

Impact

SUMMER 2012

TRUE COLORS

THREATENED WITH SUSPENSION
FOR WEARING THIS SHIRT,
MAVERICK COUCH FOUGHT
BACK WITH LAMBDA LEGAL
AND WON

**A PROFESSOR'S
BATTLE TO
RECLAIM HER JOB**

**LGBTQ
YOUTH**
& THE "SCHOOL-
TO-PRISON PIPELINE"

**BETTING ON
MARRIAGE
IN NEVADA**



Lambda Legal
making the case for equality

Teaching Justice



KEVIN M. CATHCART

A THIRD OF LGBTQ YOUTH DROP OUT OF SCHOOL, MORE THAN THREE TIMES THE AVERAGE NATIONAL RATE.

FRIENDS AND FAMILY throughout the country are making Pride plans—figuring out what to wear, which train or whose car to take, whether to bring the stroller or the dogs, the best vantage point to enjoy the festivities, where to go afterward to continue the celebration. The crowds, the energy and the astonishing diversity and creativity in our community all bring emotional uplift.

As we go to press, our community and allies are absorbing both the highs and lows that come with our broad movement for equality: First came the decision of a majority of North Carolina voters to add a constitutional amendment barring same-sex couples from the rights and responsibilities of marriage, on top of the discriminatory statute already on the state's books. The next morning, came the stunning announcement by President Obama that he believes that "same-sex couples should be able to get married."

We applaud the President for speaking the truth. And we applaud the activists and donors who fought the amendment. The battle for equality, in North Carolina and throughout the country, is far from over. But in the face of sweeping changes in our favor, we have chilling reminders of how numerous and motivated our opponents still are.

Those who would deny LGBT people their dignity and humanity are everywhere—including, sadly, the very institutions where young people should be absorbing lessons about respect, equality, freedom of expression and the importance of open debate.

These values were clearly not top of mind for Waynesville High School principal Randy Gebhardt when he told our client, 16-year-old Maverick Couch, that he could not wear his "Jesus is not a homophobe" T-shirt to school (see "What's Wrong With This Shirt?", page 10). It's painful to envision an adult authority figure, charged with the nurturing and protection of young people, opting instead to threaten a bright, gifted teenager with suspension if he didn't check his identity at the door. In May, the U.S. District Court for the Southern District of Ohio agreed with our argument that Maverick's first amendment rights had been violated, and that he should be allowed to wear the T-shirt any day he chooses.

Thankfully, Maverick stood up and called Lambda Legal. As did Jackie Gill, a college professor

denied the opportunity to interview for a permanent position because, she was told, Tarrant County College, where she taught in Hurst, Texas, "didn't like homosexuals" (see "A Dream Derailed," page 7).

We hope that one day these schools will join the places of learning that have risen to the occasion on such issues—to fight harassment and bullying, to support LGBTQ students outright and to make sure teachers and other school staff get the training they need to encourage fairness and inclusiveness. As the Hetrick-Martin Institute's Lillian Rivera tells Lambda Legal's Hayley Gorenberg in this issue's Dialogue (see "Safe Space," page 12), some of the progress on behalf of LGBTQ youth has been remarkable.

Hetrick-Martin—an essential institution working with at-risk kids since 1985—coaches educators at the City University of New York, for instance, and Rivera reports that New York City's Respect for All program in public schools is showing promise. In Newark, New Jersey, Hetrick-Martin has been collaborating with the City, the public school system and a strong community coalition committed to keeping this vulnerable population *in school*.

Unfortunately, drop-out rates for LGBTQ kids remain sky-high. A third of them leave school, more than three times the average national rate. And many arrive in the juvenile justice system as "punishment" for being harassed or bullied or for being kicked out of their homes; they easily pass from there into the adult jail system or become homeless.

I am reassured that so many LGBT adults are hard at work with young people in the battles to make LGBTQ youth feel safer and more represented at school and beyond. Certainly there are few things as worthy of our attention. What good is all our Pride if it doesn't include investing in the future of our communities and advancing the cause of our basic human rights?

From all of us at Lambda Legal: Happy Pride Season!

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

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Lambda Legal client Maverick Couch (pictured with his mom) challenged his school and won. PAGE 7

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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.

Photos on cover and this page: Sam Greene



Protestors against Arizona's controversial immigration law attend a rally in New York.

ARIZONA

STANDING UP FOR IMMIGRANT RIGHTS

Lambda Legal joined more than 100 civil rights, faith-based and community groups to urge the U.S. Supreme Court to uphold a ruling against Arizona's anti-immigrant law. In a friend-of-the-court brief filed March 27, we argued that the law, known as SB 1070, will lead to racial profiling, discrimination and anti-immigrant extremism.

"The LGBT community knows all too well how easily people who are perceived to «look different» or «act different» can be singled out for harassment and persecution," said Lambda Legal Staff Attorney Iván Espinoza-Madriral. "LGBT immigrants and people of color are particularly vulnerable, because SB 1070 authorizes the police to stop and question people based on their appearance. SB 1070 will also deter people from seeking medical care and lifesaving treatment for HIV/AIDS."



TO READ THE BRIEF, VISIT
www.lambdalegal.org/sb1070brief

IOWA

ADDING INSULT TO INJURY

More than 8,000 people have signed a petition supporting Lambda Legal plaintiffs Jenny and Jessica Buntmeyers asking the Iowa Department of Public Health (IDPH) to stop erasing same-sex parents.

The Buntmeyers met while serving in Iraq, and married in Iowa in 2010. Last year, Jessica became pregnant through in vitro fertilization, but their son Brayden was stillborn. The grieving couple filled out the paperwork for a death certificate, listing each of their names as parents in the spaces provided. IDPH sent them a death certificate with Jenny's name whited out.

"To erase Jenny's name from the death certificate was like trying to erase all the love, commitment and work we had both put into planning a family," said Jessica.

Camilla Taylor, Lambda Legal's National Marriage Project Director, said, "This is an egregious display of insensitivity and disregard for Iowa law, which states that the spousal presumption of parentage applies to children born to same-sex spouses in the same manner it applies to children of different-sex spouses. Death certificates and other vital records like birth certificates document legal parentage, not biology."

In February, Lambda Legal sued IDPH on the Buntmeyers' behalf. The previous month, in another Lambda Legal case, a court had ordered IDPH to issue a birth certificate naming both same-sex spouses as parents. That court ruled that Iowa's birth certificate statute must be interpreted in a gender-neutral way. (IDPH has appealed that ruling.)

In March, the Iowa Attorney General's office filed court documents saying that the state will persist in refusing the Buntmeyers an accurate death certificate.

Lambda Legal continues to pursue the matter in court.



SIGN OUR PETITION: <http://chn.ge/lambda-legal-iowa>



Jessica and Jenny Buntmeyers, denied equal parental status in Iowa.

NEW YORK

UNSAFE PRACTICES

In New York State, police and prosecutors currently can attempt to use possession of condoms as evidence of prostitution and related offenses. On April 5, Lambda Legal submitted a memo to state lawmakers, urging them to support a bill which would outlaw this practice. In the memo, we argued that this law would help protect the health of all New Yorkers, including members of communities disproportionately impacted by HIV, such as gay and bisexual men, transgender people, at-risk youth and sex workers. “The government has wisely promoted the free distribution of millions of condoms throughout New York City for decades in the name of public health,” said Deputy Legal Director Hayley Gorenberg. “It is unfair and misleading to encourage New Yorkers to take advantage of these programs and then turn around and use the condoms to try and build a criminal case against them.”



READ THE MEMO:

www.lambdalegal.org/ny-condom-memo

TRANSGENDER RIGHTS

NECESSARY TREATMENT

Lambda Legal and the ACLU secured a crucial victory for transgender rights on March 26, when the U.S. Supreme Court allowed a 7th Circuit Court ruling to stand that struck down a Wisconsin law barring medically necessary treatment for transgender people in prison. The Court refused to hear the state’s appeal following Lambda Legal, the ACLU and the ACLU of Wisconsin’s successful challenge to the so-called Inmate Sex-Change Prevention Act.

The law—the only one of its kind in the nation—underscored the widespread ignorance surrounding the health needs of transgender people. Transition-related care is often dismissed as cosmetic or experimental, but for years the medical community has understood these treatments to be effective, indispensable and even life-saving.

Lambda Legal and the ACLU sued in 2006 on behalf of several transgender women in prison who experienced severe physical and psychological harm after the medical treatment they had been receiving under prison doctors’ care was abruptly cut off under this draconian new law.

“Although this victory does not mean that all transgender people in prison now have full access to transition-related care,” said Lambda Legal Transgender Rights Attorney M. Dru Levasseur, “it does send a clear message that medical care should be left in the hands of doctors, not legislators who may be operating on bias and misinformation about the medical needs of a marginalized population.”



Wisconsin can no longer deny care to transgender inmates.

WHAT YOU’RE SAYING»

A sampling of comments on the Lambda Legal Blog and on our Facebook page, following President Obama’s announcement of his support for marriage equality.

THIS MEANS THAT ALL THREE OF MY YOUNG ADULT CHILDREN, GAY AND STRAIGHT, MAY SOMEDAY SHARE EQUIVALENT RIGHTS IN THE EYES OF THE LAW. THIS COULD NOT HAPPEN FAST ENOUGH FOR ME. —DEB H.

FINALLY, A PRESIDENT WHO IS NOT AFRAID TO STAND UP FOR THE RIGHTS OF EVERYONE TO BE MARRIED AND BE PROTECTED BY THE LAWS OF MARRIAGE. —JENNIFER W.

IT IS AN ASTONISHING FEELING TO KNOW THAT THE LEADER OF YOUR COUNTRY BELIEVES YOU HAVE RIGHTS. —DEANNA LONG

THANK YOU, MR. PRESIDENT. —JAMIE V.

www.lambdalegal.org/blog
www.facebook.com/lambdalegal



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UBS WMA is pleased to strengthen our ties within the LGBT community by forging this strong alliance with Lambda Legal. As part of our ongoing commitment, we also announce the Domestic Partner Seminar Series presented by UBS Financial Advisors and partnering legal experts. This important series provides financial planning advice and legal education for the specific and unique needs of the LGBT community, from domestic partnerships to marriage to adoptions. We look forward to continuing to be a relevant partner and to making a positive impact in the LGBT community. www.ubs.com/fs



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Ask Lambda Legal

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



Q Several weeks ago a few friends and I were at a restaurant. We attempted to get the attention of the wait staff, but it soon became clear to us that they were purposefully not serving us. I've heard that people can still be denied services at restaurants just for being gay. Does that kind of thing still happen? And what can we do about it?

A Unfortunately, it does still happen. Lambda Legal's Legal Help Desk gets calls from all over the country from people who feel they have been mistreated or denied service because they are, or are perceived to be, gay, lesbian, bisexual or transgender. If you have been discriminated against, there may be local or state government agencies that can assist in the investigation, conciliation, or enforcement of discrimination claims.

Although businesses may put up signs that say "we reserve the right to refuse business to anyone," that often isn't actually true: no

business may engage in unlawful discrimination against its customers. A public accommodation law protects certain groups from being discriminated against in places like restaurants or lodging. In general, a "public accommodation" is any facility, place or establishment that offers services or goods to the general public. (Private clubs and religious organizations

are generally exempt from the requirements for public accommodations.)

Unfortunately, there is no federal law that prohibits discrimination based on sexual orientation or gender identity in places of public accommodation, but many states have such laws (see sidebar). However, discrimination based on disability, including HIV status, in places of public accommodation is prohibited by the Americans with Disabilities Act.

Lambda Legal recently led a case on behalf of a woman in Queens, New York, after she was denied services at a Sizzler restaurant. The case, *Friedlander v. Warogé Met, Ltd. d/b/a Sizzler*, involved a shocking scenario. Our client, Liza Friedlander, was confronted by the Sizzler manager, who angrily yelled homophobic slurs at her in front of the other patrons and physically assaulted her. Other Sizzler patrons joined in, verbally attacking Friedlander with homophobic and hate-filled language

and threatening her with sexual assault. Under New York State and City Human Rights laws, a restaurant is a place of public accommodation, and Ms. Friedlander's civil rights were violated when she was attacked because of her actual or perceived sexual orientation, gender identity and sex. Lambda Legal reached an agreement with the local owners of the Sizzler restaurant. They agreed that she had been discriminated against, promised to take steps to prevent discrimination in the future, and paid an amount to her to settle the case.

Another current Lambda Legal case, *Cervelli v. Aloha Bed & Breakfast*, involves a lesbian couple, Diane Cervelli and Taeko Bufford, who were denied a room at a bed and breakfast in Honolulu, Hawaii after the owner of the business cited her personal discomfort with same-sex couples. With the court's permission, the Hawaii Civil Rights Commission intervened in the lawsuit on the side of plaintiffs to protect and enforce the state's antidiscrimination law. Hawaii state law specifically prohibits discrimination on the basis of sexual orientation in places of public accommodation, including specifically establishments that provide lodging to temporary guests.

In response to the lawsuit, the business owner, who is represented by the Alliance Defense Fund, has asserted that her religious beliefs provide a defense to the state antidiscrimination law. Indeed, when the business owner turned over documents to support her defenses, she included pages from the Bible. However, the state has a paramount interest in eradicating discrimination, and individuals cannot use their personal religious beliefs as an excuse to discriminate against people in places of public accommodation. Lambda Legal established precisely that precedent in California in 2008, after a doctor refused to provide infertility treatment to a lesbian on religious grounds. When a business opens its doors to the general public, it must play by the same rules as everyone else. **L**

TODAY, 15 STATES AND THE DISTRICT OF COLUMBIA PROHIBIT DISCRIMINATION IN EMPLOYMENT, HOUSING AND PUBLIC ACCOMMODATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY/EXPRESSION. These states include California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maine, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington. Six additional states prohibit discrimination based on *only* sexual orientation, including Delaware, Maryland, Massachusetts, New Hampshire, New York and Wisconsin.



IF YOU HAVE ANY QUESTIONS, or feel you have been discriminated against because of your sexual orientation or gender identity/expression, please contact our Legal Help Desk for assistance at 866-542-8336 or visit www.lambdalegal.org/help.

A Dream Derailed

In 2009, Jackie Gill realized her lifelong ambition to teach college. But then her boss told her Texas and the institution where she taught “didn’t like homosexuals.”

I have always been a big believer in the American dream. I felt that I could achieve success by working hard and furthering my education. Because I’ve seen education change so many lives, I not only wanted to ensure my own education, I wanted to educate others. When I met my partner in 1999, we had both completed some college but had not earned our degrees. So in 2000, we both decided to go back to school.

I finished my degree in 2001 and began teaching high school English and journalism, eventually becoming the English Department Chair at the Fort Worth Independent School District. Although I enjoyed teaching high school, my dream was to be a college professor. In 2006, I was accepted into a doctoral program. We moved to a new city, excited about our next adventure. Every day for three years, we went to our teaching jobs at 6 a.m., left work together to go to the university, where I attended class—and she waited for me, grading papers in the student union—until 10 p.m., and started it all over again the next day. The routine was exhausting, but we both said it would be worth it when I was a professor.

In 2009, I learned Tarrant County College in Hurst, Texas was hiring new English professors at its Northeast campus. After a long interview process over a two-month period, I finally received the call that I had been waiting for: I was a full-time professor! Even though the position was not permanent, my division dean, who was eager to hire me, told me it was customary for full-time instructors to be hired on a temporary basis first.

I still remember my first day of work when I was given my office key, instructor’s books, and class schedule. I was absolutely thrilled. When I left work that first day, heading for the new home that my partner and I had just bought, I thought, “I did it, I finally made it!” All the late nights, working and going to school full-time, and all of the sacrifices that my partner made had finally paid off. I was a professor. I had achieved my American dream.

I spent that year teaching and absolutely loved it. I enjoyed working with



“Lambda Legal is making it possible for me to take a stand so that one more example of homophobia doesn’t get swept under the rug.”

my students. Throughout that year, I received positive feedback and was complimented on my syllabus and the creative projects that I assigned my students. My department chair had told me, “We are very happy to have you with us. Everyone who has been working with you speaks most highly of you.” By the end of that year, I had created an online course and was teaching extra courses to help the college meet its growing enrollment. I had found the place where I was going to build my career.

When my department posted seven permanent positions, I was happy to apply. But one student in my class, whom I’d reported for stealing an exam, filed a complaint claiming that I had flirted with female students in class. Not only was this a lie; such interaction with any student would have been impossible, as I was rarely the only instructor in class. But when my department chair met with me to discuss the complaint, he told me that Tarrant County College and Texas “don’t like homosexuals.” I feared that regardless of my hard work, I wouldn’t be given my job back. Indeed, my chair’s secretary informed me that I would not be granted an interview for any of the permanent positions.

All of the colleagues who had known me and my work expressed shock. I appealed to the college’s two highest-ranking officials, but neither responded. I was devastated.

Since Spring 2010, I’ve been unemployed and have been looking for work. Although this situation has been difficult for me, my partner, and our family, we have much to be thankful for. We still have our house, my partner has her job, and, of course, we have each other. And I have Lambda Legal. I contacted them and told my story. Now they are making it possible for me to share that story and take a stand so that one more example of homophobia doesn’t get swept under the rug. **L**



FOR MORE ON GILL V. DEVLIN AND HOWELL, VISIT
www.lambdalegal.org/gill

WHAT SHOULD HAPPEN IN Vegas



IN ITS FEDERAL LAWSUIT FILED ON BEHALF OF EIGHT COUPLES, LAMBDA LEGAL ARGUES THAT NEVADA'S LAW BARRING SAME-SEX COUPLES FROM MARRIAGE IS HARMFUL AND UNCONSTITUTIONAL.

A new front in the battle for marriage equality burst wide open on April 10 with a bold lawsuit claiming the state of Nevada violates the Equal Protection Clause of the U.S. Constitution by refusing to allow same-sex couples to marry. The domestic partnership option offered in the state since 2009 is a “second-class” status compared to marriage, argues Lambda Legal, which filed the case in U.S. District Court for Nevada on behalf of eight same-sex Nevada couples, with *pro bono* co-counsel.

Lambda Legal Staff Attorneys Tara Borelli, Peter Renn and Shelbi Day are working on the case, *Sevcik v. Sandoval*. Borelli and Renn answered questions about legal strategy and what's expected next:

WHY BRING A FEDERAL MARRIAGE CASE NOW, AND WHY IN NEVADA?

Tara Borelli: The Nevada case makes sense now because of a string of encouraging developments recently in the federal courts and in states across the country. Lambda Legal established some

important supportive principles in our federal case *Diaz v. Brewer*, in which we obtained domestic partner benefits for government employees, and in our *Golinski v. OPM*, our challenge to the constitutionality of the so-called federal “Defense of Marriage Act.”

“IT’S HIGH TIME THAT NEVADA’S LESBIAN AND GAY RESIDENTS HAVE THE SAME RIGHTS AS THE QUARTER MILLION VISITORS WHO WED IN LAS VEGAS EACH YEAR.”

We were also heartened by the February 2012 victory in *Perry v. Brown*, the federal marriage equality challenge to California’s Proposition 8, as well as by the federal Department of Justice’s

decision last year to begin supporting the position that we have been advancing for many years: that government discrimination against gay people should be presumed unconstitutional and carefully scrutinized by the courts.

Our movement continues to make advances state-by-state, with New York now permitting same-sex couples to marry and Washington and Maryland having passed marriage equality bills. All of this momentum helped to set the stage for our challenge in Nevada.

Peter Renn: Nevada is an especially clear example of the inadequacy of domestic partnerships compared to marriage, because the evidence to prove why domestic partnerships are inadequate has been accumulating for years now. Plus, this is the state of Las Vegas—the “marriage capital of the world.” It’s high time that Nevada’s own lesbian and gay residents are able to exercise the same right to build and protect a family as that afforded to the quarter million visitors who choose to wed in Las Vegas each year.

WHY IS THE STATE'S DOMESTIC PARTNERSHIP LAW RELEVANT IN THIS LAWSUIT?

Renn: Nevada's decision to offer same-sex domestic partners the same obligations and benefits that different-sex couples obtain through marriage demonstrates that the state has no legitimate interest in treating same-sex couples differently. Restricting same-sex couples to a plainly second-class status serves only as a statement of moral disapproval and a way for the government to inflict stigma, which is forbidden by the Constitution's promise of equal protection.

"RESTRICTING SAME-SEX COUPLES TO SECOND-CLASS STATUS SERVES ONLY AS A STATEMENT OF MORAL DISAPPROVAL AND A WAY FOR THE GOVERNMENT TO INFLICT STIGMA."

WHY ISN'T THIS CASE CLAIMING A "FUNDAMENTAL RIGHT TO MARRY" AS EARLIER MARRIAGE RIGHTS CASES HAVE DONE?

Borelli: We certainly believe that the fundamental right to marry includes same-sex couples, but in this case the court doesn't need to answer that question in order to rule for our plaintiffs. We are convinced that our Equal Protection claim is so on-target that the emphasis should be there. This makes for a focused, tailored case that looks at the specific equal protection problem created when a state bars marriage equality yet also makes it clear that it has no good reason to do so.

HOW MIGHT THE STATE DEFEND AGAINST THE CASE?

Borelli: This kind of discrimination is going to be tricky for Nevada to fight. It will be very hard for the state to argue credibly that it has an interest in treating same-sex couples differently, because Nevada's domestic partnership law already extends virtually all the rights and responsibilities of marriage to same-sex couples. So, for example, it will be difficult to argue the state is trying to "protect" children—as other marriage rights cases have argued—because Nevada currently treats same-sex parents precisely the same way that it treats different-sex parents.

Renn: Tara has highlighted an important point: Defendants who are sued for enforcing clearly discriminatory laws have a choice: They can either spend their energy (and taxpayer dollars) trying to come up with a defense for the indefensible or they can decline to mount a defense. That's what the Department of Justice has done with respect to DOMA and what California officials have done with respect to Prop 8.

Even when a state declines to mount a defense, it doesn't mean the law will be invalidated; the Court still has to make that determination. But there's no sense in fighting to keep a patently unconstitutional law on the books.

ARE THERE ANY LESSONS TO DRAW FROM THE CHALLENGE TO PROPOSITION 8 IN CALIFORNIA?

Renn: We believe that Nevada's law prohibiting same-sex couples from marrying will meet a similar fate as Prop 8 did in February 2012, when a federal Appeals court affirmed its unconstitutionality. Like Prop 8, Nevada's anti-gay law is not supported by any rational basis, let alone a "compelling government interest," which is the legal test that we believe all anti-gay laws must survive in order to stay on the books.

Borelli: Of course, the *Perry* court did not analyze Nevada's anti-gay law; it held that it was unconstitutional for California to take away the right of same-sex couples to marry after that right had been already been recognized. But the *Perry* case made clear that the government will need to articulate sound reasons to justify the exclusion of same-sex couples from marriage. This reasoning was sorely lacking in California and we believe it is lacking in Nevada as well.

HOW IS THE NEVADA CASE CONNECTED TO *GOLINSKI V. OPM*, LAMBDA LEGAL'S CHALLENGE TO PORTION OF THE SO-CALLED DEFENSE OF MARRIAGE ACT (DOMA) THAT BARS FEDERAL RECOGNITION OF VALID MARRIAGES OF SAME-SEX COUPLES?

Borelli: This case asks a different legal question than *Golinski*. In *Golinski*, the issue is whether the federal government can disrespect the valid marriages of same-sex couples who are already married. The Nevada case is about whether a state must allow a same-sex couple to marry each other in the first place.

But *Golinski* and *Sevcik* have several issues in common. For example, it remains an open question under federal law whether governmental discrimination against gay people should be subjected to heightened scrutiny—in other words, when courts examine that kind of discrimination, should the government be required to justify itself? In February, we received a beautifully written decision in *Golinski* holding that this "heightened scrutiny" is indeed the appropriate level of review. We're now defending that decision before the Ninth Circuit Court of Appeals. We expect that this issue will play a role in *Sevcik* as well.

IS IT POSSIBLE THAT THE NEVADA CASE WILL BE HEARD BY THE SUPREME COURT?

Renn: It's certainly possible. Any plaintiff who files a complaint in a federal court faces the possibility that the U.S. Supreme Court may pass final judgment on the case. But we've only taken the first steps on what will likely be a fairly long road. If the final stop for us is the Supreme Court, we would be proud to stand next to courageous couples like Beverly Sevcik and Mary Baranovich, plaintiffs in this case who have been together for over four decades and are the epitome of love, commitment, and family. With couples like that, and the strength of our legal arguments, we would feel confident facing the justices. **L**

MEET OUR PLAINTIFFS



Mary Baranovich, 76, and Beverly Sevcik, 74 (Carson City): Together more than 40 years; raised three children and proud grandmothers of four grandchildren.



Theodore (Theo) Small, 43, and Antiocho Carrillo, 44 (Las Vegas): A loving, committed couple since 2006.



Karen Vibe (Karen V.), 38, and Karen Goody (Karen G.), 51 (Reno): Engaged since December 2005.



Fletcher Whitwell, 37, and Greg Flamer, 39 (Las Vegas): Together over 14 years; registered domestic partners; raising a daughter, Hudson.



Mikyla, 29, and Katrina (Katie) Miller, 27 (Reno): Dating since 2004, married (in California) since 2008; daughter due in July who will be named Amelia Love.



Caren, 53, and Farrell, 48, Cafferata-Jenkins (Las Vegas): Together 16 years; registered domestic partners; married (in California) since 2008; mothers of Dean, 8, and Quinn, 7.



Megan Lanz, 31, and Sara Geiger, 27 (Las Vegas): Together since 2004; married (in Canada) since 2006; mothers to Jordan Geiger Lanz, 3.



Tara Newberry, 37, and Adele Terranova, 31 (Las Vegas): A loving, committed couple since 2005; married (in California) since 2008; registered domestic partners; mothers of Evan, 2, and Emily, 6 months.

What's Wrong With This Shirt?

MAVERICK COUCH'S PRINCIPAL BANNED HIM FROM WEARING IT. THEN LAMBDA LEGAL HELPED THE OHIO TEENAGER MAKE HIS HIGH SCHOOL ACCOUNTABLE FOR VIOLATING HIS RIGHTS.
BY SALLY CHEW



ON THE MORNING OF APRIL 15, 2011, MAVERICK COUCH dressed for school in a bright white T-shirt decorated with a rainbow Ichthys, or “sign of the fish,” and the slogan “Jesus Is Not a Homophobe.” A friend had given him the homemade shirt the year before, but he’d never had the nerve to wear it in the hallways of Waynesville High School—never been ready to so openly protest the anti-gay harassment he’d endured for years: “People would call me ‘faggot,’ and say rude sexual things to me,” Couch explains.

But April 15th was GLSEN’s National Day of Silence, and Couch knew that thousands of his peers around the country would be participating in the annual event, hanging posters and calling attention to schoolroom bullying by keeping their own lips zipped right through a whole day of classes. So on went the T-shirt and out the door marched the spry, handsome 16-year-old, defiant but mute.

It turns out Couch was the only one among Waynesville High’s 500 students to participate in the Day of Silence, and the school’s principal, Randy Gebhardt, called Couch into his office and instructed him to turn the shirt inside out: “He told me that the shirt was disruptive to students in school,” recalls Couch. “Since I could not talk, I had to do what he said.” Couch tried again the next day—and this time was told to remove the shirt or face suspension.

In the summer of 2011, Couch looked into his rights under the First Amendment of the U.S. Constitution, and when school resumed, he asked Gebhardt directly if it was alright for him to wear the T-shirt to school. The principal said no—and again threatened suspension. That’s when Lambda Legal wrote a letter in protest.

Lambda Legal protests many such school incidents every year, and letters are often followed by an apology and a policy adjustment to bring the school in line with the law. The First Amendment is pretty clear; as for its dominion in schools, the U.S. Supreme Court famously ruled in 1969 that “students and teachers do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

School officials did not think that was the case at Waynesville. After receiving the letter, the school continued to hold firm about Couch and the T-shirt, arguing among other things that the T-shirt was “sexual in nature.” Christopher Clark, Lambda Legal senior staff attorney, marvels at the school’s explanation and its by-then-evident commitment to going to court: “It’s a ridiculous excuse that the shirt is ‘sexual in nature.’ It’s not factual and not a type of defense that the law recognizes.”

So on April 3, Lambda Legal sued the high school and the Wayne Local School District on Couch’s behalf. There was a slight reprieve the next day when the school district agreed to allow Couch to wear the T-shirt for the duration of this year’s Day of Silence on April 20, 2012—which he did, with nearly a dozen other friends who joined him in wearing LGBTQ-affirming T-shirts.

On May 21, the U.S. District Court for the Southern District of Ohio signed a judgment order in favor of Maverick, affirming his right to wear the shirt on any day he chooses and awarding \$20,000 for damages, costs and fees for private co-counsel.

“I just wanted to wear my shirt,” Couch says. “The shirt is a statement of pride, and I hope other students like me know that they can be proud, too.” **L**



TO LEARN MORE ABOUT COUCH V. WAYNE LOCAL SCHOOL DISTRICT, VISIT www.lambdalegal.org/couch-case

Dodgy Defenses

How do employers who discriminate against applicants with HIV try to justify their actions? Lambda Legal's HIV Project Director **Scott Schoettes** counts the ways.

WITH ENACTMENT OF THE Americans with Disabilities (ADA) Amendments Act in 2009, a major weapon was removed from the arsenal of employers and others accused of discriminating against people living with HIV (PLWH). For years, defendants had argued—often successfully—that a plaintiff with HIV did not qualify for the ADA's protections, because s/he did not have an impairment that “substantially limits a major life activity.” The Amendments Act, however, made clear that PLWH are covered under the ADA and that differential treatment of PLWH, whether in employment or in receiving a host of other services, is illegal.

So, post-ADA Amendments Act, HIV discrimination litigation focuses on whether the defendant's conduct was discriminatory, right? Not quite. Unfortunately, there are a number of other tools and subterfuges that defendants will use in an effort to cover up discriminatory acts and/or escape liability under the ADA. Many of these attempted defenses were on display in *Roe v. City of Atlanta*, a Lambda Legal case in which an applicant was rejected for employment as a police officer with the City of Atlanta after they discovered he is HIV-positive. What kinds of things did the defendant try to claim excused its behavior?

“You can't trust him—he's a liar!” Attempting to discredit the plaintiff is nothing new as a litigation tactic, but—because of the confidential nature of one's personal medical information—it is a charge to which plaintiffs with HIV are particularly vulnerable. As is often the case, the employer in *Roe* claimed that not only did the plaintiff fail to affirmatively announce his HIV status when he applied for the job—but that he also didn't list it on the form *Roe* completed prior to the medical examination they conducted. Never mind that *Roe* was under no obligation to reveal this information prior to being made an offer of employment—in fact, the police department was in violation of the ADA when they asked about HIV and tested him for it—or that he took pains not to sign anything indicating that he was providing every detail of his medical history. The City of Atlanta still tried

to paint him as untrustworthy. This is a dilemma that many job applicants with HIV face: if I am inappropriately asked about my status, do I reveal this information and make myself a target for discrimination, or do I keep it to myself and risk later being branded as dishonest and deceitful? It can be a no-win situation. Generally speaking, the best course of action is to answer honestly those questions your employer is entitled to ask and to feel free to keep private those things that are irrelevant to your employment application.

“We didn't even know he had HIV.” Believe it or not, defendants will make this claim despite the fact they have tested the applicant for HIV and obtained a positive result. As happened in *Roe*, the

employer sends the applicant to an “independent” doctor who evaluates the person's fitness to perform the job. The doctor conducts the inquiry about HIV—in this case, even runs an HIV test on the plaintiff's blood without his knowledge—and then reports back to the employer that the applicant is not medically qualified. That way, the employer makes the hiring decision—based on the “expert” opinion of the doctor it hired—but can attempt to disclaim any knowledge of the disability that serves as the basis for the claim of discrimination. Thankfully, employers are not allowed to isolate themselves in this way—they are ultimately held responsible

Continued on page 18

MEET OUR LAWYERS

SCOTT SCHOETTES // HIV PROJECT DIRECTOR

HOW DID YOU COME TO WORK AT LAMBDA LEGAL? After the death of Matthew Shepard, I wanted to be a part of changing the environment that could lead to such a tragedy. Eight years later, I had completed law school and put some time in at a big law firm when the opportunity with Lambda Legal presented itself. It was precisely what I had envisioned when I embarked upon this second career.

WHAT IS YOUR ROLE AT LAMBDA LEGAL? I lead our efforts to secure, protect and advance the civil rights of people living with HIV. I love the variety of work involved in my job, because HIV-related issues intersect with so many substantive areas of the law—from employment to healthcare (and other public accommodations), family law to immigration—it really runs the gamut.

WHAT HAVE BEEN THE HIGHLIGHTS OF YOUR WORK SINCE YOU ARRIVED HERE? Two things of which I am particularly proud occurred earlier this year. In January, we filed an amicus brief with the U.S. Supreme Court, explaining the importance of the Patient Protection and Affordable Care Act to people living with HIV and our ability to get a handle on the HIV/AIDS epidemic. In February, we convinced the Eleventh Circuit Court of Appeals to reverse the decision of a trial court, clearing the way for a man living with HIV to proceed with his claims against the Atlanta Police Department, which had denied him the opportunity to serve as a police officer because of his HIV status. On the policy side, playing a small part in ending the travel and immigration ban against people living with HIV was particularly gratifying.

IS THERE ANYTHING THAT THE LAMBDA LEGAL COMMUNITY MIGHT BE SURPRISED TO LEARN ABOUT YOU? In 1998, I was on the national tour of “West Side Story,” playing Action (sometimes Riff) in 46 of the 50 United States and three Canadian provinces. (I was an actor/dancer/singer in my first career.)

WHAT DO YOU DO TO UNWIND WHEN YOU'RE NOT AT WORK? When I can make the time, you might find me playing a weekend tournament with the North American Gay Volleyball Association (NAGVA) or on the beach in Chicago. Not sure I “unwind” when I play—my competitive edge is a bit too sharp to allow for that—but it is a great way to stay in shape and work out some leftover aggression!



What Makes a Family

In his new book, Zach Wahls, an activist and son of two moms from Iowa, talks about the challenges which the kids of gay couples face.

MINE HAS ALWAYS BEEN A sit-down-dinner kind of family. So when I announced at a Sunday night supper that I was preparing to testify the following night at a state hearing on gay marriage, the four of us launched into a hearty conversation on the topic.

My moms always used our dinner table conversations to prepare my sister and me for the daily challenges of life. From simple reminders to do our homework and practice the piano to the more complex task of teaching us how to deal with a school bully, these nightly dialogues were both a safe harbor and a staging ground.

It was around the dinner table that they introduced the book *Teaching Your Children Values* by Richard and Linda Eyre, which gives

parents a yearlong, month-by-month plan for teaching children values such as self-discipline, perseverance, kindness, and honesty. Every night since I was a young child, we'd share examples of that month's value. Although I'd usually just toss out a quick example en route to whatever was on my plate, over the course of the nearly two decades, these moral explorations sank in. My moms equipped me with a strong sense of right and wrong and taught me that the world is rarely black and white.

A month after my moms' public wedding, I decided it was time for me to start giving back, to do my good turn, so to speak. I decided to attend an event for LGBT families in Des Moines called "Around the Table." It was hosted by the organizations One Iowa and Lambda Legal to answer questions about the ruling winning marriage equality in Iowa and what people could do to help keep the momentum going. I was there to work with the kids of LGBT couples in attendance.

These kids were all pretty young, most about seven or eight. I'm not a particularly emotional guy, but I got choked up listening to these kids talk about their experiences. Some didn't even realize they had gay parents. They "just have two moms." I remember one little kid who didn't understand why he was even there. So normal was his life experience that it wasn't until after lunch that he came back and said, "Oh, yeah, I am one of those."

"I WAS NORMAL UNTIL SOCIETY TOLD ME I WASN'T."

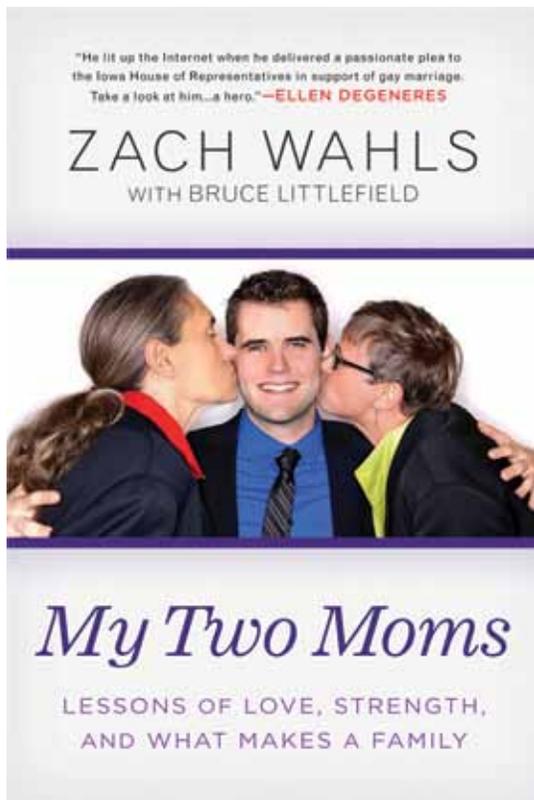
Another young boy who had two mothers was very confused and got pretty upset. He couldn't comprehend why some people didn't want his moms to get married. He kept saying his family was normal. I looked in his eyes and could see genuine concern. He believed that kids from families run by gay couples were really—in every single way that mattered—not any different from families run by heterosexual people.

Then it dawned on me as this boy talked: I was normal until society told me I wasn't. I realized that the little kid looking up at us, with his brown hair, large eyes, and big smile, was me.

My heart went out to him, because I knew that at some point in his life he was going to come face to face with people who thought he would need "fixing." I knew the pain he was going feel.

Opponents often talk about the struggles and challenges that children of gay couples have to go through. I will say only this: We go through those challenges because you put us through them. We only experience that pain because you insist on inflicting it. Knowing the challenges that child will face and the things he will have to deal with—that we're still not at a point where he can live a childhood untouched by fear and unsullied by hate—breaks my heart.

This book is for him. **L**

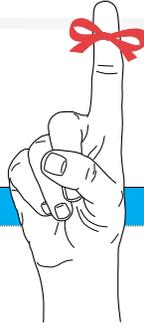


From *MY TWO MOMS: Lessons of Love, Strength, and What Makes a Family* by Zach Wahls with Bruce Littlefield. Published by arrangement with Gotham Books, a member of Penguin Group (USA), Inc. © 2012 by Zach Wahls LLC

Show Your Pride!

Lambda Legal will be at Pride events across the country. Come march with us, grab a T-shirt or our new logo sunglasses, or just say hello.

Save the Date



JUNE

- 2-3 **Tulsa Pride, OK**
- 2-3 **Quad City Pride, IL**
- 3 **Jersey Pride ASBURY PARK, NJ**
- 3 **Queens Pride Multicultural Festival, NY**
- 9 **Brooklyn Pride, NY**
- 9 **Circle City Pride INDIANAPOLIS, IN**
- 9 **2012 PrideFest San Antonio, TX**
- 9 **Rockford Pride, IL**
- 9 **PrideFest San Antonio, TX**
- 9-10 **Los Angeles Pride Parade and Festival, CA**
- 10 **Chicago Latino Pride, IL**
- 10 **Capital Pride WASHINGTON, D.C.**
- 10 **Philadelphia Pride, PA**
- 16 **Portland Pride, OR**
- 16-17 **Baltimore Pride, MD**
- 16-17 **Denver PrideFest, CO**
- 22 **San Francisco Trans March, CA**
- 23 **Houston Pride Festival, TX**
- 23 **Harlem Pride, NY**
- 23 **Chicago Dyke March, IL**
- 23-24 **Twin Cities Pride MINNEAPOLIS, MN**
- 23-24 **San Francisco Pride, CA**
- 24 **Seattle Out and Proud, WA**
- 24 **Chicago Pride Parade and Festival, IL**
- 24 **Heritage of Pride Parade and PrideFest, NY**

JULY

- 1-5 **Chicago Windy City Black Pride, IL**
- 21-22 **Portland Latino Pride, OR**
- 21-22 **Colorado Springs PrideFest, CO**
- 21-22 **San Diego Pride, CA**
- 28-29 **Triangle Black Pride North Carolina Raleigh, NC**
- 29 **Chicago Trans Pride, IL**

AUGUST

- 11-12 **Indiana Black Pride Indianapolis, IN**
- 18 **Hudson County Pride Jersey City, NJ**
- 18 **Reno Pride, NV**

SEPTEMBER

- 1 **Atlanta Black Pride, GA**
- 7-8 **Las Vegas Pride, NV**
- 15 **Rehoboth Gay Pride, DE**
- 16 **Dallas Pride Parade and Festival, TX**
- 22 **Austin Pride, TX**
- 27-30 **"THE MOVEMENT" Dallas Black Pride, TX**

OCTOBER

- 7 **Philadelphia OUTFest, PA**
- 13-14 **Atlanta Pride, GA**

NOVEMBER

- 3-4 **Palm Springs Pride, CA**

FOR MORE INFORMATION ON LAMBDA LEGAL EVENTS, VISIT
www.lambdalegal.org/events





Safe Space

What can be done to change the path to jail or homelessness that traps so many lesbian, gay, bisexual, transgender or questioning (LGBTQ) youth, both in school and on the street? Impact speaks with Lambda Legal Deputy Legal Director **Hayley Gorenberg** (above, left) and Hetrick-Martin Institute Director of Advocacy and Capacity Building **Lillian Rivera**.

LILLIAN RIVERA: Compared to the way things were 10 years ago, there are more anti-bullying and anti-harassment laws now, but many states have none. And many laws fail to make crystal clear in their language that they protect students on the basis of their sexual orientation or gender identity.

I think the difference today is that young people can identify individuals who are supportive, so they can stay in school a little longer. And visibility among New York City youth who identify as LGBTQ has increased, which has a ripple effect on their staying engaged in the educational process.

I don't think the stories that young people tell are different today. Still it's basically: "I'm being treated this way by another student and I've reported it, and administrators are not always responsive." But I think young people are speaking out for themselves more and creating communities for themselves.

And I think the Internet has created more connections for young people, which can be lifesaving.

HAYLEY GORENBERG: I'm really glad that you bring that up, because with the publicity about cyber-bullying, and recently the sentencing of Dharun Ravi [in the New Jersey case following the 2010 suicide of Rutgers student Tyler Clementi], there's a question about the role of new technologies among students. I think that too often the technology is cast as an evil in and of itself. But the point about the Internet being a resource I think is really crucial, particularly if someone is feeling isolated.

RIVERA: The situation is not the same for all young people. We've had studies that indicate LGBTQ youth of color are less likely to come out to their families. There are also serious disparities around being able to finish school.

The young people that we work with are primarily people of color from poor and working families. So they are LGBTQ or presenting in a gender-variant way in neighborhoods that are dealing with systemic oppression, such as racism and poverty. I think the intersection of all of those create,

for lack of a better word, the perfect storm, so we see higher rates of HIV, for instance. The violence that LGBTQ youth experience is greater as well within communities of color—because communities of color experience higher rates of violence.

GORENBERG: Studies show disproportionate punishment is meted out in school for infractions or perceived infractions by both LGBT youth and youth of color. So think about the double-whammy that LGBT youth of color are experiencing!

And this connects to the problem of youth dropping out. That may be because school isn't safe, or it may be because of the so-called school-to-prison pipeline, where students are being disciplined right into the juvenile justice system or the criminal system.

All our stats show that young people who are out of school are disproportionately LGBT and youth of color, and they're often unsupported because the out-of-home care is inadequate. They're disproportionately homeless for this reason—and

then getting profiled by the criminal justice system.

A lot more youth of color are arrested because they're simply more exposed by being out on the streets. And then youth are profiled because of how they look, whether that means being a person of color or gender-nonconforming.

Something that we're looking at now in New York is cops using condoms as evidence of prostitution. Our law-enforcement system is deterring youth from being safe after decades of public health officials trying to get the message out that condoms are essential interventions for protection.

RIVERA: We're currently working on creating a process to help young people get identification, because they're increasingly being targeted by police throughout the city, often simply for not having ID. The ID disparity is really based in economics. If this is a young person who's homeless and maybe not connected to a family of birth, it's harder to access the documents to prove their identity—and it costs money.

GORENBERG: That's a great initiative. LGBTQ youth have various pressures that can lead them into the justice system. Many are not in school, or their schools aren't welcoming to them so they're not showing up. They get picked up on the street, often without ID, and then they're in the system. Or the young person *is* in school and there is an infraction or a perceived infraction and the response of school officials is to get the police involved. This is often not to be helpful, not to assist young people in growing or taking a better path, but instead channeling them into something punitive. Then soon they're more part of the criminal justice system than the educational system. This is the "school to prison pipeline" that we have to put an end to.

RIVERA: In New York City we have the police department *within* schools, so they can arrest students for any type of violation. It's extremely problematic if you're not safe in school, you're not safe in the streets—and also not at home. These are systemic issues that lead young people to prison.

GORENBERG: And then there are so-called "zero-tolerance policies," where kids get removed from school based on a variety of infractions.

Sure, there are certain extreme, limited situations where I think a child has to be removed from school based on a safety issue. But I don't think that students need to be removed when they're being targeted [for harassment or bullying by other students]. A school's job is to protect them, not to kick them out. Schools

should not lead students straight into the so-called school-to-prison pipeline. It's a recipe for disaster.

We want a lot more intervention and support for students who are being targeted and who need help. There's a huge amount that schools can do to help heal an environment short of suspending students or kicking them out. You can hold school assemblies. You can train staff and school safety officers. You can train the students. You can do advisory groups and focus groups.

"IT'S IMPORTANT THAT WE AS ADULT LGBT PEOPLE INVEST IN THE FUTURE—ESPECIALLY IN A SOCIETY THAT DOESN'T ALWAYS LISTEN TO YOUNG PEOPLE."

We also need the Student Non-Discrimination Act. [repeatedly introduced in the U.S. Congress and endorsed in April 2012 by President Obama]. We have other laws, including the U.S. Constitution, that we've worked with creatively. But, in many states, we don't have a clear message out there that youth should be protected as much as everybody else from being harassed or discriminated against in schools based on their sexual orientation and gender identity.

RIVERA: Young people impacted by zero-tolerance policies are generally being punished for trying to take care of themselves—which is the job of the adults in the space. So the choice is either running away from school because it's unsafe or staying and fighting and having to deal with the repercussions. That's a really, really difficult thing.

GORENBERG: And they're not just getting in trouble for physically defending themselves but also in the arena of words. As recently as last week, we had a call from a student who was answering questions about her participation in the National Day of Silence [an annual, national day sponsored by GLSEN to protest the silencing of LGBT youth] and then was threatened with suspension based on what was called "insubordination."

And even in a climate with extreme pressure on school budgets, I think we have to figure into the calculus the costs of *not* making schools safe and affirming for LGBTQ students. When kids are

looking over their shoulder because they're afraid of what's going to happen to them next period, they don't learn very well.

But on the flipside, we don't usually need some new, expensive add-on. The material is out there. And any number of things that already go on in a regular school day can serve as opportunities to introduce it. Some communities are adding curricula that include LGBTQ figures in history, for instance. That way they create role models, and students respond to that and start to see themselves as potential leaders.

RIVERA: I absolutely think there are some bright spots to celebrate and support. I think people are working towards creating clear curricula that are

accessible to all age groups. Hetrick Martin has been working on this with the Center for Lesbian and Gay Studies (CLAGS) at the City University of New York and with other educators to build their ability to "queer" not just their curriculum but their classrooms, their communities, even their teachers' lounges.

New York City's Respect for All program in public schools has had some impact. And the Newark Public School System is committed to increasing that district's ability to engage LGBTQs and retain them in the school system. So there are lots of wonderful things happening.

I think the political will to make things better needs to come from several places at once. For the past three years, Hetrick Martin has been working with the city of Newark, providing services for young people in collaboration with the Newark Public School System. In Newark, not only is the school district committed but also the city and the community.

I think it's important that we as adult LGBT people invest in the future—especially in a society that doesn't always listen to young people. Even if you don't have a son or a daughter or a niece or a nephew at a particular high school, what do you do to make it safer? How do you contribute to the community to ensure that LGBTQ teens have spaces and voices? I think it's important for us to invest in the future, much like the history of Hetrick Martin, which was started by two adults who thought: "Hey, I have to do something." **L**

Lewis “Sonny” Turner (1919–2011)

This decorated war hero, performing artist and lover of life could not be out during his lifetime. Now his generosity is helping Lambda Legal ensure future generations won’t have to do the same. BY CYNDE HORNE

Lewis “Sonny” Turner lived a life that most only dream of living. Those who knew him best describe him as “handsome,” “elegant,” “interesting,” and “charming.” He and his partner, Alex, shared homes in Manhattan, East Hampton, and Fort Lauderdale. Sonny was a wonderful cook, and he and Alex often entertained their close circle of friends. By all accounts, Sonny was adored by his friends and his family. But Sonny had a secret, which he kept from even his closest family members—Sonny was gay and his “friend” Alex was his partner.

When Sonny passed away in March 2011, he left a very generous bequest to Lambda Legal of over \$1 million. “Sonny knew this (his bequest to Lambda Legal) was his coming out story,” said Lisa Padilla, Sonny’s lawyer and friend. “The gift speaks for Sonny in a way he could not speak for himself.” He had grown up in an era that made him fearful of living his life as an out gay man, and it was important to him to support an organization that works to change society so that young gay men and lesbians won’t have to live in fear of being who they are. He wanted his legacy to be a gift that would be used to end discrimination and that would also honor Alex, who had been an attorney.

Sonny loved dance and dreamed of becoming a professional dancer. Having studied dance under Mikhail Mordkin, his dream became a reality when he was cast in the chorus of *DuBarry Was a Lady*, starring Ethel Merman, Bert Lahr, and a young Betty Grable.

During World War II, Sonny served his country by joining the army. When asked what he did during the war, Sonny would reply, “I cleared the way for Patton.” Wounded in the Battle of the Bulge and transferred to Walter Reed Army Hospital, Sonny would later be awarded the Purple Heart for his bravery. Because of his injuries, Sonny would never dance professionally again.

For a short time, Sonny and Alex lived in Los Angeles with their black standard poodle, Joe. When they returned to the East, they felt Joe would not enjoy

New York City life, so Joe went to live with their good friend Liberace.

In 1967 Sonny and Alex hired legendary architect Paul Rudolph to design a home for them on Manhattan’s Upper East Side. They lived in this starkly modern home until 1974, when it was purchased by Halston and became “party central” for Halston’s Studio 54 crowd.

Sonny loved to have a good time and could often be seen driving around East Hampton in his Thunderbird convertible. One of Sonny’s fondest passions was cooking, and he was a wonderful cook. Having studied with well-known Chinese cook Virginia Lee, Sonny would often prepare elegant dinners for his friends, all of whom remember his masterful culinary skills.

Toward the end of his life, Sonny turned to his niece, Thai Jason, who had long known that Sonny was gay. When she told him she knew and that it was nothing for him to be ashamed of, he was incredulous that she had always known. Thai speaks so lovingly of “Uncle” and remembers him as a kind and generous man. Thai is thankful that Sonny could do in death what he could not do in life—come out. Lambda Legal is thankful for Sonny’s generosity that makes it possible for us to continue our fight against LGBT discrimination. **L**

“Sonny always said he was the 7th son of a 7th son and this is why he led such a charmed life.”
—Thai Jason on her Uncle Sonny



Turner, in uniform, received a Purple Heart for his service in World War II (top). With a family member (bottom).

“Dodgy Defenses,” continued from page 11

for sufficiently guiding and monitoring the quality of the evaluation conducted by the doctors with whom they contract. In other words, under the ADA, employers aren't allowed to “outsource” disability discrimination.

“He doesn't really want the job.” Again relying on the doctor as the bearer of bad news in a twisted game of “telephone,” the employer has the doctor tell the applicant that the employer doesn't hire people with HIV. Then, if the applicant accepts the determination of this doctor—who has been *paid* by the employer to test the applicant for HIV—the employer later claims the applicant “abandoned the application process.” In Roe's case, the Atlanta police department claimed this even though Roe made subsequent and additional efforts to convince the City's doctor that his HIV would not in any way disqualify him or prevent him from performing the job of police officer. Under the City's “abandonment” theory, Roe

should have instead pled his case directly with the police department—which allegedly knew *nothing* (see above) about why he was found not medically qualified!

“We don't discriminate based on HIV status; but if we did . . .” Defendants are at their most cynical here, recognizing that they shouldn't—and professing that they don't—discriminate based on HIV status, while simultaneously relying on outdated misconceptions about living with HIV and deeply entrenched fears about the transmission of HIV to justify their actions. Usually this takes the form of a claim that the HIV-positive plaintiff, in whatever context is at issue, presents a “direct threat” to the health of safety and others. The defendant in *Roe* pressed this argument, albeit with a slightly different gloss: the City claimed that though it could not prove that Roe's HIV presented a direct threat to others, Roe would not be able to prove that it *didn't* present such a threat. And because the district

court discounted the evidence Roe presented to make this required initial showing—not to mention that it's almost impossible “to prove a negative” to a point of absolute certainty—the defendant almost prevailed with this argument.

If it had not been for Lambda Legal's decision to represent Roe on appeal to the Eleventh Circuit Court of Appeals—where we succeeded in getting the district court's summary judgment decision reversed—there would have been yet one more decision on the books against a plaintiff living with HIV.

At Lambda Legal, we recognize that we have our work cut out for us. We will continue to eradicate harmful precedents and stamp out defenses that turn disability law on its head for people living with HIV. Lambda Legal's HIV Project isn't going anywhere until the battle against HIV discrimination has been won once and for all! **L**



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The Power of Precedent



JON W. DAVIDSON

**WHEN POLITICIANS
ATTACK THE
DECISION IN *PERRY*,
THEY REVEAL A
FRIGHTENING
MISUNDERSTANDING
OF THE AMERICAN
LEGAL SYSTEM.**

OUR NATION'S MODEL OF

jurisprudence is built on a system of precedent, meaning that the decision in one lawsuit not only resolves that case but guides future lawsuits. It also ensures that the accumulated wisdom of past decisions influences the results in those that follow.

The majority opinion in *Perry v. Brown* is squarely based on precedent, not politics. When politicians attack the decision in *Perry* as the work of “rogue judges,” they reveal a frightening misunderstanding of the American legal system. Judges are bound by precedent. The Ninth Circuit judges who decided *Perry* were simply doing their job—following precedent to enforce the legal protections that the Constitution safeguards for everyone.

The precedent on which *Perry* rests most heavily is the 1996 Supreme Court opinion in *Romer v. Evans*, a ruling the *Perry* majority cites more than two dozen times. As the opinion in *Perry* points out, Proposition 8 is “remarkably similar” to Colorado’s Amendment 2, which prohibited the state and its political subdivisions from providing lesbians, gay men, and bisexuals any legal protection against discrimination on the basis of sexual orientation. In *Romer*, Lambda Legal, along with the ACLU and some of Colorado’s top lawyers, successfully convinced the Supreme Court to rule that Amendment 2 was unconstitutional.

As the Supreme Court explained, Amendment 2 involved government discrimination of an “unusual character.” It “withdr[ew] from homosexuals, but no others, specific legal protection...and...forb[ade] reinstatement of these laws and policies” except by “enlisting the citizenry...to amend the State Constitution.”

California’s passage of Prop 8 closely parallels Colorado’s passage of Amendment 2. Both amendments involved electoral backlashes to civil rights advances by the state’s gay minority.

Rather than modify California’s marriage law, Prop 8 amended the California Constitution in an unusual way, withdrawing from gay people, but no others, the right to equal protection when it comes to marriage. Like Amendment 2, Prop 8 barred legislators from ever affording such equal treatment to the gay minority.

Citing *Romer*, the *Perry* majority explains that “Proposition 8 denies ‘equal protection of the laws in the most literal sense,’ because it ‘carves out’ an ‘exception’ to California’s equal protection clause by removing equal access to marriage, which gays and lesbians had previously enjoyed, from the scope of that constitutional guarantee.” *Perry* continues, again quoting *Romer*: “Like Amendment 2, Proposition 8 ‘by state constitutional decree...put[s] [gay people] in a solitary class with respect to’ an important aspect of human relations, and accordingly ‘imposes a special disability’ on them alone.

In *Romer*, Justice Kennedy explained that one of the most fundamental principles of equal protection is that “the Constitution neither knows nor tolerates classes among citizens.” The Ninth Circuit was bound to apply *Romer*’s holding to Proposition 8.

There is much one can learn from *Perry*. There is restraint in the judges’ decision not to decide whether the Constitution requires all states to allow same-sex couples to marry. There is humor in the point that “Had Marilyn Monroe’s film been called *How to Register a Domestic Partnership with A Millionaire*, it would not have conveyed the same meaning.” There is insight in the recognition that we don’t celebrate “when two people merge their bank accounts; we celebrate when a couple marries.” There is wisdom in the understanding that Prop 8 cannot reasonably further any purpose other than making gay people unequal. The one thing there is not, however, is politics.

Jon W. Davidson

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