

January 15, 2009

President-elect Barack Obama
Washington Transition Headquarters
451 6th Street, N.W.
Washington, D.C. 20001

Dear President-elect Obama:

As you and your administration begin to address pending and upcoming judicial nominations, Lambda Legal urges you to weigh the following considerations in deciding who should be picked for these pivotal lifetime appointments. As the nation's oldest and largest national impact litigation organization committed to achieving the full recognition of the civil rights of lesbians, gay men, bisexuals and transgender people and those with HIV, we have respectfully offered our legal expertise to your Transition Team and do the same to you as you approach your inauguration.

In the coming years, a number of key issues that significantly impact the LGBT community are likely to arise in the federal courts. Ensuring that federal 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 who our legal system has the highest obligation to protect. When nominating people to the federal bench, we respectfully ask that you take a variety of considerations into account. The first and foremost consideration should be the judicial philosophy of the judges, which should include a commitment to render decisions impartially and in accordance with the U.S. Constitution and the laws of the United States.

Specifically, we ask that all of your judicial nominees:

- Rule fairly and impartially in cases involving LGBT litigants.
- Comply with legal precedent established in *Lawrence v. Texas* 539 U.S. 558 (2003) that the right to liberty under the due process clause gives individuals the right to engage in private, adult, consensual, noncommercial sex without interference by the government, and that this right belongs as much to lesbians and gay men as it does to heterosexuals.
- Adhere to legal precedent established in *Lawrence v. Texas*, that under our U.S. Constitution, religious beliefs about sexuality and the “traditional family” cannot be the sole basis for the enactment and enforcement of criminal laws. Judicial nominees also should adhere to *Lawrence's* holding that lesbians and gay men are entitled under the U.S. Constitution's protection of liberty to the same autonomy as heterosexuals in making personal decisions relating to marriage, reproductive choice, family relationships, child rearing and education.
- Follow the legal precedent established in *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.
- Adhere to legal precedent established in *Roe v. Wade*, 410 U.S. 113 (1973), that the constitutional right to privacy is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.

- Follow legal precedent established in *Tennessee v. Lane*, 541 U.S. 509 (2004), that Congress acted within its power in providing disabled individuals the right to sue in state courts under the Americans with Disabilities Act, which was subsequently codified by the ADA Amendments Act of 2008.
- Observe legal precedent established in *Bragdon v. Abbott*, 524 U.S. 624 (1998), that HIV infection is a disability that limits one or more major life activities, and therefore HIV discrimination is covered by the Americans with Disabilities Act.
- Carry out legal precedent established in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), that treating employees differently in the workplace based on whether they conform to sexual stereotypes is a form of sex discrimination that is prohibited by Title VII of the Civil Rights Act of 1964.

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

Finally, in order to seek the highest level of judicial integrity, we urge you to seek potential nominees who are not only qualified and thoughtful jurists but who also represent this nation's diversity. While people of color and women continue to be underrepresented at all levels of the federal judiciary, "out" LGBT judges are nearly invisible among their ranks. Just as you have made it a priority to appoint a Cabinet and Administration that reflects all of America, we call on you to appoint qualified LGBT judges, as well as other underrepresented minorities and those with public defender and public interest legal backgrounds, to the federal bench.

Very truly yours,



Kevin M. Cathcart
Executive Director

CC: Senator Patrick Leahy, Chair, Senate Judiciary Committee (via facsimile)
Senator Arlen Specter, Ranking Member, Senate Judiciary Committee (via facsimile)