

IMPACT

FALL 2016

 **Lambda Legal**
making the case for equality

10 TOP STATES

protecting LGBT people
& people living with HIV
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SPECIAL REPORT

THIS NOVEMBER,
27 STATES WILL
LET VOTERS SELECT
65 JUDGESHIPS,
LEAVING COURTS
AT THE MERCY OF
IDEOLOGY AND
MONEY



JUSTICE FOR SALE

WHY JUDICIAL ELECTIONS THREATEN LGBT RIGHTS

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Tammy Baldwin:

"Our next president must
speak out against efforts to
undermine our progress"
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"YOU GET SO SCARED, YOU CAN'T SLEEP"

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IN, MO, NC,
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JAMES R. BROWNING UNITED STATES COURTHOUSE

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JUSTICE, UNWRAPPED



Cover illustration: Lincoln Agnew

I used to edit this magazine. More precisely, I used to edit a forerunner to this magazine: the *Lambda Update*. In the late 1990's I was hired by Peg Byron as Lambda Legal's

Managing Editor. It was a great title for a former journalist, and my job was to capture the amazing work the attorneys did and make it accessible to all LGBT people.

In a lot of ways, I'm still doing the same job.

I am excited that this issue of *Impact* showcases how much we've grown. The challenges we face are as daunting as ever. But thanks to your support, our legal team can ensure that same-sex parents aren't denied the right to be in their children's lives; that a prison cannot withhold health care from a transgender inmate who desperately needs it; that a vulnerable senior isn't physically assaulted just because she is a lesbian and raised a family with another woman.

As Senator Tammy Baldwin points out on page 7, we

have a lot at stake in this year's elections. But beyond the races grabbing the most headlines, there are also crucial elections for high court judgeships that will impact millions of people. The U.S. is virtually alone in the world in giving voters the ability to unseat judges. Our Fair Courts Project's new report, *Justice Out of Balance*, shows how this practice undermines the rights that LGBT people and people living with HIV have fought so long and hard to realize.

This *Impact* has a new look, a sex and relationships section, a personal perspectives column and, for the first time, an interview with a public figure.

We're also at a milestone moment: no brown paper wrapper. We haven't hidden our identity as an LGBT organization in a long time, and the outside of *Impact's* envelope has been pretty gay for a while now. But still, it feels momentous to go bare.

RACHEL B. TIVEN
CEO, LAMBDA LEGAL

Let us know what you think of this issue at impact@lambdalegal.org.

IMPACT

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Rachel B. Tiven, CEO

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BIG WIN

NEW YORK

Victory for the Rights of Non-Biological Parents

In August, Lambda Legal and co-counsel secured a groundbreaking ruling

from the New York State Court of Appeals affirming the rights of non-genetic parents. "The state's highest court is recognizing the diversity of New York families and reversing a bitter precedent that has kept children from their parents," Lambda Legal's Susan Sommer told the *New York Times*. Lambda Legal had argued for upstate New York resident Brooke B., who had a son with Elizabeth C. They had planned to marry, but their relationship ended in 2010 before the state legalized marriage for same-sex couples. Both mothers continued to co-parent their child, picking him up at day care, taking him to doctor's appointments and celebrating holidays with him. But in 2013, Elizabeth cut Brooke off, arguing in a subsequent court case that without marriage or adoption, Brooke had no parental rights. Judge Sheila Abdus-Salaam wrote that "where a partner shows by clear and convincing evidence that the parties agreed to conceive a child and to raise the child together, the non-biological, non-adoptive partner has standing to seek visitation and custody." The landmark decision finally brings the state "into line with the mainstream," Sommer said.



Lambda Legal Director of Constitutional Litigation Susan Sommer (left), with plaintiff Brooke B., after arguments leading to New York's landmark ruling on non-genetic parents.

NEW CASES

MISSOURI

Prison Refuses Care to Transgender Woman

Lambda Legal filed a federal lawsuit in August on behalf of Jessica Hicklin, a transgender woman incarcerated at all-male Potosi Correctional Center in Mineral Point, Missouri. Doctors have prescribed hormone therapy, gender-affirming canteen items and permanent hair removal for Hicklin. But the Missouri Department of Corrections has denied these to her, citing its policy barring access to hormone therapy



Plaintiff Jessica Hicklin

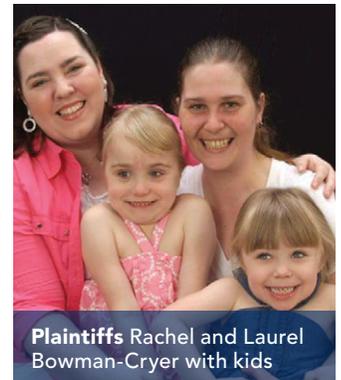
to anyone not receiving it prior to incarceration. The consequences have been cruel for Hicklin, in prison now for 21 years. "Without care, I feel as though I am re-sentenced each day, further locked in a prison within a prison—my body," she says. Lambda Legal Staff and Transgender Rights Project Attorney Demoya Gordon says, "Not only does this violate accepted medical standards, it is the definition of cruel and unusual punishment."

OREGON

Couple Denied a Wedding Cake Heads Back to Court

Lambda Legal filed a friend-of-the-court brief in August on behalf of Laurel and Rachel Bowman-Cryer, a lesbian couple subjected to a three-year campaign of public harassment—even death threats—over a wedding cake. The foster parents of two were planning to get married in 2013 when a

local bakery, Sweet Cakes by Melissa, refused to make them a cake. The owners of the bakery cited their Christian religion and described the couple's relationship as an



Plaintiffs Rachel and Laurel Bowman-Cryer with kids

"abomination." The Bowman-Cryers filed a complaint, and the bakery and its supporters retaliated by attacking them online and in a radio talk show. Lambda Legal's brief opposes the appeal of a state agency decision to award the couple damages. "Religion should not be used as a sword to deny rights or basic services to same-sex couples," says Lambda Legal Law and Policy Project Senior Staff Attorney Nancy Marcus.

UPDATES

NORTH CAROLINA

Lambda Legal Seeks to Block HB2

Lambda Legal announced in August that it is filing an appeal to protect all transgender North Carolinians



Client Joaquín Carcaño

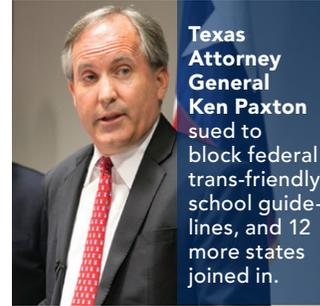
from the notorious House Bill 2 (HB2) while Lambda Legal's case against the law proceeds toward trial next year. The appeal challenges a trial court ruling, in a bid to block HB2 more broadly. HB2 eliminates antidiscrimination protections for LGBT people and bars transgender people from using sex-specific facilities that match their gender identity. "We are optimistic that HB2's days are numbered and are appealing

Friday's ruling in order to bring relief to all those who live in or visit North Carolina," says Lambda Legal Senior Attorney Tara Borelli. The district court ruling also found that HB2 may violate Title IX, which prohibits sex discrimination in federally funded schools. Lambda Legal, the ACLU, the ACLU of North Carolina and Jenner & Block will also argue that HB2 violates the U.S. Constitution. A separate challenge to HB2 is pending from the U.S. Department of Justice.

NATIONAL

13 States Still Defying Trans-Friendly School Guidelines

Lambda Legal and four other civil rights groups filed a friend-of-the-court brief defending guidelines that the Obama Administration issued in May, calling for public schools to respect transgender students by using the right pronouns, combatting bullying and allowing students to use restrooms in line with their gender identity. Texas and 12 other states immediately



Texas Attorney General Ken Paxton sued to block federal trans-friendly school guidelines, and 12 more states joined in.

sued to block the guidelines. In August, a U.S. District Court judge ruled in those states' favor, although schools still have a legal responsibility to protect transgender students. "The decision is certainly emotional and certainly an attack on transgender students' dignity," Lambda Legal Staff Attorney Paul D. Castillo told the Associated Press.

INDIANA

Setback for Lesbian Teacher in Job Discrimination Case

Lambda Legal has filed for rehearing in the case of Kimberly Hively, who served as a part-time math instructor at Ivy Tech Community College in South Bend, Indiana for 14 years. Hively was repeatedly refused promotions and full-time employment and ultimately fired because she is a lesbian. In July, a three-judge panel of the Seventh Circuit rejected Lambda Legal's appeal on Hively's behalf arguing that Title VII of the Civil Rights Act of 1964, which outlaws workplace discrimination based on sex, also bars discrimination based on sexual orientation, and that contrary to 7th Circuit precedents should be overruled. "Lesbian, gay and

bisexual people are vulnerable and losing their jobs because old case law interpreted Title VII too narrowly," says Lambda Legal Counsel Greg Nevins. "It is past time to fix that."

MISSOURI

Church Playground Case Goes to the Supreme Court

Lambda Legal has submitted a friend-of-the-court brief in a case that the U.S. Supreme Court will hear this fall, involving the Columbia, Missouri-based Trinity Lutheran Church. Trinity had been rejected for state funding to resurface its school playground, as Missouri's constitution bars churches from receiving government grants. Trinity took its case to court, claiming religious discrimination. Lambda Legal's brief warns that "there is reason for concern" that this particular church school discriminates against the children of same-sex parents. "Government should not fund a church playground that fences out certain children," says Lambda



Legal Counsel Camilla Taylor. Lambda Legal is concerned that the Senate's failure to seat a ninth justice could have an impact on the outcome of this case.

TALKING POINTS

THE CLAIM: "Letting transgender women use women's restrooms is dangerous for cisgender women and girls."

THE FACTS:

- Trans women have always used women's restrooms.
- There have been no reported cases of transgender women attacking people in women's restrooms.
- Transgender women are commonly harassed and even sometimes assaulted while trying to use public restrooms.

More at lambdalegal.org/restrooms

CRIMINAL JUSTICE

TEXAS

#StopPrisonRapeInTX



Texas's record of protecting LGBT people in prison from rape or sexual assault is among the worst in the country. Lambda Legal has repeatedly pressed the state to abide by federal law and protect LGBT people in prison. Lambda Legal client

Passion Star was placed in safekeeping only after months of litigation. Following Texas's latest promise to address the problem, Lambda Legal launched its #StopPrisonRapeInTX campaign, urging investigations into a string of specific episodes. "Texas's newest assurance is not enough," says Lambda Legal Staff Attorney and Criminal Justice and Police Misconduct Program Strategist Richard Saenz. "We need action." The new campaign includes a petition to the governor at lambdalegal.org/petition/stopprisonrapeintx

EDUCATION

ARIZONA

#DontEraseUs

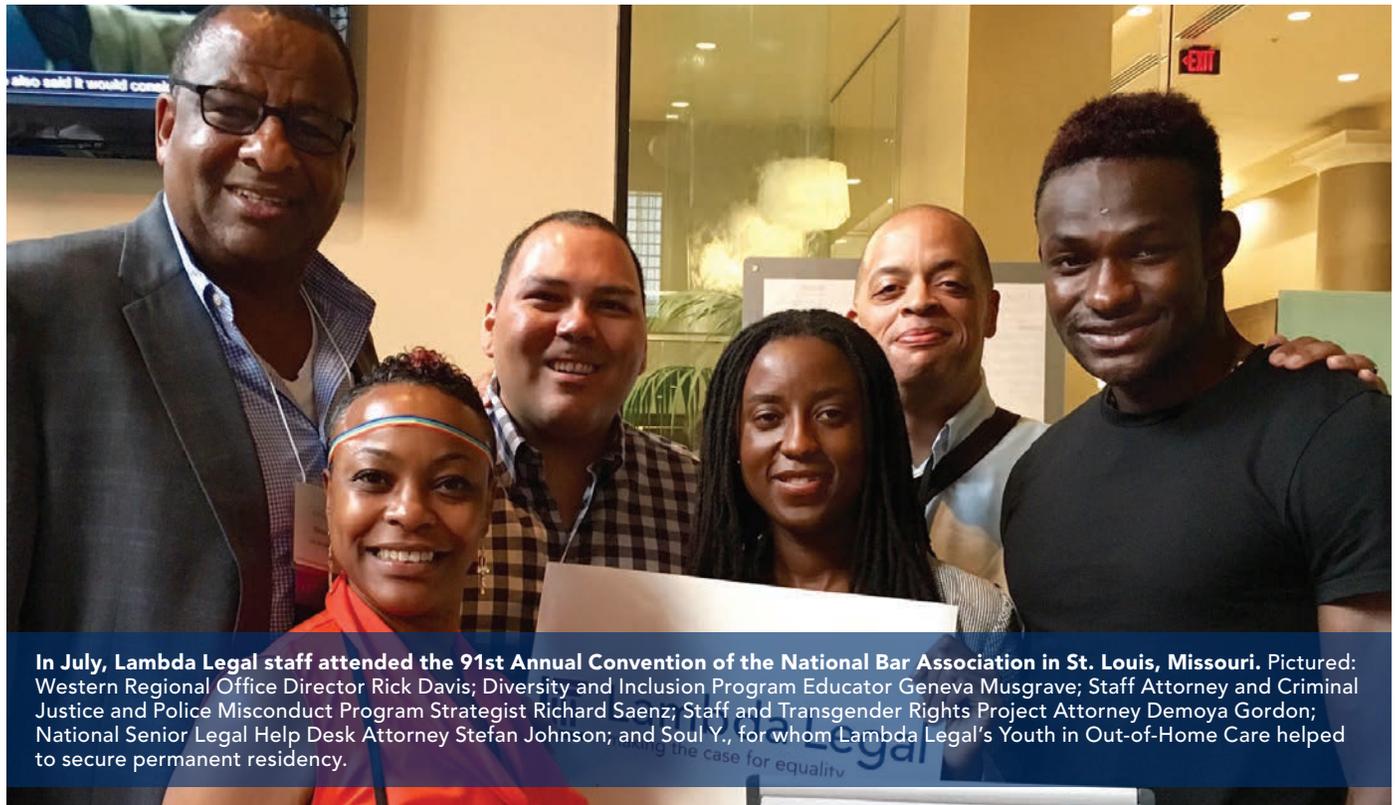
Arizona law forbids public school teachers from acknowledging that gay people can have sex without transmitting



HIV. It also bans curricula that "portray homosexuality as a positive alternative life-style." State lawmakers considered a bill earlier this year to correct the curricula and make them more inclusive, but it was defeated. One senator's explanation was this: "The problem is we have lost sight of that morality taught in the Bible." Lambda Legal's #DontEraseUs campaign is aimed at defeating laws like Arizona's that require teachers to share inaccurate and discriminatory information about LGBT people. Check out the campaign at lambdalegal.org/dont-erase-us

COMMUNITY

Lambda Legal at the National Bar Association



In July, Lambda Legal staff attended the 91st Annual Convention of the National Bar Association in St. Louis, Missouri. Pictured: Western Regional Office Director Rick Davis; Diversity and Inclusion Program Educator Geneva Musgrave; Staff Attorney and Criminal Justice and Police Misconduct Program Strategist Richard Saenz; Staff and Transgender Rights Project Attorney Demoya Gordon; National Senior Legal Help Desk Attorney Stefan Johnson; and Soul Y., for whom Lambda Legal's Youth in Out-of-Home Care helped to secure permanent residency.

7 MINUTES WITH

RYAN RASDALL

Legal Assistant, Transgender Rights Project

What do you do at Lambda Legal?

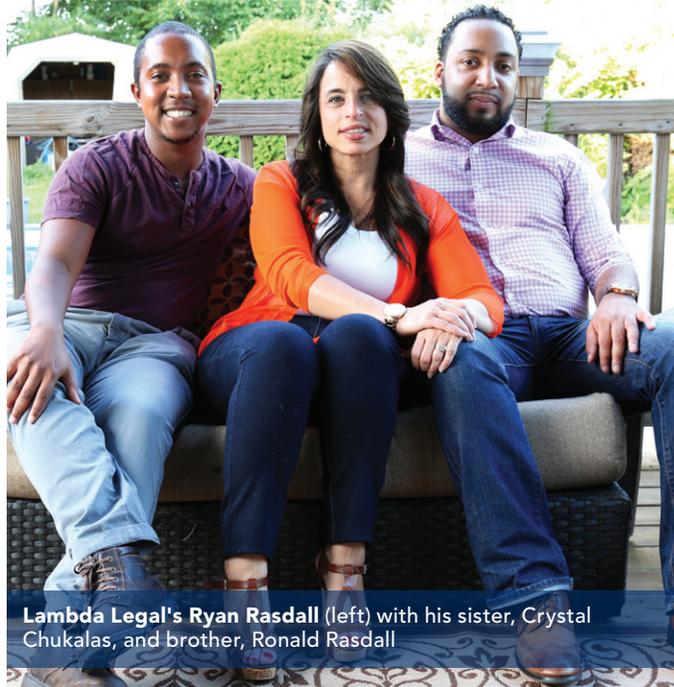
I support the attorneys in their work and do presentations at trans health and law conferences. I recently led a Google Hangout with transgender youth on restroom access.

What's challenging about your job?

Listening to the stories from Help Desk callers who've been discriminated against, abused and harassed.

Who inspires you in your personal journey?

Young transgender activists of color who are doing this work without pay or thanks.



Lambda Legal's Ryan Rasdall (left) with his sister, Crystal Chukalas, and brother, Ronald Rasdall

As an activist yourself, what are you most proud of?

Putting myself through college and being true to myself by coming out as transgender.

What's rewarding about your job?

Witnessing the movement from inside and getting to learn so much about the legal field prior to applying to law school.

Your work sounds demanding. How do you decompress?

I recently streamed and loved Ken Burns's *The Roosevelts*. Also, watching *The Bachelorette*. It's my guilty pleasure.

LAMBDA LINGO

Intersex: *Adj.* An umbrella term used to describe a wide range of natural bodily variations. Intersex people are born with sex characteristics that do not fit typical binary notions of bodies designated “male” or “female.” Lambda Legal has sued the State Department for denying Dana Zzyym a passport that accurately reflects their gender as neither male nor female. A ruling is expected soon. “This case sits at the core of Lambda Legal’s fight for justice,” says Lambda Legal Staff Attorney Paul D. Castillo. “We want to make sure none of our lives are limited because of gender.”

RESOURCES

New Hospital Guidelines

For five days, Kendra Jones waited in the emergency room of her local hospital, desperately hoping to talk to a doctor about her suicidal thoughts. Staff repeatedly told her that, as a transgender woman, they “didn’t know” where to put her. It’s with patients like Kendra in mind that Lambda Legal has published a new set of trans-friendly model policies for hospitals to follow. *Creating Equal Access to Quality Health Care for Transgender Patients* covers issues ranging from privacy and room assignments to staff interactions with transgender patients. Find it at lambdalegal.org/trans-hospital

Trans Student Rights Watch in Georgia

Transgender and gender-nonconforming students are commonly denied the basic right to be safe and fully included at school, whether in class or using restrooms or locker rooms. In August, Lambda Legal launched an online tool to better monitor such discrimination. Trans Student Rights Watch is a pilot program in Georgia that invites people to tell their stories to Lambda Legal and four other advocacy groups. The groups will consider the incidents reported and weigh taking action. Visit lambdalegal.org/trans-student-rights-watch

MARSHA WETZEL

plaintiff, 69, Niles, Illinois.

EDITED BY ALBERTO GALINDO | PHOTOS & INTERVIEW: LESLIE VON PLESS

1 The day Marsha met Judy, her partner of 30 years (pictured at right), Judy had a gray dress on. "She had a nice shape. And she goes, 'Hi I'm Judy.' And I thought, 'My god.'" Marsha was working as a security guard. "She fell in love with my uniform. She says 'maybe at first, but I fell in love with what was under it.'" In 1993, they adopted a baby and called him Josh. Judy passed away two days after his 21st birthday.

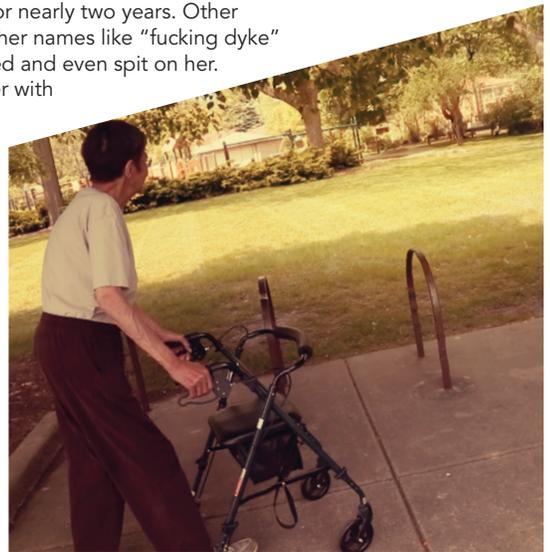


2 Marsha had nowhere else to live after Judy's family evicted her from the home they shared. A social worker found Marsha a place at Glen St. Andrew, a senior living community.



3 Once settled in the living community, Marsha revealed she was a lesbian and had raised a son with another woman. Then the insults began and have continued for nearly two years. Other residents have called her names like "fucking dyke" and physically harassed and even spit on her. One encounter left her with a black eye.

4 Because of the hostility she has faced, Marsha has trouble sleeping. She sometimes skips meals and retreats into her small room. She has repeatedly spoken to staff about the mistreatment, but they ignore her. "Like I'm a ghost, a non-person," she says.



5 Marsha knows she's not the only person dealing with discrimination as she ages. "I want to stick with this," she says of Lambda Legal's lawsuit against the living community. "I want people to know they can get justice. Stop pushing us around." She often thinks of Judy. "I can feel her rooting for me." **LL**

Lambda Legal filed suit against Glen St. Andrew on Marsha's behalf in July. If you want to send a note of support to Marsha, visit lambdalegal.org/send-marsha-a-note. If you experience discrimination, contact Lambda Legal's Help Desk online or call 866-542-8336.

VIEW FROM THE HILL

Tammy Baldwin, the first openly gay U.S. Senator in history, has been busy. During the summer recess, she joined in submitting an amicus brief to support Lambda Legal's petition for rehearing in the Hively workplace discrimination case (see page 3). Just as the Senate was returning to session this fall, Sen. Baldwin sat down to answer some questions from Lambda Legal.

What would you like our community to consider as we go into this election?

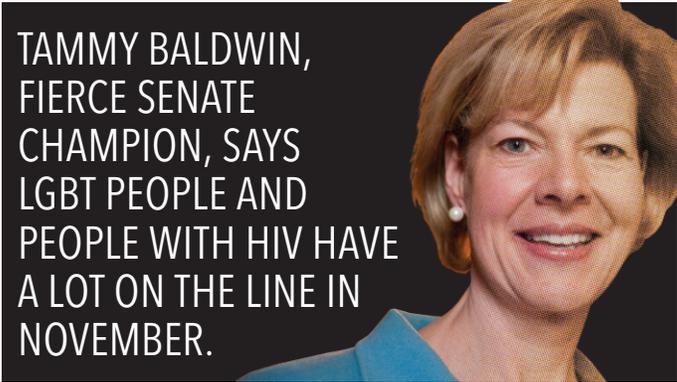
It is vital that our community be engaged, look at the candidates' records and experience and get out and vote. Protections for LGBT Americans are still inconsistent and uncertain in too many places. Violence, particularly against people of color and transgender people, is still alarmingly prevalent. Opponents of equality are trying to use religion as a justification to discriminate and attack the dignity and basic humanity of transgender people. Will the next president nominate federal judges who recognize that the guarantees of our Constitution apply equally to LGBT Americans? Our next president must not only advocate for policies that protect LGBT people; he or she must also use the bully pulpit to speak out against efforts to undermine our progress. **You co-sponsored the Equality**

Act. Why is that law needed? In 30 states, LGBT Americans live without fully inclusive nondiscrimination laws. I believe America is ready to take the next steps forward. A growing number of Americans believe their LGBT family members, friends and neighbors deserve to be treated like everyone else. Of course, I believe that our existing laws barring sex discrimination also prohibit discrimination based on sexual orientation

too often and we absolutely must do more to bring attention to the epidemic of attacks on transgender people, particularly transgender women of color. We must also strengthen the federal government's efforts to prevent hate violence, and fully investigate and prosecute bias-motivated crimes when they do occur. **In Wisconsin, state lawmakers have tried to block transgender students from using school**

circuit court vacancy in the country. What are your concerns about continued efforts to obstruct that process? The failure of [Senior Wisconsin] Senator [Ron] Johnson to do his job is really disappointing, and the obstruction of Majority Leader [Mitch] McConnell is unacceptable. The 7th Circuit Court has taken up a number of Wisconsin issues without a Wisconsin seat on the court, including women's health, labor rights, campaign finance, marriage equality and most recently voting rights. These are important issues and the people of Wisconsin deserve better than an empty seat.

Why is it important for more LGBT people to run for office? I believe that when you are not in the room, the conversation is about you. But when you are in the room, the conversation is with you. That changes everything. When we participate in public life, we can effect change well beyond winning an election or passing a law. Progress isn't just when the first openly lesbian American is elected to the Senate or the first woman is elected president of the United States. It's when the "nexts" become a reality. While the "firsts" represent history, the "nexts" represent real progress. So if someone asks you to step up and participate, do it. And if nobody asks you, definitely do it. **TL**



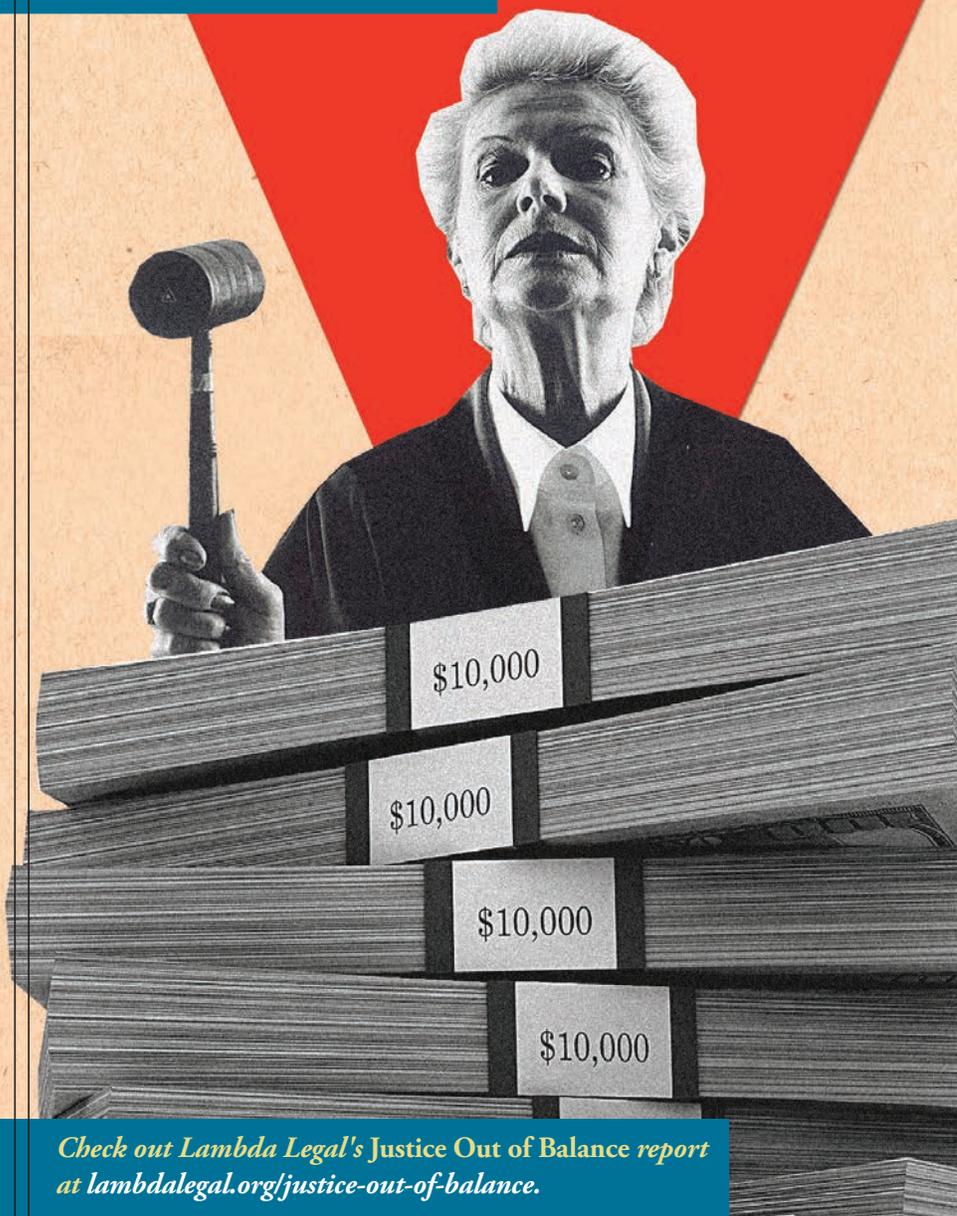
and gender identity, and thanks to the efforts of brave plaintiffs and skilled lawyers like yours, more and more courts are recognizing that fact. But I have always believed that we must use every tool at our disposal to advocate for equality. **What can be done to address violence against our community?** The unprecedented tragedy in Orlando shined a national spotlight on the hateful violence targeted against the LGBT community. But the reality is, violence against the LGBT community happens all

bathrooms that match their gender identity. Why is this issue important? The politicians advancing this discrimination have found themselves on the wrong side of history. I believe that every student deserves the freedom and opportunity to dream the same dreams, get a great education and have the same shot at success. That is why we need to provide a supportive environment for students free of discrimination. **Wisconsin's judicial nomination to the 7th Circuit is the longest-standing federal**

JUSTICE FOR SALE

A new Lambda Legal report uncovers how the election of judges in the U.S.—and the attendant mix of ideology and campaign money—threatens our rights.

BY WALTER ARMSTRONG



Check out Lambda Legal's Justice Out of Balance report at lambdalegal.org/justice-out-of-balance.

One of the early victories in the fight for equal marriage came when the Iowa Supreme Court unanimously struck down Iowa's marriage ban in Lambda Legal's *Varnum v. Brien* case. However, Iowa justices, while appointed for their first terms, must run before voters to serve subsequent terms. In the year following the Iowa ruling, antigay groups poured nearly \$1 million into a campaign urging voters to throw out these "activist judges" for doing the very thing that judges are supposed to do: decide tough cases and uphold constitutional rights, even if those decisions may not be politically popular. The result: the ousting of three justices.

This year, four Kansas Supreme Court justices up for retention elections are being targeted in such a campaign, because they ruled that severe cuts to education funding violated their state's constitution. The Kansas Supreme Court is also reviewing a case involving the constitutional right to abortion access. Special interest groups are aiming to intimidate justices and reshape the court. In an interview with the *New York Times*, the executive director of Kansans for Life admitted, "We have a pro-life House and a pro-life Senate and a pro-life governor... We pass pro-life legislation—and we get sued. The next frontier is the courts." Kansans for Life is calling for voters to oust these justices.

Most American media and popular attention is trained on the U.S. Supreme Court, whose justices are nominated by the president, confirmed by the Senate and serve for life. But while the Supreme Court reviews 85 or fewer cases annually, state supreme courts handle over 2,000 constitutional cases each year. A total of 38 states either ask voters

to elect judges to their high courts or, like Iowa, appoint judges for initial terms and then hold popular votes for subsequent terms.

What effect, if any, do these different state judicial selection methods have in shaping outcomes in cases dealing with LGBT rights?

In its new report, *Justice Out of Balance*, Lambda Legal analyzed data on all state high court decisions involving LGBT issues between 2003 and 2015. The result: State high courts whose judges stand for election are less supportive of LGBT rights claims.

The study found that state high courts where judges are granted life tenure or reappointed ruled in favor of LGBT rights 82 percent of the time. Courts where judges are selected in partisan contests, by contrast, handed down favorable rulings only 53 percent of the time. “State judges who face election, often in increasingly expensive races, can cede justice to politics,” says Eric Lesh, Lambda Legal’s Fair Courts Project Director and the report’s author. “Clearly, the scales of justice are out of balance.”

THE AMERICAN EXCEPTION

The U.S. is virtually the only country in the world that selects judges by popular election. The election of state judges in the U.S. dates back to the 19th century. “There was an idealistic belief that voters would be informed and engaged and therefore capable of picking judges whose accountability was to the Constitution,” says Jed Shugerman, associate professor at Fordham School of Law and the author of *The People’s Courts: Pursuing Judicial Independence in America*.

In recent years, however, special interests have used the popular election and reelection of state judges to intimidate, vilify or remove judges

in the hopes of influencing case outcomes. In some instances, judges openly run against the legal rights of LGBT people on the campaign trail in order to pander to voters.

This reality can exacerbate the feelings held by some LGBT people and people with HIV: that courtrooms are unwelcome places. In Lambda Legal’s 2014 survey, *Protected and Served?*, a fourth of the respondents reported hearing discriminatory language about sexual orientation or gender identity in court. Only 27 percent of transgender people and 33 percent of LGBT people of color said that they “trust the courts.”

“If the State has a problem with judicial impartiality, it is largely one the State brought upon itself by continuing the practice of popularly electing judges.”

– Former Justice Sandra Day O’Connor,
U.S. Supreme Court

Justice Out of Balance also explores the stunning lack of diversity on the state judicial bench. Out of 340 state high court judges, only 10 are openly lesbian or gay. There are only two openly transgender judges in the entire country. Women are over half of the population but less than a third of state judges. People of color are 40 percent of the population but less than 20 percent of state judges. Individual state statistics are even more staggering. In Alabama, for example, a quarter of the population is African American, yet all 19 judges on its three appellate courts are white. “A legal system that includes a diverse range of perspectives and experiences will improve the quality of justice and

build public confidence,” says Lesh.

REBALANCING JUSTICE

What can be done to counter the influence of money and ideology on the judicial process—which may only be worsened by the flood of campaign dollars following the Supreme Court’s 2010 decision in *Citizens United*?

In *Justice Out of Balance*, Lambda Legal offers several recommendations for countering the effects of judicial elections. These include replacing the direct election of judges with a commission-based appointment system of selection based on merit.

Another recommendation is for those who appoint high court judges to do so with an eye to increasing judicial diversity. In Puerto Rico, Lambda Legal urged the governor to appoint a judge committed to fairness in cases involving LGBT people and people living with HIV. This year, Puerto Rico became home to the first openly LGBT chief justice throughout the U.S. and its territories.

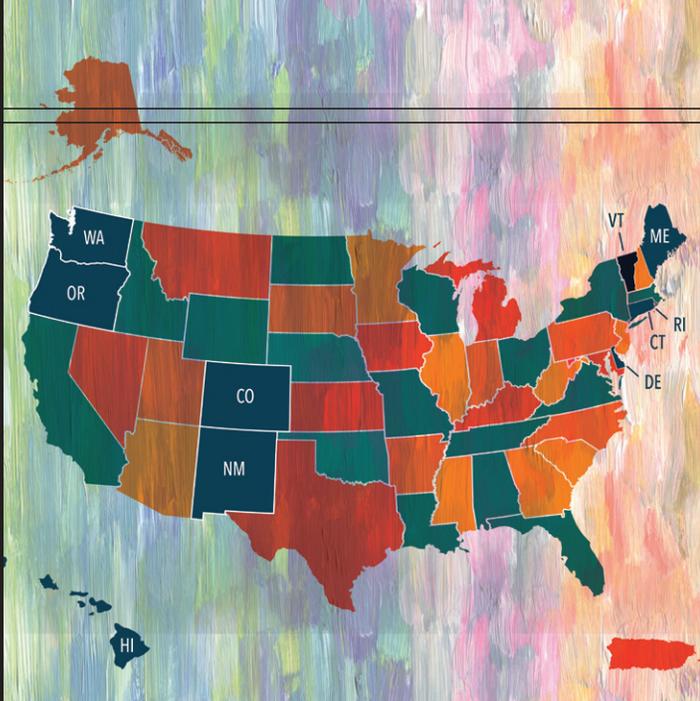
The report also strongly recommends anti-bias and cultural competency trainings for judges. Lambda Legal has been growing its network of educators to provide such trainings.

While education and advocacy make inroads throughout the judicial system, spending in judicial elections is rising sharply. An estimated \$54.6 million was spent on judicial races during the 2011-12 election cycle, with \$33.7 million in TV spending alone. According to a recent survey, 76 percent of Americans believe that campaign cash affects court decisions. Almost half of judges agree. “When it comes to courts, win or lose, LGBT people need to know that there isn’t a thumb on the scales,” said Lesh, “and that we haven’t been shut out of the process to ensure equal access to justice.” [LL](#)

10 TOP STATES

with legal protections for LGBT people and people living with HIV

BY ALBERTO GALINDO



Statewide protections for LGBT people and people with HIV have come a long way. “Though no state is perfect, there’s no question some states have moved further than others,” says Jon W. Davidson, Lambda Legal’s National Legal Director and Eden/Rushing Chair.

We looked at 21 kinds of protections in the laws of all 50 states, Puerto Rico and the District of Columbia (see sidebar). Some states

with the largest LGBT communities did not make our cut. California has some bad HIV laws, including stiffer criminal penalties for sex workers with HIV. New York still doesn’t expressly include gender identity in its state laws protecting employees and students.

The following are examples of states with excellent protections that illustrate what’s needed everywhere. Some might surprise you! And remember that federal law may fill in some gaps.

COLORADO

Thumbs up: The Centennial State has strong laws if you’re LGBT or living with HIV, including public and private workplace protections that specifically mention gender identity.

Needs work: State discrimination laws do not clearly protect transgender students, and anti-bullying laws do not apply to private, non-religious schools.

Highlights: Forty years before *Obergefell*, six same-sex couples married here thanks to the wording of state law. Lambda Legal

is currently suing a property owner who refused to rent to a same-sex couple (one of whom is transgender) and their children.

CONNECTICUT

Thumbs up: With great marks across the board, Connecticut bans health insurance exclusions of transition-related care and has robust laws to prevent health care discrimination in general.

Needs work: Anti-bullying laws don’t apply to private,

28

states don’t expressly prohibit sexual orientation discrimination in private employment.

non-religious schools, though many have taken steps to create their own student protections. **Highlights:** In 1927, Mae West starred in a daring Bridgeport play called *The Drag: A Homosexual Comedy in Three Acts*. It shut down almost immediately.

DELAWARE

Thumbs up: Delaware earns its nickname as the Small Wonder State, with numerous legal protections and no HIV criminalization laws.

Needs work: Delaware requires charter schools to have anti-bullying protections but still doesn’t cover private schools.

Highlights: The state is the birthplace of Sarah McBride, the first transgender person to speak at a major party convention, this past July at the Democrats’ conclave. It’s also home to two top LGBT-friendly

beaches: North Shores and the fun-named Poodles.

HAWAII

Thumbs up: LGBTQ students are protected by law from bullying and cyberbullying based on sexual orientation or gender identity. **Needs work:** Private, non-religious schools are excluded from state anti-bullying laws.

Highlights: The Aloha State in 1993 gave us the first high court ruling supportive of marriage for same-sex couples. It’s also the birthplace of Olympic gold

We looked at 21 legal protections in these areas

 Health care

 Relationship recognition

 HIV criminalization

 Transgender rights

 Parenting

 Workplace

 Public accommodations

 Youth and schools

HOW ABOUT YOUR STATE?

Check out your state's legal protections at lambdalegal.org/in-your-state or contact Lambda Legal's Help Desk at 866-542-8336.

medalist and soccer player Natasha Kai, one of three openly gay athletes who represented the U.S. in the 2008 Olympics.

MAINE

Thumbs up: The Pine Tree State, like Colorado and Oregon on this list, offers domestic partnerships to couples who choose not to marry.

Needs work: Still needs to ban the exclusion of transition-related health care from insurance plans.

Highlights: Bangor, Maine, is home to writer and LGBT ally Stephen King, author of a much-publicized tweet criticizing Indiana's Religious Freedom Restoration Act.

NEW MEXICO

Thumbs up: New Mexico leads in the Southwest,

protecting LGBT people at work and not criminalizing HIV transmission.

Needs work: No state law bars insurance plans from excluding transition-related health care.

Highlights: The now-historic Taos Inn, built in 1928 by openly bisexual patron of the arts Mabel Dodge Luhan, was a cultural center for the likes of Gertrude Stein, D.H. Lawrence and Martha Graham.

OREGON

Thumbs up: On the West Coast, Oregon

sets a high standard, providing broad legal protections.

Needs work: No laws explicitly criminalize

conduct based on HIV status here, but there has been at least one prosecution for not disclosing HIV status.

Highlights: Home to Kate Brown, first openly bisexual governor; Stu Rasmussen, first transgender mayor in the U.S.; and Rives Kistler, first openly LGBT state supreme court justice.

RHODE ISLAND

Thumbs up: "Little Rhody" has strong laws protecting students against bullying, including those attending private schools (which often are excluded from this type of legal protection).

Needs work: Joint adoptions providing a child with two legal parents have been granted in court, but there's no explicit law.

Highlights: Much like Lambda Legal itself, which had

to go to court for the mere right to exist, in 1976 a gay rights group sued for the right to march in what became Providence's first Pride parade. Four years later, high school student Aaron Fricke won a federal lawsuit after his school barred him from attending prom with a same-sex date.

VERMONT

Thumbs up: "Freedom and unity," the state's motto, applies to all of our criteria.

Needs work: There has been at least one prosecution for not disclosing HIV status.

Highlights: In 2009, Vermont was the first state to pass legislation allowing same-sex couples to marry. California, Connecticut, Iowa and Massachusetts had provided marriage equality through lawsuits.

Vermont also was the first state to provide civil unions for same-sex couples.

32

states have student protections that don't reference gender identity.

WASHINGTON

Thumbs up: Not to be outshone by its southern neighbor, Oregon, Washington State does a good job protecting its LGBT residents.

Needs work: Not disclosing one's HIV-positive status before having sex is classified as a felony in the Evergreen State.

Highlights: There are openly LGBT candidates on November's ballot for Congress, state secretary of state and reelection to the state supreme court. 

29 states criminalize conduct based on HIV status.

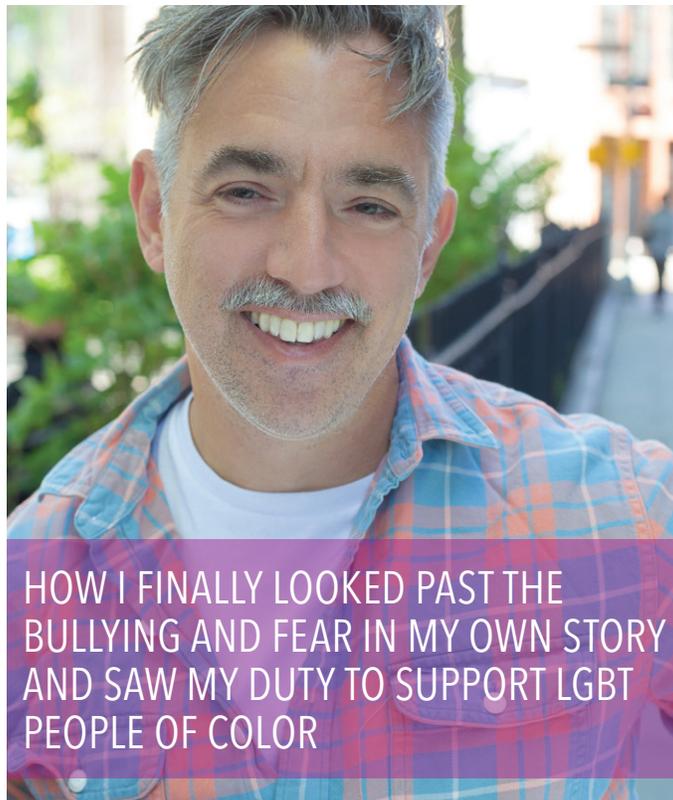
PRIDE & PRIVILEGE

BY TIM MURPHY

Recently I've come to realize that, as vulnerable as I've felt all my life as a gay person, I've had it pretty good as a white, cisgender man. The daily thrum of videos showing unarmed black people being harassed, beaten or even killed by police is getting to me, along with the murder epidemic of transgender women of color.

It has taken me some time to come to this realization. I've lived much of my life as an outsider. As a child in the 1980s, I was severely bullied in my Massachusetts hometown, even before I knew my sexual orientation. And when I came out of the closet and moved to New York City in the early 1990s, the shadow of AIDS and the threat of anti-gay violence loomed large. The best we gays could hope for, I felt, was to huddle together and be content with our designated gyms, bars and community groups. The larger world was not for us.

A lot has changed in the past 25 years. As a movement, we won the right to serve openly in the military, get married and enjoy legal protections from discrimination in work, housing and family matters. For me, a gay white man living in the bubble of 2016 New



HOW I FINALLY LOOKED PAST THE BULLYING AND FEAR IN MY OWN STORY AND SAW MY DUTY TO SUPPORT LGBT PEOPLE OF COLOR

York City, it often feels like "everything is alright now."

For most of my life, it didn't occur to me that racial injustice might be an LGBT issue. Friends and fellow activists have on occasion asked me to "confront my gay white male privilege." What privilege? I wanted to rebut. The *privilege* of growing up bullied and shunned? Of living in terror of AIDS? Of constantly looking over my shoulder for gaybashers? Of hearing constantly from homophobic religious people that I was sick?

But then about 15 years ago, I attended a community meeting on the criminalization and targeting of drug users by New York City cops. Afterwards,

I told a (white) friend I'd sat alongside: "Gee, I had run-ins with the cops when I was using drugs and they were always perfectly nice to me."

"Maybe that's because they saw you as a nice white boy," he replied.

That was a wake-up call for me. I'd long assumed it was my own grit that got me through my tough gay childhood. But maybe, I now realized, I'd been buoyed by privilege and opportunities that my own (legitimate) sense of gay injury had blinded me from seeing.

And as much as I suffered in earlier years for being gay, I've never suffered because of my race or sex. I have never feared that a cop might take

my life before I reached my destination. Or feared even leaving my home.

Several years ago, in an interview with transgender icon Laverne Cox, she told me that she felt unsafe the moment she left her New York City apartment and didn't feel safe again until she returned. She'd been regularly insulted on the street, even kicked once.

This growing consciousness about the privilege I do have has helped me get over that sense of injury about my own past and see more clearly what is going on right now among LGBT people of color. Admitting I was far better off than I thought I was, merely by dint of my race and gender, also alerted me to what I consider my responsibilities.

I credit this recent barrage of police violence at least partly for my decision to participate in the new group Gays Against Guns. Certainly the news has fortified my determination to support the transgender rights movement and the many brave queer people in the Black Lives Matter movement, now more than ever. **LI**

Tim Murphy's novel "Christodora," a saga of the AIDS epidemic in 1980s-90s New York City, came out in August. He also writes for New York magazine.

TALK TO US

Send your feedback on Impact to: impact@lambdalegal.org

LETTER TO THE EDITOR

As a Liberty Circle donor, I wanted to thank you for the best issue of *Impact* ever.

I have written before to appreciate the slowly increasing inclusion of transgender issues in *Impact*. But the latest *Impact's* combination of diverse issues—including many aspects of your transgender work, racially diverse voices—both staff and plaintiffs—and strong, fighting spirit was just terrific!

The new voice of *Impact* was confident, dynamic and inspiring. I look forward to reading more about your great work and continuing to support that work.

In solidarity,
Desma Holcomb

ON SOCIAL



When Lambda Legal shared the news about Marsha Wetzel's experience of sexist and antigay harassment in a senior living center, there was an outpouring of support on Facebook. For more on Marsha, see page 6.



Holly Osman

Miss Marsha, thank you for just being you. Try to stay comfy and now the whole rest of the world knows what kind of people you are surrounded by. Go ahead on and just be you. Looking good.

Hide · Sep 6



Susie Kimbell

LOVE YOU SISTER...PLEASE BE HAPPY...When help is needed please find it...Look so you know were to go when needed...Thank you for fighting for us all and our future as well...KEEP US POSTED ABOUT THIS WOMEN...DONT LET THEM HURT HER....

2 Hide · Sep 6



Marlena Alvarado

I wished I had this woman's strength---love her so much.

6 Hide · Sep 6

VIDEO SUBMISSION



“ I entered kindergarten, identifying as a girl. I began second grade as my true self, a boy. I started at the school in kindergarten and I am about to begin third grade. I am very lucky to be in a school that has good teachers, good friends and everything that I could imagine for a good life. I understand that other students do not have the same experiences that I do. When my parents and I told my teachers, counselor, school nurse and head of school, they supported me from the beginning. Since I was the first transgender student in my school, my experiences have helped others.”

—**Jackson Millarker, 8**, from a video submitted to Lambda Legal's Georgia Trans Students Rights Watch, created to allow young people to tell their stories. In September, Jackson was the first transgender actor to appear on the primetime sitcom *Modern Family*. To read more about the Rights Watch, see page 5.

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American Airlines has been a national sponsor of Lambda Legal and a travel partner since 2004. As a Lambda Legal member, you can help support Lambda Legal every time you travel on American Airlines, at no cost to you.

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CORPORATE SPOTLIGHT: MERRILL LYNCH Working Together for the LGBT Community

Merrill Lynch has been a National Sponsor supporter of Lambda Legal since 2007. As a leader in the financial services industry on LGBT issues well before marriage equality was a reality for most of the country, Merrill Lynch has conducted life and financial planning programs in partnership with Lambda Legal for over 10 years. Together, our teams have worked to educate LGBT people on the issues unique to the community, to ensure that people are aware of the legal rights and responsibilities that come with marriage equality, and to share strategies to help minimize the financial impact of the inequities LGBT people and same-sex couples can face.

In addition to this educational partnership, Merrill Lynch, a **Bank of America Corporation**, has provided significant financial support to Lambda Legal over the past decade, helping to ensure that our work for full equality for LGBT people and those living with HIV continues and grows. In 2016, Merrill Lynch increased its support to the Circuit Plus level of National Sponsorship, making even more victories possible. Moreover, numerous Merrill Lynch wealth management advisors and trust officers in their U.S. Trust Division, along with many other committed employees, have dedicated countless hours to volunteering with Lambda Legal as members of our Board of Directors, National Leadership Council and Local Leadership Committees.

Lambda Legal is proud of and grateful to Merrill Lynch for its years of **generous** support.

LAMBDA LEGAL WEDDING REGISTRY SPOTLIGHT

FIRST COMES LOVE

When **Kay Ellen Outsterhout** and **Patrick Wendell** decided to set up a wedding registry with Lambda Legal for their nuptials, they never imagined the response that would follow.



Inspired by their friends, National Leadership Council members Natasha Haase and Jennifer Rexford—who had set up a gift registry in honor of their new baby—Kay and Patrick wanted to make their wedding celebration about more than just themselves. In lieu of gifts, Kay and Patrick asked their family and friends to make generous donations to Lambda Legal in support of equality for the LGBT community and people with HIV.

Kay and Patrick saw starting a wedding registry with Lambda Legal as an opportunity to start a conversation with their friends and family that would lead to education and increased awareness. In addition, Kay and Patrick had seen first-hand the positive impact of Lambda Legal's work on friends and family members, many of whom now enjoy rights they might not otherwise have had.

While the idea of the registry was exciting, the results of their efforts were astonishing. At first donations were sporadic, but by the time Kay and Patrick tied the knot they had raised over \$23,000 for equality! In fact, their wedding registry was one of the most successful in Lambda Legal history.

Support Lambda Legal's work on your special day by visiting lambdalegal.org/weddings

A SPECIAL MESSAGE FROM LAMBDA LEGAL

LAMBDA LEGAL & FRIENDS



LAMBDA LEGAL IN THE HAMPTONS Liberty Circle member Scott Sanders; National Leadership Council and Amicus-level Liberty Circle member Bill Candelaria; Liberty Circle member Peter Wilson; and Amicus-level Liberty Circle member Guilford Robinson in East Hampton, NY on July 30, 2016.



SEATTLE GARDEN PARTY Amicus-level Liberty Circle members Eric Candell and Bill Powell with Amicus-level Liberty Circle members Jacquelyn and Tim Casey, in Seattle on August 4, 2016.



INDIANA BENEFIT Vanessa Lopez Aguilera; Christian Mosburg; and event co-chair and Liberty Circle member Barbara J. Baird at the Central Library in Indianapolis on September 16, 2016.



DALLAS LANDMARK DINNER National board co-chair and Amicus-level Liberty Circle members Tracey and Jennifer Guyot-Wallace at the Adolphus Hotel in Dallas on August 13, 2016.

INTO THE WOODS Liberty Circle members Braden Berkey and Robert Bartlett in Three Oaks, MI on August 27, 2016.



LAMBDA LEGAL IN ATLANTA CEO Rachel B. Tiven with board member and Amicus-level Liberty Circle member Jeff Cleghorn at the Wimbish House in Atlanta on September 18, 2016.



WEST COAST LIBERTY AWARDS Board and Amicus-level Liberty Circle member Wendy Chang; board and Liberty Circle member Vincent Jones; board and Liberty Circle member Lisa Snyder; board and Circuit-level Liberty Circle member Elliott Sernel; National Leadership Council and Defender-level Liberty Circle member Brad Seiling; board and Supreme-level Liberty Circle member Roberta Conroy; and event co-chair, board and Amicus-level Liberty Circle member Sheri Bonstelle at the Four Seasons Beverly Wilshire in Beverly Hills, CA on June 2, 2016.

SEX & RELATIONSHIPS

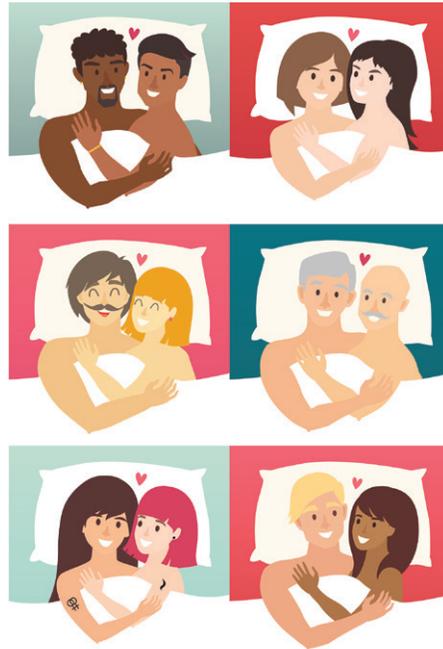
You reveal your most intimate concerns. **We ask the experts.**

Q I have HIV and say so in my dating profile. Some guys I meet online say they're on PrEP and want to have sex without condoms. But those HIV criminalization laws worry me. Am I at any kind of legal risk? And do I have to disclose that I'm positive? Isn't it the other guy's responsibility to protect himself?

People with HIV have as much right as anyone to an enjoyable sex life. We couldn't agree more that each person should take responsibility for their own sexual health. You're right to be concerned, however, about the legal risks of dating or hooking up while HIV positive, condom or no condom. Many states criminally punish people for not disclosing their HIV status—or for not being able to prove they've disclosed.

Unfortunately, being out about your status in a dating profile isn't always enough. A former sex partner could claim that they didn't notice that little detail before having sex with you. If you want to be extra cautious, discuss your status in front of a third person or try to get a potential sexual partner to acknowledge in a text message or some other written communication that you have disclosed.

"We don't think you should have to take such extraordinary steps to protect yourself," says Scott Schoettes, Lambda Legal's HIV Project Director. "But until we get state legislatures to bring their laws in line with current science and com-



mon sense ideas about prevention, Lambda Legal wants people living with HIV to protect themselves the best they can."

► *For a list of states with HIV criminalization laws and other info about HIV, visit lambdalegal.org/kyr/hiv*

Q I'm a bisexual woman in a monogamous relationship with a man. That seems pretty straightforward, I think, but lots of folks seem to think I must be secretly unsatisfied because I'm not having sex with women as well. My friends love to joke about this! And I hate it. I usually just remind them how important my commitment is to my boyfriend, but that's getting tired. What's a good way to explain to people that just because I'm bi, that doesn't mean I can't be with just one person?"

As you seem well aware, bisexuality is an orientation, not a description of what's going on in a person's life at any one point in time. It means having the potential to be attracted to people of more than one sex or gender, not necessarily with more variety or non-monogamy than anyone else.

Explaining this to non-bisexuals is remarkably thorny.

Sex therapist Kelly Wise suggests, a little wryly, "Maybe you can ask your non-bisexual friends who are in happily committed relationships if they feel unhappy with their life because they aren't having sex with all the people they are attracted to."

Nancy Marcus, Senior Staff Attorney in Lambda Legal's Law & Policy Project, wonders if your friends might think bisexuality and polyamory are the same thing.

What's clear, says Marcus, is that many people feel the need to quickly pinpoint whether someone is gay or straight by knowing the gender of their partner. But there are no such instant cues with bisexual people.

"Even dating only men or women (whether cisgender or transgender), or only genderfluid people, does not make a person any less bisexual, as long as the potential to be attracted to others is there as well," says Marcus.

► *For more on this, contact BiNet, "America's oldest advocacy organization for bisexual, pansexual, fluid, queer-identified and unlabeled people."* 

Have questions for our sex and relationships experts? Email impact@lambdalegal.org. This information does not constitute legal advice. For more information, contact our Help Desk at lambdalegal.org/help or 866-542-8336.



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