

# The POWER of Lambda Legal's AMICUS WORK

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

## CONTEXT

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

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

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

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

By Hayley Gorenberg,  
Deputy Legal Director

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

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

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

## COMPLEMENT

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

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

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

RALPH WALDO EMERSON

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

## CONNECTION

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

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

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

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

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

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

## COLLABORATION

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

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

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

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

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

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

## CLOUT

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

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