

April 20, 2011

Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

As you and your administration consider appointments to the New York judiciary, Lambda Legal would like to share with you our thoughts about considerations we believe need to be taken into account in selecting future judges and in choosing those who will advise you in the judicial selection process. As the nation's largest and oldest national legal organization committed to achieving the full recognition of the civil rights of lesbian, gay, bisexual and transgender ("LGBT") people and those living with HIV, we respectfully offer our legal expertise in these important decisions.

In recent years, a number of key issues have arisen in New York's courts that have significantly impacted LGBT and HIV-affected individuals and their families. Ensuring that our state's judges are fair-minded and approach the decisions they make without prejudice is of utmost importance both for our legal system and for the rights of those more vulnerable people whom our legal system has the highest obligation to protect. When selecting individuals for the bench, we respectfully ask that you take a variety of considerations into account.

The first and foremost consideration, of course, should be the judicial philosophy of the judges, which should include a commitment to render decisions impartially and in accordance with the United States and New York Constitutions, as well as the laws governing our nation and state. Specifically, we ask that all those you decide to appoint commit to rule fairly and impartially in cases involving LGBT and HIV-positive litigants and, in particular, to adhere to the legal precedents established in:

- *Lawrence v. Texas*, 539 U.S. 558 (2003), that the right to liberty under the federal Constitution's Due Process Clause gives individuals the right to engage in private, adult, consensual, noncommercial sexual intimacy without interference by the government, and that this right belongs as much to lesbians, gay men and bisexuals as it does to heterosexuals.
- *Lawrence v. Texas*, that under our United States Constitution, religious beliefs about sexuality and "traditional" notions about family life cannot be the sole basis for the enactment and enforcement of criminal laws. Judicial nominees also should adhere to *Lawrence's* holding that lesbians, gay men and bisexuals are entitled as part of the United States Constitution's protection of liberty to the same autonomy as heterosexuals in making personal decisions relating to marriage, reproductive choice, family relationships and the raising and education of children.
- *Romer v. Evans*, 517 U.S. 620 (1996), that, when a law can be explained only by antigay bias, it violates the Equal Protection Clause.

- *Debra H. v. Janice R.*, 14 N.Y.3d 576 (2010), that, under New York law, a child born to a couple who entered a Vermont civil union is legally the child of both parties to the civil union.
- *Godfrey v. Spano*, 13 N.Y.3d 358 (2009), that a state agency's policy to extend health insurance benefits to same-sex spouses of married state government employees was validly adopted.
- *Martinez v. County of Monroe*, 50 A.D.3d 189 (N.Y. App. Div. 2008), that marriages entered by same-sex couples in other jurisdictions must be recognized by New York.
- *Matter of Ranftle*, 2011 NY Slip Op 01407 (App. Div. 2011), that out-of-state marriages of same-sex couples are entitled to respect in the inheritance context.
- *Golden v. Paterson*, 23 Misc. 3d 641, (N.Y. Sup. Ct. 2008), that the directive issued by counsel to former Governor Paterson to all state agencies to review their operations and ensure that their agencies extend respect to marriages entered by same-sex couples in other jurisdictions to the fullest extent permitted by law was validly issued.
- *Matter of Winn-Ritzenberg*, 26 Misc. 3d 1 (N.Y. App. Term 2009), that a New York City Civil Court's requirement that transgender people must submit medical evidence of the need for their name change before being awarded the change was improper.

As a non-profit, public interest legal organization, we are ever aware of the importance of access to justice for all people, including the necessity that judges who will decide the cases that come before them be prepared to do so without bias, but instead based on evidence and precedent. We urge you, and those you select to assist you, to scrutinize every judicial candidate's record closely and ask pertinent and comprehensive questions to best assess each one's ability to be a fair and impartial jurist.

In order to seek the highest level of judicial integrity, we also urge you and your staff to seek potential judicial candidates who not only are qualified and thoughtful jurists, but also are reflective of our state's diversity. In 1994, the Southern District of New York was honored with the appointment of the Honorable Deborah Batts, an African American woman who became the first openly LGBT judge to serve on the federal bench. In recent years, New York also has shown initiative in its efforts to increase diversity on the state bench. Indeed, in 2009 former Governor Paterson appointed out lesbian, Elizabeth Garry, to the appellate bench, and Rosalyn Richter, New York's first appellate court justice who is openly a lesbian and a person with a disability.

In your early actions as Governor, you specifically included LGBT New Yorkers in your vision of a great Empire State. You appointed Alphonso David, an openly gay person of color (and a former staff attorney at our organization), to the newly-created position of Deputy Secretary for Civil Rights. The creation of this position to oversee civil rights, and the appointment of Alphonso David to fill that position, is an inspiring indication of your efforts to reflect our state's diversity in our state government. We urge you to continue on this path as you consider potential candidates for the state judiciary.



Despite New York's efforts to increase diversity on the bench, the unfortunate fact remains that openly LGBT individuals, people of color and women are underrepresented in the state judiciary. We call on you to appoint other qualified LGBT judges, as well as other underrepresented minorities and those with public defender and public interest legal backgrounds, to the state bench. Finally, we urge you to recognize the need for diversity on the judicial screening panels and commissions that play such an integral role in the state's judicial nomination process.

Thank you for the commitment you have shown to the LGBT community in the early stages of your administration. We look forward to working closely with your administration over the coming years.

Very truly yours,

Jon W. Davidson, Legal Director
Susan Sommer, Director of Constitutional Litigation
Meredith Palmer, Fair Court Project Manager