constitutional Litigation

**IMPACT:** What are the possibilities for striking down DOMA in Congress?

**TAYLOR:** The Respect for Marriage Act is a DOMA-repeal bill that's been introduced in Congress. The lead sponsors in the House are Jerrold Nadler (D-N.Y.), Barney Frank (D-Mass.), Tammy Baldwin (D-Wisc.), Jared Polis (D-Col.) and John Conyers (D-Mich.). Senators Diane Feinstein (D-Calif.), Patrick Leahy (D-Vt.) and Kirsten Gillibrand (D-N.Y.) introduced a companion bill in the Senate. And it's gaining more sponsors every day. For example, Congressmen Braley and Loeb sack and Senator Harkin, all Iowans, support it. It's important to see Iowa federal representatives interested in repealing DOMA because there are a number of Iowa married couples they represent.

“When the government discriminates against LGBT people, that's precisely the type of discrimination that the court should view with significant suspicion.”



—TARA BORELLI, Staff Attorney

Who could have anticipated five years ago that we'd have elected representatives from the Midwest supporting the repeal of discrimination against Midwest married same-sex couples? But here we are, in 2011, and a significant number of Midwest federal reps have signed on.

**SOMMER:** Whether there will be a congressional repeal before a judgment in court, it's hard to say. I think there's a good chance that a case involving DOMA will go to the U.S. Supreme Court before it's over.

**IMPACT:** What does the status of DOMA mean for couples on the ground? Is the legal status of their relationships in any way improved?

**SOMMER:** Not yet but there have been some organized or individual efforts to register, in different ways, opposition to DOMA and to its enforcement. For example, there are ways for couples, without incurring penalties, to make sure the government knows at tax filing time that they are married and that their marriages should be respected. We have information on our website about that.

**TAYLOR:** In the context of immigration, under the current laws, where one spouse is a U.S. national and the other one is not, couples are particularly vulnerable. The spouse who is a U.S. national may have no way of rejoining his or her spouse in the nation of origin of the spouse. It may not be possible to get a visa to travel to that country or to remain there, and so they may be separated permanently if the spouse is deported. Similarly, LGBT immigrants are often escaping considerable antigay discrimination in their home countries. And regardless of whether they are eligible to file for asylum, it can be cruel to send an LGBT immigrant back to his or her country of origin. The administration has great discretion with respect to how and when to enforce immigration laws concerning deportation and when a U.S. citizen is permitted to petition, and we have just witnessed an important step by Attorney General Holder, who exercised his discretion in a deportation case in New Jersey and vacated the previous ruling that had relied on DOMA. But repealing DOMA would clearly be the best solution for binational couples.

**IMPACT:** What problems will a DOMA repeal not address?

**SOMMER:** The cases that are working their way through the courts now are focused on taking down Section 3 of DOMA, that portion of DOMA focused on the deprivation of federal protection to those married under their states'

laws. People shouldn't be confused into thinking that those DOMA challenges are a broad-scale federal constitutional challenge to states that still don't allow same-sex couples to marry. That is a different issue.

**TAYLOR:** Yes. The DOMA cases that are currently in the courts—including *Golinski*, *Gill*, *Pederson* and *Windsor*, concerning whether the federal government must respect a state's determination of who is married—wouldn't cause a state with a marriage ban to have to alter it in any way. Also, of course the repeal of DOMA would not conclude the work that we still have to do in the many states where marriage is still barred for same-sex couples and in the areas of workplace discrimination, transgender rights, school-based discrimination and the rights of people living with HIV, as well as LGBT seniors, just to name a few examples.

**IMPACT:** But if DOMA is struck down, can a couple get married in Iowa or another state where marriage is legal for same-sex couples and then file taxes jointly?

**SOMMER:** It depends on where you live. If you live in Mississippi, get married in Iowa and move back to Mississippi, chances are you wouldn't be able to file your taxes as married because the federal government, in most of its benefits, looks to the law of the state in which you live to determine if you're married. There's a good chance that simply with a ruling in a case like *Gill*, people who have gone to other places to get married but live in states that in no way respect their marriages are still not going to get federal benefits. That will be litigation for another day.

**IMPACT:** So even though people should feel somewhat excited about the possibility of DOMA ending, it still sounds like there's a lot of work to do.

**SOMMER:** I don't necessarily want to say it's a marathon rather than a sprint, but this is going to be a process. We encourage people who are feeling the terrible pinch and bite of DOMA to contact us with questions and their concerns. We can fill people in more on what's going on in their particular context, and see if we can offer help. **L**



## The Couple Behind the Case

An interview with the plaintiff in Lambda Legal's DOMA challenge, **Karen Golinski** (above, left, with wife **Amy Cunningham**)

**Did you ever expect things to proceed this way when you first sought to enroll Amy in your benefits plan?** No, we did not, although (former Lambda Legal Marriage Project Director) Jenny Pizer warned us that my "little employment dispute" might take on a life of its own. When I first put in my paperwork to add Amy to my health insurance, she and I joked that we were going to try, but hoped we wouldn't have to "make a federal case out of it." We laugh quite a bit about that now, two and a half years and a federal lawsuit later.

**How do you feel about the case now moving forward as a direct challenge to DOMA?** We feel honored and a bit overwhelmed to be part of this movement that is challenging DOMA. When we talk to people about our case, it seems so simple and unfair to everyone, and we are glad that our case highlights the clearly discriminatory nature of DOMA. We are also amazed by how the legal landscape has changed since I first tried to add Amy to my health insurance—the number of cases across the country that are now challenging the unfair treatment of lesbians and gay men due to DOMA, as well as the Administration's significant decision to stop defending this discriminatory law.

**"LAMBDA LEGAL WARNED US THAT MY 'LITTLE EMPLOYMENT DISPUTE' MIGHT TAKE ON A LIFE OF ITS OWN."**

**As an attorney, what has it been like for you to find a very personal issue of your own at the center of a high-profile case?** Quite honestly, it has been uncomfortable at times, especially as a federal judiciary employee now suing the federal government. With that said, I am incredibly grateful to my employer, the Ninth Circuit Court of Appeals, for its comprehensive employee dispute resolution plan, which covers both sex and sexual orientation discrimination. The court has tried in every way possible to treat me fairly and to put Amy on my health plan.

**What have the past three years been like for you as a family?** An emotional rollercoaster! It is difficult to explain to friends and family that despite having won several rulings during the employee dispute resolution process, Amy has not yet been added to my family health plan. It is surreal. Amy and I are also fairly private people, and the public nature of this case has been challenging. We steel ourselves for the appearance of news articles, reminding each other that we are fighting an important fight for our own family and for others like ours.





# Sharing Strength

Lambda Legal Executive Director **Kevin Cathcart** and **Deepak Bhargava**, executive director of D.C.'s Center for Community Change, talk about why immigration is an urgent LGBT issue.

**DEEPAK BHARGAVA:** The Center for Community Change was founded in 1968 as a living memorial to Robert Kennedy—by people in the civil rights movement, the labor movement and the war on poverty. Its mission is to support grassroots community organizing in low-income communities and communities of color all over the country, and to enable low-income people to have a voice in the policies that affect our lives.

Currently we are working in four areas, including affordable housing; unemployment; a recently launched campaign to save and improve Social Security (although not widely understood as such, it's the largest anti-poverty program in the country's history) and our longest standing campaign, immigration reform, which for us means legalization of the undocumented, the ability for immigrants in the United States to bring close family members to the United States and a variety of other things such as the Dream Act.

I know people in the LGBT movement feel like it's an incredibly hard slog, but at a little bit of a remove, it's so exciting to see the speed at which the country is going through a cultural and legal transformation.

I think the LGBT movement is one of the few progressive social justice movements that is really moving the country in the right direction. The work that the LGBT movement has done on every front, from legal and legislative to cultural, offers a good model for the immigrant rights movement.

**CATHCART:** It's interesting, because inside the LGBT movement, people are incredibly frustrated by how slowly things go. We can't even get ENDA to pass, and "Don't Ask, Don't Tell" is not really gone yet. When you're in the middle of it, there is something to be learned from other peoples' perspectives. But I also think it says something about how much of a disconnect there often is between people who are primarily LGBT or HIV activists, and the other movements that are all out there.

One of the challenges that we face as a mainstream LGBT rights organization is: How do we bring in our supporters on broader issues? It is not clear to everybody who exactly our community is. We can explain that LGBT people who are not legalized are often afraid to report hate crimes, fight job or housing

**"LGBT PEOPLE WHO ARE NOT LEGALIZED ARE OFTEN AFRAID TO REPORT HATE CRIMES OR FIGHT JOB DISCRIMINATION."**

discrimination, report police abuse or stand up for their own civil rights, which will have an impact on all other LGBT people. The same thing is true for people with HIV. Because the risks are too great. Are you going to report housing discrimination if you think you're going to be deported?

**BHARGAVA:** I think the first and most important reason why immigration reform should be such a priority for the LGBT community is that

a large and growing part of the LGBT population is in fact newcomers to the United States. They face a special set of challenges, in addition to the challenges that LGBT people already living here face—for instance, they're more likely to have a same-sex partner or spouse from outside the U.S., whom they need to be able to petition to come to the U.S. or stay here, but can't. And LGBT immigrants who are in detention, particularly transgender immigrants, are often subjected to horrendous conditions and abuse. At the level of moral commitment, every movement has to ask the question, are we really for everybody? Core immigration issues like providing a path to citizenship for 12 million undocumented people in the United States are gay issues because there are so many LGBT people for whom it is the single most transformative thing that could be done to improve their lives. At the level of politics, this constituency is gaining in numbers and clout. And the LGBT agenda in political terms will ultimately be in the hands of this newly empowered constituency.

Also, immigration reform really is crucial for the future of our country. It's part of our identity, that we are a nation of immigrants—and welcoming. It's part of the American genius, it's part of prosperity, it's part of how the country is renewed, with new ideas, new talent, new visions.

The last thing I'll say is it's equally important that the immigrant rights community embrace the LGBT agenda, and that is just as challenging and just as fraught with difficulty.

**CATHCART:** I have always suspected that LGBT people may be over-represented in immigrant populations, because there are good reasons perhaps for gay people to leave a lot of places in this world and to try to come here. There is this sort of magnet effect that the United States has, and the more we succeed with an LGBT movement in general in this country, the sharper the contrast is between the United States and some other places. And that would cause people living in rougher conditions to decide it could be worth the trouble to come here.

But it's so hard to figure out even how many gay people there are and where we are, let alone in populations that have good reasons to stay somewhat underground. And it's a challenge around HIV-related work. While the epidemic is still heavily gay, it is also heavily people of color and heavily a poverty epidemic.

So how do you organize in communities where there's a variety of challenges, and things like language and culture are maybe the least

of it? Because people are staying underground and they're not necessarily out in the way that the LGBT movement or the HIV movement in general thinks of out?

## “PROVIDING A PATH TO CITIZENSHIP IS A GAY ISSUE. FOR SO MANY LGBT PEOPLE, IT IS THE SINGLE MOST TRANSFORMATIVE THING THAT COULD BE DONE TO IMPROVE THEIR LIVES.”

**BHARGAVA:** I think it's actually a very good hypothesis that there's a higher share of LGBT people in the immigrant community than in the country as a whole. It's certainly very striking, the extent to which, in the immigrant rights leadership and activism within the country, LGBT people are everywhere. It might be half queer young people who are leading that effort. And the borrowing from the LGBT movement in terms of the whole notion of coming out as undocumented is not accidental. You know, it really has to do with the echoes for those young people between their experience as queer and as undocumented.

**CATHCART:** Have you encountered any skepticism or misinformation in the LGBT community around immigration reform?

**BHARGAVA:** One thing I've heard occasionally is: Isn't the massive wave of immigration bringing lots of very socially conservative people to the United States, who are likely to oppose full equality for LGBT people? And my response to that typically is that immigrants who come to this country are in a certain structural position with regard to the broader society. They feel like outsiders. They have to navigate between cultures. And so I actually think there's tremendous openness in the immigrant community to the LGBT agenda. And that's especially true for the children of immigrants, or people who come as first-generation immigrants at a young age. My experience is they're quite sympathetic.

It is true that the Catholic Church and to an increasing extent evangelical churches are playing a very central role in the lives of many immigrants, and you know, it's been a very rough challenge, but I think we're kind of on the other side of it now. We have the leadership in the immigrant community speak up for equality for binational couples. It has not come without some real blow-backs.

The Catholic Church has been a major funder of immigrant rights work in the United States, and they have yanked funding from groups that have taken a stance for LGBT equality. But without

exception, all the groups that have faced that kind of choice have taken the right path and said, we won't take your money if it means that we can't speak for the entire immigrant community. So I think there's very good reason to be optimistic that there could be a real partnership between the LGBT community and the immigrant community.

The other myth that I would highlight is about immigration being bad for the economy. All the evidence actually suggests the opposite. There was a study by the Center for American Progress that showed that immigration reform would actually grow the economy by \$1.4 trillion over the next decade, in GDP growth, and substantially reduce the budget deficit because it would allow people to come forward and pay taxes. And the history of the country is that immigrants are pretty critical to innovation and entrepreneurship. You see that in major pockets of the economy like high tech.

**CATHCART:** So what would you say to a mainstream LGBT audience, not about *why* they should be involved but *how* they should be involved?

**BHARGAVA:** I think it's critical that organizations join forces at the state and local level, where the LGBT community and the immigrant community face the same opponents using the same tactics, from salary initiatives to horrendous laws. And that joining of forces is happening in some really exciting ways in places like California and Oregon.

Also, just as the LGBT community has advanced in part because straight people increasingly feel passionately about equality for LGBT friends and loved ones, the immigrant rights community is only going to advance when non-immigrant communities speak up in support.

*To learn more about the Center for Community Change, visit [communitychange.org](http://communitychange.org).* 

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# Sheryl Teslow and Tauni Waddington

This Lincoln, Nebraska couple supports Lambda Legal through its monthly giving program, the Justice Fund

**Sheryl Teslow and Tauni Waddington have been together for 19 years**, describing themselves as “as solid a couple as any you could hope to find.” Waddington works as a private practice therapist and serves as the executive director of an adolescent girls group home. Teslow has been a freelance court reporter for 32 years and is a co-owner of a freelance agency. Together, they talk about why they have supported equality as members of Lambda Legal’s monthly giving program, the Justice Fund, for nearly a decade.



**“WE HAVE BEEN TOGETHER FOR 19 YEARS, BUT IN OUR HOME STATE, WE ARE LEGALLY STRANGERS.”**

Sheryl Teslow and Tauni Waddington

## What does the fight for equality mean to you both?

We have been together for 19 years, but in our home state of Nebraska we are legally strangers. We can’t get family health insurance, we can’t file joint tax returns, we can’t inherit as family members—the list goes on and on. We have signed all the documents that we think we need to protect ourselves and our relationship, but we also know there is no guarantee that they will be respected in a time of emergency. We want—we *need* a marriage license that is valid in all 50 states and that is equal in every way to the one our parents had. We want the real thing.

## Why do you support Lambda Legal?

Of all of the different types of organizations working for equality, it seems to us that Lambda Legal has the best chance to make tangible progress. Whether it’s DADT or marriage or workplace protections, the courts are where we have made the most progress and Lambda Legal is the one in the trenches doing all the hard work necessary to make it happen. Lambda Legal has been an integral part of most, if not all, the major victories in the LGBT community and we feel it makes the best use of our money.

## Why is monthly giving to Lambda Legal an important part of your philanthropic efforts?

We know that raising money is always a difficult process. By committing to a set amount every month we are adding a small degree of certainty in Lambda Legal’s budget process and that’s important to us. It’s important for us to know that our money is being used as effectively as possible.



**TO LEARN MORE ABOUT THE JUSTICE FUND, VISIT [lambdalegal.org/365for365](http://lambdalegal.org/365for365), see our ad on page 18 or call 212-809-8585 ext. 334.**

*“Bad Counsel,” continued from page 13*

prescribe what those goals and values should be.” Greg Nevins, Supervising Senior Staff Attorney in Lambda Legal’s Southern Regional Office, explained, “A counseling session is not a free speech arena; you’re supposed to perform your job in a way that is conducive to a client’s mental health.”

Both Keeton and Ward lost their cases at the district court level, and the cases are currently under appeal. Lambda Legal filed amicus briefs in both cases in support of the schools, on behalf of

PFLAG and the Georgia Safe Schools Coalition (in *Keeton*) and for PFLAG, Gay, Lesbian, and Straight Education Network, Affirmations and the Ruth Ellis Center (in *Ward*).

Ultimately, Lambda Legal argues, the First Amendment does not shield incompetent, unethical and affirmatively harmful performance of one’s profession. Ward and Keeton could, of course, exercise their First Amendment rights and criticize their chosen profession on this issue

and write scholarly articles about the purported benefits of “reparative therapy” and supposed shortcomings of current ethical standards. But as Lambda Legal argues in its brief, withholding counseling, steering clients toward potentially harmful therapies—which Keeton has considered offering students—or proselytizing to clients in a clinical setting are all harmful and unethical practices, and no law requires universities to award degrees or professional licenses for that. **L**



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\*\*\*Lambda Legal travel mug is available with Justice Fund (monthly giving) memberships at the \$30.42 level or more. Mug will be mailed after the second consecutive month of Justice Fund membership. Please allow 2 to 4 weeks for delivery. While supplies last.

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# IT'S NOT OVER YET



JON W. DAVIDSON

## **MAKING EQUAL TREATMENT A REALITY FOR ALL IN THE LGBT COMMUNITY REQUIRES CONSIDERATION OF THE EFFECTS OF RACE, NATIONAL ORIGIN AND OTHER FACTORS.**

**I'VE BEEN SAYING FOR A LONG TIME** that indeed there is an LGBT “agenda,” and it can be summed up in one word: equality.

On February 23, 2011, our quest for equality was made significantly easier. On that day, Attorney General Holder announced that he and President Obama have concluded that the so-called “Defense of Marriage Act” is unconstitutional. Their conclusion flowed from their analysis that courts must give what is called “heightened scrutiny” to government action that treats people differently based on their sexual orientation, and that DOMA cannot survive such close judicial review.

It's hard to overstate the importance of this analysis. When “heightened scrutiny” is applied, courts presume that government acts that treat one group of people unequally to others are unconstitutional and they put the burden on the government to prove that the inequality was necessary to substantially further an important government objective. Up to now, most federal courts have used lower levels of judicial review which presumed that government actions were constitutional and it was up to us and other legal

groups to argue otherwise. But Lambda Legal has argued for decades that, because discrimination based on sexual orientation is likely the result of bias or stereotypical thinking, courts should be suspicious of laws and other government action that treat gay people unequally. Until now, we fought what seemed to be an Orwellian-named Department of “Justice” that had argued that the burden should be on those challenging antigay laws or conduct to disprove every possible reason that might be imagined to justify the government's action, and that courts should give deference to other branches of government even when they were blatantly discriminating.

Heightened scrutiny is a very hard standard to meet and, if adopted by the courts, should result in the elimination of all antigay laws. But we're not there yet. The leadership of the House of Representatives has hired private lawyers to defend DOMA who likely will urge courts not to demand much of a rationale for sexual orientation discrimination. And, of course, judges have to do the right thing and strike DOMA and other antigay laws down. But having the Obama administration on our side makes that *much* more likely.

If the courts agree that heightened scrutiny is required, the battle for LGBT equality will still not have been won, however. Heightened scrutiny of race and sex discrimination has not ended all unequal treatment of racial minorities and women. Instead, a right to equality under the law must still be translated into equality in practice. As some have said, we need not just “formal equality,” but also “lived equality.” That means not only enforcing the victories that we are now trying to win, but also taking into account social and economic forces that prevent people from accessing and, if necessary, enforcing their rights.

Making equal treatment a reality for all in our community also requires consideration of the interactive effects of race, national origin, sex, sexual orientation, gender identity and expression, HIV status and other disabilities, immigrant status, age, poverty and other factors. As lesbian activist and leader Urvashi Vaid has argued, to ignore the intersections between multiple and overlapping forms of discrimination and disadvantage that continue to exist in our society is to leave some of us behind.

President Obama and the Attorney General have made our quest for equality much easier. But we still have very far to go to achieve true equality. Fortunately, Lambda Legal is determined to be there for the long haul.

A handwritten signature in blue ink that reads "Jon W. Davidson".

# CELEBRATE PRIDE!



LAMBDA LEGAL STAFF, SUPPORTERS AND VOLUNTEERS WILL BE AT THE FOLLOWING PRIDE SEASON EVENTS. COME GRAB A SPORTPACK, CHECK OUT OUR INFORMATION RESOURCES OR JUST SAY HELLO!

## JUNE

3-5	ALBANY BLACK AND LATINO PRIDE ALBANY, NY
4	SPENCER, IN
4-5	KANSAS CITY, MO
5	QUEENS, NY
5	ASBURY PARK, NJ
11	BROOKLYN, NY
11	INDIANAPOLIS
11-12	LOS ANGELES
11-12	MIDSOMMARFEST CHICAGO
12	NEWARK-ESSEX PRIDE NEWARK, NJ
12	CAPITAL PRIDE DC WASHINGTON, D.C.
17-19	NASHVILLE
18-19	DENVER
19	BALTIMORE
24-25	HOUSTON
25	HARLEM PRIDE NEW YORK CITY
25-26	SAN FRANCISCO
25-26	CHICAGO
25-26	TWIN CITIES PRIDE MINNEAPOLIS
26	NEW YORK CITY
26	SEATTLE

## JULY

2	SAN ANTONIO, TX
9	BRONX, NY
16-17	SAN DIEGO
24	GALDE NEW YORK DOMINICAN PRIDE NEW YORK CITY
31	TRIANGLE BLACK PRIDE RALEIGH, NC

## AUGUST

13-14	MARKET DAYS CHICAGO
27	JERSEY CITY, NJ

## SEPTEMBER

2-4	ATLANTA BLACK PRIDE
17	REHOBOTH, DE
18	DALLAS
29-OCT 2	DALLAS-FORT WORTH BLACK PRIDE



### VOLUNTEER AT PRIDE!

You can help us staff a Pride booth or march with Lambda Legal at a Pride parade in a city near you. Visit [www.lambdalegal.org/pride](http://www.lambdalegal.org/pride) for complete, updated listings.

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 **Lambda Legal**  
making the case for equality