

Lambda
Legal

Impact



Notes from the
Frontline

In My Own Words:
Vandy Beth Glenn





The Business of Being Impartial

“In a democracy, issues of policy are properly decided by majority vote; it is the business of legislators and executives to be popular. But in litigation, issues of law or fact should not be determined by popular vote; it is the business of judges to be indifferent to unpopularity.”

– *U.S. Supreme Court Justice John Paul Stevens*

John Paul Stevens is one of the nine justices who currently sit on the Supreme Court. He clearly understands the role of judges in America and has been on the majorities issuing important victories for our communities, from *Romer v. Evans* to *Lawrence v. Texas*. He is nearing retirement.

The next President may have the opportunity to appoint more than one U.S. Supreme Court justice and will nominate hundreds of federal district and appellate court judges. Many of these justices will serve for decades and shape the law for generations to come. This is something to remember as we go to the polls next month.

Lambda Legal does not get involved in partisan politics. We do not make endorsements or pitches for candidates. But we do know the importance of having fair and impartial courts in America, and around this time of year, it's our job to make the connection between the electorate and judicial appointments very clear. The stakes are too high. Plain and simple: We rely on a judicial system that promises everyone equal access to justice, where people are judged by the law — and the law only. That means, as Justice Stevens so succinctly put it, judges must not make decisions based on political pressure.

This fundamental principle is a pillar of American democracy and an essential part of our checks-and-balances system. But it is often under pressure and attacked by extremist organizations and politicians. As these threats to fair courts intensify, Lambda Legal continues to expand our Fair Courts Project. We serve as a

watchdog, an educator and an activist for fair courts in the states and nationwide. But you can be the biggest champion of fair courts!

While the U.S. Supreme Court and federal nominees often steal the limelight, your state may allow you to vote for some of the hundreds of state and lower court judges that can have a huge impact on laws affecting your life. We've created a Judicial Elections Chart to provide information about which judicial candidates are running, how they are chosen in each state and where to find information about them. You can find this chart and other resources on Lambda Legal's Fair Courts web page (www.lambdalegal.org/fair-courts-project). We'll help you learn how you can educate yourself and others on this vital issue and give you tips to become a fair courts advocate.

The key is to find out as much information as possible about your candidates — whether they're up for a seat on the bench or a seat in Congress — and their position on fair and impartial courts. When you vote for candidates who support fair courts, you're helping to ensure that judges do their jobs — apply our laws fairly and make sure that all people have equal access to our nation's courts. And that's about as fundamental as it gets.

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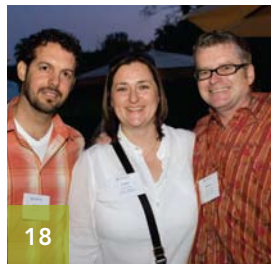
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Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

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On the cover:

Lambda Legal plaintiffs Rosario Gennaro and Alexander Gardner are fighting antigay adoption discrimination. (Photo: Bryan Derballa)

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The financial, pro bono and in-kind giving that is provided by Lambda Legal's national sponsors is critical to the success of our work. This year, well over 40 companies and law firms have demonstrated their support of Lambda Legal by becoming national sponsors — more than at any other time.

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A full listing of Lambda Legal's national sponsors can be found on our website: www.lambdalegal.org. We are truly grateful for their generosity and look forward to a continued relationship with each one of them.

Equal Protection for All

In July New York's Governor Paterson signed the "Fair Access to Family Court" bill into law, 20 years after it was first introduced, which will finally offer LGBT survivors of domestic violence recourse in family courts. New York's Office for Prevention of Domestic Violence reported in a press release that "unmarried victims, such as those living together, dating, or in same-sex relationships, will now be able to obtain potentially life-saving civil orders of protection. The law is now in effect and the unified court system has updated their civil order of protection petition."

ON THE DOCKET

CROSSING THE LINE

In a case opened more than four years ago, Lambda Legal achieved an early-summer victory for a lesbian mother fighting for visitation rights to her daughter. Lisa Miller and Janet Jenkins married in Vermont and later ended their relationship; a Vermont court ordered joint custody of their daughter, Isabella. Miller then moved to Virginia, where she used an antigay marriage law to establish herself as the sole legal parent. Lambda Legal represented Jenkins and appealed this decision. A Virginia appeals court upheld the Vermont court order, maintaining that federal law requires all states to enforce visitation and custody orders from other states. Most recently, the Virginia Supreme Court affirmed this decision, ruling that Jenkins must be allowed to have regular visitation with her daughter.

IMPACT: This decision reunited Jenkins with her daughter after years of legal struggle. It also confirms that federal law mandates equal custody and visitation rights for same-sex and different-sex couples.

ADF DISMISSED (AGAIN)

The persistent attempts of antigay Alliance Defense Fund (ADF) to challenge New York State law failed yet again. The New York Supreme Court has dismissed a lawsuit against Governor Paterson challenging his directive that state agencies respect out-of-state marriages of same-sex couples, making this the fourth court in New York to affirm the law. The court granted Lambda Legal's motion to intervene in the case on behalf of Peri Rainbow and Tamela Sloan, longtime public employees who are raising a special needs child adopted from foster care. The couple, like others in the state, depends on the protections that come from respect for their marriage. In May, Governor Paterson instructed all state agencies to revise policies and regulations to recognize marriages of same-sex couples performed in other countries or states. Attorney General Cuomo responded on the Governor's behalf with a motion to dismiss the case.

IMPACT: The Alliance Defense Fund, a self-described Christian legal firm established in 1993 by more than 30 Christian ministries, including Focus on the Family, has a history of aggressively filing lawsuits seeking to block laws and policies protecting LGBT communities. Lambda Legal has gone face-to-face with ADF before and will continue to deflect extremist attacks that would strip away the progress we and other civil rights groups have worked so hard to achieve.

IN MEMORIAM:

Del Martin



Dorothy “Del” Martin, champion of LGBT and women’s rights for over fifty years, died in San Francisco on August 27. She was 87 years old. In June she and her partner of 55 years, Phyllis Lyon, became the first same-sex couple to legally wed in California, marking a lifetime of contributions to the LGBT movement that began in 1955 when they co-founded the nation’s first public lesbian

rights organization, the Daughters of Bilitis (DOB). Martin was active in the campaign to eliminate homosexuality from the American Psychiatric Association’s list of mental illnesses, which succeeded in 1973, and was the first out lesbian on the board of directors of the National Organization for Women. Her leadership and dedication have touched our lives and continue to be an inspiration to us all.

TRANS ACTION

On November 13, 2007, the Montgomery County Council unanimously passed a law adding gender identity as a protected characteristic under the county’s civil rights law in order to address discrimination against transgender individuals. This law protects transgender people from discrimination in employment, public accommodations, housing, cable television and taxicab service. However, a group calling itself Citizens for Responsible Government (CRG) sought to collect enough signatures to block the law from going into effect. Lambda Legal, working with Equality Maryland, represents 12 Montgomery County registered voters who assert that the referendum should not be on the ballot because there were not enough supporters to sign the ballot petition. On September 9, the Maryland High Court ruled in favor of our challenge to the illegal referendum.

IMPACT: Referenda have often been used to stop antidiscrimination laws from taking effect. Success in this case upholds critical protections for transgender people and affirm that petition efforts must strictly comply with the letter of the law to ensure that the referendum process is not abused.

SAFETY FIRST

Joey Ramelli and Megan Donovan were forced to drop out of high school and complete their education at home after being harassed by their classmates over the course of their sophomore and junior years. Students taunted them with antigay slurs. Ramelli was assaulted, his car vandalized. Lambda Legal filed initial briefs in 2006 and gave oral arguments in July, urging the California Court of Appeal, the state’s mid-level court, to uphold a jury decision that holds Poway High School responsible for failing to protect them. The jury deemed the harassment endured by Ramelli and Donovan so severe that administrators were held responsible for protecting them under California law and the U.S. Constitution, which require school officials to provide equal education opportunities to all students. The students were awarded \$300,000.

IMPACT: LGBTQ students deserve a safe educational environment with reasonable assurances from administrators on their safety. This victory and others like them support students and allies who are working together to make schools safer places where all students have the chance to pursue an equal education.

Lambda Legal and Equality for All:



“Hi, do you support the freedom to—”

“Running late. Sorry!”

Ok, more assertive this time. Don't forget to smile!

“Hi, do you support the freedom to marry for gay and lesbian couples?”

They smiled. Bingo!

In the early months of spring, marriage equality in California was on the horizon, but so were assaults from antigay forces. We knew our opponents were planning something: since the beginning of the year, we had seen an increase of funds flowing into their coffers. By mid-February, our worst fear had been confirmed: The opposition had hired paid signature-gatherers to drum up support for getting what would later be known as Prop 8 on the ballot — which would change the California constitution to ban marriage for same-sex couples in California.

As attorneys from Lambda Legal, the National Center for Lesbian Rights, the ACLU and the City of San Francisco prepared for oral arguments in the California Supreme Court case for marriage equality, community education and grassroots organizing were also underway. A statewide coalition called Equality for All was organizing a strategy to defeat any possible antigay ballot initiative, and at Lambda Legal we were doing our part to help.

TARGET, WALMART, AND SUPERMARKETS, OH MY!

The opposition needed about 700,000 valid signatures (8 percent of the votes cast in the last governor's race) by April 18 to get their anti-marriage equality proposition on the November ballot.

We did not wait to see if they would eventually reach their number (They did!). We did not wait to see if we would win the California marriage case (We did!). We hit the pavement — well, actually, the shopping centers. With Equality for All's “Decline to Sign” campaign, we visited fertile grounds of signature-

gathering: Target, WalMart and super markets. We urged shoppers not to sign the antigay petition that was being promoted at these same shopping centers by our opposition. We asked them instead to identify themselves as marriage equality supporters.

While we were unable to keep Prop 8 off the ballot, the first months of intense organizing and mobilizing were crucial. We would not be as prepared as we are today if we hadn't started early. We identified supporters in decisive swing areas, all the while building and growing our base of volunteers.

Many thousands of identified marriage-equality supporters and volunteer-shift hours later, here we are, in the middle of one of our greatest political struggles.

A FATEFUL FALL

Lambda Legal played an important part in winning marriage equality in California. Now, we're a part of protecting that victory.

In addition to being on the winning legal team, we have been involved in the media strategy and extensive field effort. But now it is everybody's turn to play a part. We cannot win the fight against Prop 8 in November without you!

Like the freedom of religion and freedom of speech, the freedom to marry is fundamental to our society. No one can tell you which church to attend or which books to read. And no one should be able to tell adults that they cannot marry the person they love simply because that person is of the same sex.

We cannot afford to lose this fight. We would not only be losing the freedom to marry for thousands of Californians and those that come to the state to marry, but we would also be losing the security, dignity and respect that the California constitution guarantees. It's about equality and fairness. And it matters to all people who believe in equality and fairness, no matter where you live or whom you love.

Here is how you can help. It's simple. No matter where you live, the campaign to defeat Prop 8 in California needs your financial support and your time. If you live in California, we need your vote.

1. Estimates on the final costs of this campaign are in the millions. California is a large state; it takes large resources to reach the voters we need. Please give generously to the campaign.
2. Equality For All is working to identify thousands of voters to support marriage equality in order to win. Help us achieve that goal: Sign up to work with the phone bank or call family and friends who live in California. It's still not too late to make a difference.
3. If you can vote in California, register and vote for freedom, dignity and equality — register now and then VOTE NO on Prop 8. Even if you do not plan to get married today, tomorrow, or ever — support fairness and equality for all.

Go to www.equalityforall.com and sign up to donate and volunteer, and don't forget to register and VOTE NO on Prop 8.

Fighting for Fatherhood



Gary Day with his children, who are being denied insurance benefits because of antigay discrimination.

Being a father isn't easy. Being gay doesn't make it easier. But apparently, the challenges don't dissuade the many gay couples choosing to pursue fatherhood. In an August 2008 article on CNN.com, titled "More gay men are becoming daddies," the Associated Press reported that fertility clinics and surrogacy programs are receiving an ever-increasing amount of interest from gay men. The article profiles couples who are using surrogates and adoption agencies — and who may face an uphill battle. Says one couple who received an antigay response from a South Carolina adoption agency before succeeding with an L.A.-based surrogacy program, "Our journey to parenthood was not easy, cheap or fun. The result, however, has been the most amazing experience in the world: being called Daddy and Dad by our loving daughter."

"As a parent," Gary said, "it is my job to provide for my children. Unfortunately, the SSA is standing in the way."

Lambda Legal has been supporting gay and lesbian parents for decades in their struggle to assert rights for themselves and their children. Two new cases on our docket specifically involve gay fathers asserting their right to parent and protect their families.



In a civil rights complaint against ParentProfiles.com, Rosario Gennaro and Alexander Gardner, a couple registered in New York as domestic partners in 2005 and married in 2008, are taking on antigay adoption discrimination. Rosario and Alex knew they wanted children, and they chose adoption as the best course for them. They found ParentProfiles.com to be affordable

and trusted by couples seeking to adopt as well as by birth parents seeking adoptive parents. But the company refused to do business with gay and lesbian couples. The Arizona-based internet company was already being sued in California for violating

nondiscrimination laws, which eventually led to its being unable to conduct business there. But they were still advertising in New York, violating the state's nondiscrimination laws by soliciting business while not intending to offer services equally. Happily, Rosario and Alex were able to adopt a daughter through other means, but the prominence and affordability of ParentProfiles.com would aid in the process of adopting a second child. Lambda Legal seeks a decision against the company that will enforce the laws and policies protecting same-sex couples in New York and remind companies that nondiscrimination laws apply to web-based businesses as well as those operating out of brick-and-mortar storefronts.

In another recent Lambda Legal case, a gay father has been denied equal access to insurance benefits for his children. In *Gary Day v. Social Security Administration (SSA)*, we are suing the SSA on behalf of disabled gay father Gary Day in Tampa, Florida. Gary had completed all necessary steps to obtain child insurance benefits for his children by filling out appropriate paperwork and repeatedly following up with the agency after extensive delay. Citing unspecified "legal questions and policy issues," the SSA failed to respond to his application for more than two years. The SSA also failed to respond to a letter that Lambda Legal sent requesting action. After Lambda Legal filed a federal lawsuit seeking to compel the SSA to do its job, Gary finally received his answer. The SSA denied his children benefits, claiming simply that each of his children "were not your child for the purposes of child insurance benefits." Lambda Legal is representing him in his administrative appeal while pursuing a federal lawsuit to ensure compliance with the SSA's own procedures. SSA benefits are critical in ensuring that children are provided for if their caretaker is disabled. "As a parent," Gary said, "it is my job to provide for my children. Unfortunately, the SSA, which is supposed to help during a time of need, is standing in the way."

Gary, Rosario and Alex have all devoted themselves to providing their children with love and support. Lambda Legal will continue to do our part by taking on legal challenges for them and all others around the country who rejoice in sharing that most distinguished title: Dad. **L**



Joanne Clark, Lupita Benitez and Jennifer Pizer respond to the media outside the courthouse.

NOTES FROM THE FRONTLINE

BY JENNIFER C. PIZER, SENIOR COUNSEL

As I walked across San Francisco's Civic Center Plaza in the early morning of May 28th, the air held a delicate sparkle. The California Supreme Court building stood ahead, larger and more imposing than I had recalled. At my left, Lupita Benitez, my client of the past five years, hurried along. The steady presence at her side was Joanne Clark, her partner of 18 years. With years of build-up to this day, anticipation and hope tied us together in our march to the courthouse.

I was about to argue on Lupita and Joanne's behalf about a question we face with increasing frequency nationwide: Do federal or state constitutional protections for religious freedom excuse those who violate civil rights laws? Yet rarely do we have the chance

to make our case on the high-stakes stage of a supreme court. It was to be one of the most intense, exhilarating hours of my life.

Lupita Benitez's path to the California Supreme Court had started nine years earlier. After many attempts at pregnancy through self-insemination at home and intrauterine insemination at a reproductive health center, Lupita's physician had diagnosed her with polycystic ovarian disease, a common infertility condition. He referred her to North Coast Women's Care Medical Group. North Coast had an exclusive contract to provide infertility care to patients in Lupita's health plan. The clinic was near Lupita's home and her workplace.

Joanne had gone with Lupita to her first clinic visit in August of 1999, where they met Dr. Christine Brody. Lupita explained her years of futile, maddening efforts to become pregnant. This being Dr. Brody's area of expertise, she explained how they should proceed. She would perform tests and formulate a plan, including medication to stimulate ovulation. Then the bombshell hit. If Lupita needed intrauterine insemination, as most patients do, Dr. Brody would not perform it. She provides this treatment routinely, but, she explained, she had religious objections to doing so for Lupita because of her sexual orientation.

Lupita was shocked and deeply humiliated. How could this be happening? Dr. Brody stepped out of the room, leaving Joanne to try to calm Lupita. When Dr. Brody

returned, she told them another doctor would provide insemination as needed so Lupita's care would not be compromised. Lupita felt stuck, as her health plan offered only North Coast Women's Care for infertility treatment. Relying on Dr. Brody's assurance, she reluctantly agreed to the plan.

This was to be the first of many broken promises over the next 11 months, ending only when the clinic's medical director, Dr. Douglas Fenton, summarily terminated Lupita's status as a patient, acknowledging she would never receive the care she needed at North Coast because too many staff members refused to treat her. What he did not admit at the time was that he was among them.

The night before our California Supreme Court argument, Lupita was perched on the hotel sofa, trying to prepare emotionally for the justices' questions and reactions. Time had passed, yes, but Lupita had not yet fully healed from the betrayals she had experienced after placing her trust in North Coast's care. Her face strained with anxiety, she asked if her former doctors were likely to attend. I reassured her she was unlikely to see them, that things were different now. She would be surrounded by support; she knows she has rights that were wrongly denied to her.

What should she expect from the media, she asked. Just two weeks after our California marriage victory, the public spotlight was especially bright. "Reporters keep asking if we're getting married," Lupita said. "Don't they understand? We're in a lawsuit and we have three little kids. We don't have time to think about marriage!"

Jason Howe, our public information officer and a former reporter, coached her. "They may ask anything. But you're here to talk about what happened at North Coast Women's Care and how it affected you. How it still affects you because they treated you differently from everyone else."

Lupita and Joanne understand that they represent a community. They speak openly to the media because they know society changes as more people realize that gay people often yearn for parenthood, and that medical discrimination drives patients away from care they need. Mostly, Lupita and Joanne know they can help demystify LGBT families. Lupita was not even out as a lesbian to her coworkers when the case began. But she pushes herself now to talk about the painful events, especially with media that serve Latino communities. And because she is so down-to-earth and expressive, her story is both moving and accessible. At the same time, Lupita and Joanne are vigilant in protecting their family's privacy, especially when it comes to their children.

Lupita and Joanne understand that they represent a community. They know they can help demystify LGBT families.



Walking into California's Supreme Court, one is immediately taken by the high ceiling and ornate decor. Though I've been here many times, the formal chamber still fills me with awe, reverence and anticipation. I took my place and greeted my opposing counsel. Glancing around, I saw representatives of two religious conservative legal groups who are helping Lupita's former doctors and who oppose us on many issues — the Alliance Defense Fund and Advocates for Faith and Freedom. They have lots of company in this litigation, as ten friend-of-the-court briefs were filed against us by more than a dozen religious and other conservative groups, ranging from the Mormon Church (represented by former Whitewater prosecutor Kenneth Starr), to the

Foundation for Free Expression (affiliated with actor Mel Gibson's Catholic sect).

These opposing groups have an extensive history of antigay action: They attacked California's expanded domestic partnership law, claiming it was too broad to co-exist with marriage, as well as the domestic partnership registry and family insurance plan for city workers in New Orleans, claiming even those narrow protections are too much. They have sought special exemptions from civil rights laws that protect LGBT people from discrimination, arguing that those with antigay religious views should be free to deny rights to LGBT people in employment and education, as well as in professional settings, as Lupita experienced. Collectively, these groups

represent hundreds of millions of dollars directed against us, growing every day. Their increasing strength does not make their arguments better. But it requires us to defend each advance we make, and to marshal strategic responses to their expanding initiatives.

At once, the gavel banged and the clerk intoned: "All rise!" The seven robed justices filed in, the case was called, and we were off.

"Good morning, and may it please the Court," I began, "this case is about preserving equal access to business establishments." As expected, three sentences into my opening, Justice Joyce Kennard, the longest-serving member of the court, interrupted to narrow the discussion: "What did the physician refuse to do here? And on what

grounds?” Following my explanation, Chief Justice Ronald George asked whether their refusal had been based on Lupita’s sexual orientation or marital status. “For purposes of the religion question we address here,” I answered, “it doesn’t matter. What matters now is whether a religious motive allows discrimination that otherwise would be unlawful.”

In our diverse, pluralistic society, in which equality and individual liberty stand as twin guarantees, there are some challenging questions when the equality rights of one are in tension with the liberty rights of another. But Lupita’s should not be seen as a difficult case. While freedom of religious belief and practice have been core values in California — and nationwide — throughout our history, the state-licensed practice of medicine and other commercial activities have never been recognized as a protected form of religious worship. It is well-established that our government can and should regulate the marketplace to ensure equal access and public safety.

Justice Kathryn Werdegar took the questioning in a pragmatic direction. “When one doctor objects, another can step in. It happens all the time. Where’s the harm?” I took this invitation to emphasize that there’s a lot of harm. In Lupita’s case, there was nearly a year of delay, deception and substandard care, including unwarranted tests and medications, unnecessary abdominal surgery, thousands of dollars of unfair costs, and cruelly thwarted expectations. More generally, there is harm any time an individual is singled out and humiliatingly denied equal treatment because of who they are. A powerful friend-of-the-court brief by the National Health Law Program cited data released by the federal Institute of Medicine revealing that health care provider bias exacerbates public health disparities correlating to race and ethnicity — and that public health effects are similar for discrimination against LGBT patients.

Justice Werdegar probed, “But what is a medical clinic to do to avoid liability?” I explained that the rules are the same for all businesses, whether professional or commercial. Businesses generally are free to decide what services to offer and which employees will do which jobs. Then all services must be offered to the public equally, with no agents of the business discriminating. Period. Suddenly, my time was up and my opposing counsel stood. The Chief Justice cut to the chase. “Doesn’t your argument mean doctors can turn people away based on race or religion?” he gripped the podium, admitting, “Yes, but I don’t know any religions that call for that kind of discrimination.” The newest member of the court, Justice Carol Corrigan, then turned up the heat. “Doesn’t your position mean a doctor can say, yes, I do this procedure, but I won’t do it for because of who you are?” He looked trapped.

I had a turn for a rebuttal, and made my final key points. We all have a stake in ensuring fair treatment in medical offices. Any different rule opens the door to medical care segregated based on race, religion and all the other traits covered by the civil rights law. All one needs do is imagine sitting in a clinic waiting room watching medical staff call on patients by religion, race and sexual orientation, and the prospect of historical throwback is all too obvious. The law must reject that possibility.

And suddenly, it was over. I took a breath, gathered my notebooks and realized there had not been a single question for which we had not prepared. I gave inner thanks to our Legal Director Jon Davidson and appellate specialist Jon Eisenberg, my close partners in the Supreme Court work, and to all the participants in our three moot court sessions. Our co-counsel at O’Melveny & Myers had been especially rigorous and creative. Our reproductive and civil rights allies had cautioned us wisely.

Our allies in LGBT advocacy had been prescient.

Lupita and I walked together through the crowd to the crush of reporters outside. She seemed overwhelmed by the experience — the intensity of the setting and of the argument itself. Joanne was energized, savoring the directness of the questioning and the fair consideration by their government. For Lupita, the justice’s thoughtful attention was deeply validating. As an immigrant woman of color for whom a lifetime of hard work had not ensured proper treatment when she was most vulnerable, she no longer presumes others’ respect. As a lesbian who faced religious judgment growing up, the court’s straightforward analysis of religious claims was reassuring.

She approached the cameras with hope, knowing her case has stimulated thousands of conversations and is helping move society forward. And perhaps — given the apparently open-minded Supreme Court bench — the case also will establish an important precedent that antigay discrimination has no place in doctors’ offices, whatever individual beliefs may be. There is no LGBT exception to the Hippocratic Oath each new doctor takes. And “equal under law” must mean “equality for all.” **L**

Lambda Legal wins again!

On August 18, the California Supreme Court unanimously ruled in favor of Benitez, saying religious belief does not excuse illegal sexual-orientation discrimination.



35 YEARS OF
FIGHTING
WORKPLACE
DISCRIMINATION

It's a Hard Job, But We Can Do It



“So, what do you do?”

It's a simple enough question, a building block of small talk and getting-to-know-you conversations. It's open-ended — most people “do” a lot of things — but most of us will answer in similar ways: “I'm a teacher,” “I work for an insurance company,” “I'm a police officer.”

But for LGBT people and people living with HIV, getting and keeping a job is not always a simple matter. When Lambda Legal opened its doors in 1973, there were no state or federal statutes that expressly prohibited discrimination on the basis of sexual orientation, gender identity and expression.

Discrimination on the job has always been one of the most common and harmful dangers faced by LGBT people and people with HIV. It is still the number one issue brought to Lambda Legal's Help Desk, with 1000 callers seeking help and legal information on the subject in 2007 alone.

Progress in passing laws that prohibit discrimination on the job has been steady. In 1982, Wisconsin was the first state to enact a “gay rights” law prohibiting

employment discrimination on the basis of sexual orientation. Fifteen years ago there were seven states; 10 years ago there were 10; and within the last five years, Colorado, Illinois, Iowa, Maine and Washington have followed. Today we have 20 states plus the District of Columbia with express sexual orientation antidiscrimination laws, 12 of which also expressly cover gender-identity discrimination.

Lambda Legal has been making the case for equality on the job for 35 years, fighting against discrimination on the basis of sexual orientation in the private and public sector, including the military; fighting against discrimination on the basis of HIV status; and fighting against discrimination on the basis of gender identity and expression. As we celebrate our anniversary, we offer a look back on the work we've accomplished. As a continued leader in the LGBT and HIV civil rights movements, we also look ahead to the work still required to both safeguard the protections we've won and to expand these protections for everyone in our communities.



EQUAL PAY FOR EQUAL WORK

When LGBT employees are denied the same benefits given to married heterosexual co-workers, they are not getting equal

compensation for their work. Lambda Legal has fought for equal benefits for LGBT employees and won. In 1993 a Lambda Legal lawsuit resulted in a settlement requiring New York City to provide identical benefits to domestic partners and dependent children of city employees as those given to married different-sex spouses and their children.

Similarly, in 2007, in our *deGroen v. City of Bellevue* case in Washington, we argued for equal family benefits as a basic issue of fairness. We represented city firefighters and paramedics, including Larry deGroen (pictured), and after we made the case for equality, the city council voted to provide equal benefits.

In a 2007 Ohio case, ultraconservative legislator Thomas Brinkman threatened Miami University's domestic partner benefits program. Lambda Legal intervened on behalf of professors whose families stood to lose their medical coverage. We won and the university was able to continue their benefits program for all employees.



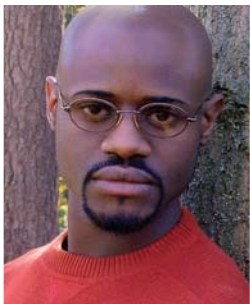
COMBATING HIV STIGMA ON THE JOB

Lambda Legal's vital role in protecting the civil rights of people with HIV began in the early years of the epidemic. Not only did we litigate cases for employees

with HIV, we fought stigma and discrimination by reinforcing their ability to work and educating the public on what it was like to live with the disease.

Our historic federal disability discrimination case *Cusick v. Cirque du Soleil* argued that the organization had no right to fire Matthew Cusick, a gymnast with HIV. Lambda Legal argued that Cusick did not pose a health risk or safety threat to himself or anyone else. Following a determination by the federal Equal Employment Opportunity Commission that Cirque had likely engaged in illegal discrimination, Lambda Legal reached a record \$600,000 settlement with the company — the largest ever for an HIV-discrimination complaint.

In 2003 Lambda Legal client Lorenzo Taylor (pictured) challenged the U.S. State Department's ban on hiring people with HIV for the Foreign Service. We fought back against stigma and outdated, blanket assumptions about people with HIV when we made the case for Taylor's ability to work. In February 2008, less than two weeks before our trial date, the U.S. State Department adopted new hiring guidelines and lifted the ban against hiring HIV-positive Foreign Service Officers.



WHEN PRIVATE LIVES LEAD TO PINK SLIPS

Early on, discussing or disclosing one's sexuality or gender identity in the workplace was almost always dangerous. In 1978, we helped a gay university professor in

Pennsylvania get his job back with pay for lost time after he was fired for being an "admitted homosexual." Stories like these were all too common.

Lambda Legal fought on behalf of two gay Michigan teachers when the school demanded the removal of their gay history display. The school was ordered to apologize for its misconduct in violating the First Amendment and engaging in sexual orientation discrimination.

Lambda Legal represented Kevin Dunbar (pictured), a man who experienced severe antigay harassment at the South Carolina Foot Locker stores where he worked and was then

fired after complaining. Assisted by a massive postcard campaign from Lambda Legal members, we obtained a settlement from Foot Locker where Dunbar received a cash payment and the company committed to training all of its employees around sexual orientation harassment and discrimination.

In one of our most recent cases, we defended Cheryl Bachmann, a 25-year-old high school teacher who disciplined a student using antigay language in her classroom. Bachmann experienced workplace discrimination as a straight ally who promoted a zero-tolerance policy for antigay harassment. When her tenure was threatened, Lambda Legal stepped in to defend her rights. By taking on Bachmann's case, we were able to make schools safer for LGBTQ students as well as protect our allies when stepping up to homophobia in their professional capacity.

LEARNING TO USE THE RIGHTS WE HAVE

Case by case and state by state, Lambda Legal and others have been building protections against workplace discrimination. Every worker and every job-seeker needs to know what his or her rights are and how to promote fairness at work.

In addition to our litigation, Lambda Legal educates and publicizes the need for firm laws and policies around workplace discrimination. We produce resources like the popular *Out at Work: A Toolkit for Workplace Equality*, a 56-page booklet that offers

invaluable information to LGBT and HIV-positive employees on their rights and recourse in case of discrimination; our community educators use this resource, published in English and Spanish, in their outreach work. Our Clock-In For Equality campaign has been a phenomenal success two years running as a national day of action to promote awareness and grassroots activism around workplace equality for everyone. And our Help Desk specialists talk to nearly 1,000 callers every year who are facing discrimination on the job.



GENDER IDENTITY ON THE JOB

Lambda Legal has also taken strong legal action to defend the rights of transgender people in the workplace. Izza

Lopez (pictured), a 26-year-old transgender woman, was given a job at a medical imaging office and then had the offer revoked when they learned that she was transgender. The employer claimed that she “misrepresented” herself as a woman. Lambda Legal claimed that the employer illegally discriminated against Lopez and violated Title VII, a federal law that bans sex discrimination in the workplace. The court issued a favorable ruling in the case, and we promptly attained a settlement.

And this summer we filed a lawsuit on behalf of Vandy Beth Glenn, a transgender woman who was fired from her job as a legislative editor at the Georgia General Assembly. We are seeking justice for Glenn under the equal protection guarantee provided in the U.S. Constitution.

ENDA in Sight

The work is far from done. In the majority of states in our country, there is still no explicit law prohibiting employers from firing or refusing to hire LGBT people. Until Congress and the President enact a comprehensive Employment Non-discrimination Act (ENDA), there is no standard law to prohibit discrimination across the country. We need good laws, like an inclusive ENDA protecting against both sexual orientation and gender expression-based discrimination, so that Lambda Legal has stronger tools to continue to fight for workplace equality. Of course, even after passage of ENDA, important cases will arise that affect how the new law would protect people in their everyday lives. Lambda Legal will be there.

In 35 years, we have made enormous progress. Until every person in every state is free from discrimination on the basis of sexual orientation, gender identity and expression and HIV-status, we won't stop making the case for equality. **L**

Q&A



KEVIN M. CATHCART AND DR. ELIZABETH CLARK, PRESIDENT

A Wider Safety Net

Lesbian, gay, bisexual, transgender and questioning youth are in America's child welfare and juvenile justice systems in disproportionate numbers. Executive Director Kevin Cathcart and Dr. Elizabeth Clark, President of the National Association of Social Workers (NASW) Foundation, discuss the ongoing work of better understanding, addressing and protecting LGBTQ young people in the social service system.

KEVIN M. CATHCART: We should recognize that a significant number of young people in out-of-home care are in a much better place than they would have been a few years ago because of better policies and training. In March, for instance, the New York State Office of Children and Family Services implemented the most comprehensive LGBTQ juvenile justice policy in the country. And California has a law on the books protecting LGBTQ youth statewide. But there's still a long way to go until this help reaches everyone that needs it. When we talk about the needs and challenges that LGBTQ youth face

in out-of-home care, it's important to remember that many are there for reasons connected with their sexual orientation or their gender identity — which cause them to bounce out of schools, to be kicked out of their families and to end up in the social service system. Their sexual orientation or gender identity has already affected their lives in big ways. Remember how little control young people have over the settings in which they live. In out-of-home care, especially in the foster care system, there is the additional fear or trauma that comes with being bounced around from home to home — switching schools, friends, neighborhoods. There just isn't enough permanency.

ELIZABETH CLARK: We see this as a major civil rights issue. As a membership association of about 150,000 social workers, the NASW Foundation's goal is to help develop and respond to social work policy and practice issues. We found that our members working in areas with LGBTQ youth felt that they were working in isolation, and that they didn't feel they had enough input from the national association. LGBTQ youth in out-of-home care have so many needs to address. Youth living on the streets, living in an institution or living with foster families can have serious problems — health problems, safety issues. Whether related to their sexual orientation or gender identity, youth often don't have the support they need from families, schools or institutions.

KC: One of the big challenges is the squeamishness that our society has about young people and sex, which is heightened when we talk about same-sex sexual activity. Many times foster parents or caregivers are extremely nervous about addressing sexuality because they worry about their jobs. They worry about what happens when it's publicly acknowledged that kids under their care are not just sexually active but are sexually active with same-sex partners. It may be risky to be seen as encouraging sexual behavior of any sort. But when adults are overly cautious or avoid certain topics, young people usually pick up on it and get the message that something is wrong with them.

EC: Kids are smart in many ways. They're very able to identify whom they can talk to: whom they trust and don't trust. I think it would be particularly hard to talk about your own sexuality if you were in foster care, because you're trying to fit into a family. I think, too, it's important to address how the media portrays some of these issues. I think media sources often try to be positive by devoting air time to LGBT issues, but it often ends up having negative effects. Every teenager has to deal with issues of sexuality, becoming comfortable with their own identity, with their own behavior, their own needs. But the media — television shows, news coverage — sometimes play this up for LGBTQ adolescents in a way where stereotypes are perpetuated. The media has the potential

“We see this as a major civil rights issue. Whether related to their sexual orientation or gender identity, LGBTQ youth often don’t have the support they need from families, schools or institutions.”

- DR. ELIZABETH CLARK

OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS FOUNDATION

to be a key modeler of more accepting environments and provisions for young people who need more assurances of their safety. Statistics show very high numbers of young children or adolescents who have suffered either physical or verbal abuse in high school. Nearly two-thirds of LGBTQ students reported being physically harassed on the basis of sexual orientation and more than a quarter because of their gender expression. Every time there is an act of violence against a young person, it becomes a huge media event, but so little positive impact comes from it.

KC: And we’ve barely begun to address the invisibility of the population aging out of the foster care system. No one expects people at the age of 18 to suddenly be fully-functioning. But, generally, we have this harsh cut-off date for youth in out-of-home care systems who usually don’t have any support systems to fall back on. It’s no surprise that they struggle with the transition. And consider the effects of our economy now — not only in terms of state funding for transitional programs or other support services, but what about landing jobs?

EC: We worry about that too because we know that we already have a shortage of social workers in this country. We often refer to social workers as being “society’s safety net.” But I worry most of all about the cutbacks in federal funding for programs. If we’re cutting back so that we can’t afford Medicare services, how are we going to afford

youth services? We hope that in the next several years we will see better programs and services that will include research funded by the federal and state governments. We hope that there will be more exposure on and about the LGBTQ population through public education in the media. We’d like to see some better media partnership on these areas. And we’d love to see more services available for their use, particularly in urban areas.

KC: We must continue the work that we’ve done on behalf of adults who work in this field, because far too many people still remain closeted, and then youth lack role models who aren’t helping to steer the conversation in the direction it needs to go — whether among policymakers or between adults who are working in the field. When LGBT providers working in these settings don’t feel that they can come out, LGBTQ youth continue to believe that there is nobody there who will understand. It has to be safe for adults to be working in the field in order for it to be safe for young people to be living in these programs. Our work in protecting employment rights for adults or protecting the rights of gay people to be parents actually resonates in a big way for young people in the system.

EC: I think a lot of the work that’s being done for same-sex parents is also very important. We’ve done quite a bit of work here on same-sex marriage and adoption in the friend-of-the-court briefs we’ve worked on,

including the New Jersey marriage case that Lambda Legal litigated. The NASW Legal Defense Fund has been around for a long time, and the NASW Foundation has been involved in a number of programs supporting gay youth and LGBT parents over the years. And our group is committed to our continuing partnership, particularly in the upcoming train-the-trainer initiative, where we will work together to provide comprehensive training to over 1000 social workers on LGBTQ youth concerns.

KC: And that, from our perspective, is a wonderful thing. Because what we bring to any partnership that we go into is a tremendous range of experience with the LGBT community and with people who have been facing discrimination in the legal system. But we don’t have the connections with large numbers of social workers out there. NASW is a leader in the field, and was out there with us in the days where there was still huge debate over whether gay people should be foster parents. Gay foster children were still incredibly invisible — and still are in many places — but we’ve done a lot of work fighting to bring out the full picture of who youth in out-of-home care actually are. And so we continue to rely on these partnerships, which bring our expertise to all of the people who could use it, learn from it and benefit from it. It’s essential to extending our reach to youth in out-of-home care and to their caregivers. **L**

In My Own Words

GLENN V. BRUMBY

For two years, Vandy Beth Glenn worked for the Georgia General Assembly's Office of Legislative Counsel as an editor and proofreader. After informing her supervisor of her Gender Identity Disorder diagnosis and her intent to transition, she was called "immoral" and was immediately dismissed. Here is her story.

I was about 11 years old when I noticed that I was different. It was around the time that the usual hormonal changes happen, but I felt something unusual. I knew that other people saw me as a boy, but I wanted to be a girl and, eventually, a woman. As I went through adolescence and grew into adulthood, I dealt with this in a variety of ways. Mostly, I put it out of mind. Sometimes I imagined myself living my life as a woman.

In 2005 I began seeing a therapist to sort through my distress with being male. I was diagnosed with Gender Identity Disorder (GID), a serious medical condition, and I prepared to undergo a course of professionally guided treatments, which included gender transition. I was heartened to discover that the American Medical Association and other medical authorities recognize treatment as crucial to relieve the suffering that GID can cause. Though my family and friends went through the initial shock and struggle to accept my transition, they ultimately offered me their compassion and love. When it came to my colleagues, I knew that people might have questions. But I had honestly expected to be treated fairly by my superiors and my co-workers. Shortly after informing them of my decision to transition, I instead found myself out of a job.

I had worked for two years in the General Assembly's Office of Legislative Counsel in Atlanta, Georgia, as an editor and proofreader. I lived as a woman outside of work for a couple of years, but I hadn't transitioned in the workplace. I felt that

it was time to take the final step and live as the woman that I am — completely open, 24/7. I loved my job and had no desire to leave. In 2006, I informed my immediate supervisor that I was transgender with a female identity and that I planned to transition in 2007. She was sympathetic and indicated that she didn't foresee a problem. I decided to test the waters at the office on Halloween, when many staff members came to work dressed in costumes. I dressed as I did every day outside of the office, as a woman. I wore a red turtleneck sweater, a black knee-length skirt, black boots and tights. When the senior legislative counsel saw me, he said I was inappropriately dressed and promptly sent me home. I was stunned and embarrassed. But that was just a taste of what was to come.

"The motto of the state of Georgia is *Wisdom, Justice, and Moderation*. The Georgia General Assembly's treatment of my situation lacked any of these virtues."

I gave my supervisor an album of photos of me as a woman and educational materials about workplace gender transitions. She looked through the packet and then passed it on to the senior attorney who'd sent me home. I was told he would consult with the leaders of the General Assembly concerning my transition. Soon after, we met. After confirming that I was indeed intending to transition from male to female and present myself as a woman in the workplace, he



Vandy Beth Glenn

fired me immediately. He said that my gender transition would be seen as "immoral" and could "not happen appropriately" in the workplace. After I was fired, I turned to Lambda Legal for help in getting my job back.

The motto of the state of Georgia is "Wisdom, Justice, and Moderation." The Georgia General Assembly's treatment of my situation lacked any of these virtues. I am fully aware that, as a transgender woman, I will often have to deal with obstacles and indignities, but I think that most residents of Georgia believe that people should be judged only on their ability to do their job. My career with the Georgia General Assembly was cut short because of reasons completely irrelevant to my professionalism and ability to do my job efficiently.

So I will stand up for my rights as a transgender woman. Taking a stand is just another step forward in living life as I must: fully and fiercely, without compromise. **L**

"To make sure anyone can find your documents, here's an old trick: put a copy of your important documents in a zipper bag in the freezer..."

— From "Tools for Protecting Your Health Care Wishes" in *Take the Power: Tools for Life and Financial Planning*

a COOL idea



In an emergency, there is no time to hunt for documents. A friend or relative may have to go to your home to get the documents because you are in need or helping a person in need. It's crucial to have all documents ready so the focus can be on the person who requires help. Lambda Legal created the Emergency Documents Pouch for that reason.

Sturdy enough to keep in the freezer (if you choose) and convenient for travel, the Lambda Legal Emergency Documents Pouch is the perfect place to store original copies of documents like your power of attorney or health care proxy and other emergency papers — it's the perfect complement to our *Take the Power* toolkit.

Request both the *Take the Power* toolkit and the Emergency Documents Pouch, free with a tax-deductible gift to Lambda Legal. Visit www.lambdalegal.org/takethepower to request the items — it's a cool idea!

In the News

"History should look kindly on the way Ronald George, the Republican chief justice of the California Supreme Court, strode past the bigotry, fear and blind adherence to tradition that have stood in the way of marriage equality."

San Francisco Chronicle editorial in response to the victorious marriage-equality case in California

MAY 16, 2008

"Doctors can choose their procedures but they cannot pick and choose between their patients."

Lambda Legal Senior Counsel Jennifer Pizer to Law.com after oral arguments in *Benitez v. North Coast Women's Care Medical Group*. Lambda Legal represented Guadalupe Benitez against her doctors who refused to do an insemination procedure because she is a lesbian.

MAY 29, 2008

"No matter their sexual orientation, New Yorkers should have the same fundamental right to marry. Governor Paterson has taken an important first step, but it is not enough."

New York Times editorial in response to Governor Paterson's directive to state agencies to respect out-of-state marriages for same-sex couples living in New York.

MAY 30, 2008



Legal Landscape

The Liberty to Love and Serve

In two recent cases challenging the military's "Don't Ask, Don't Tell" (DADT) policy, both federal appellate courts accepted the argument Lambda Legal made in our friend-of-the-court briefs: Our victory in *Lawrence v. Texas* requires heightened scrutiny of the policy. In other words, the courts cited *Lawrence* in concluding that the policy's intrusion into a servicemember's private sexual life had to be balanced against the government's reasons for the policy.

The first case, decided by the Ninth Circuit Court of Appeals, was successfully brought by the ACLU on behalf of Major Margaret Witt. Notwithstanding 19 years of decorated service, Major Witt was discharged based on the Air Force's investigation into her committed, long-term relationship with a civilian woman with whom she shared a home 250 miles away from base. In our brief, we argued that the DADT policy impinges on servicemembers' freedom to have a private, intimate relationship with another adult of their choice, and the court agreed. As a result, the court held that "when the government attempts to intrude upon the personal and private lives of homosexuals ... the government must advance an important governmental interest, the intrusion must significantly further that interest, and the intrusion must be necessary to further that interest." The court reversed the lower court's dismissal of Major Witt's lawsuit and sent the case back to the lower court to determine whether the military's interest in "unit cohesion" met this test.

The second case, *Cook v. Gates*, was brought by Servicemembers Legal Defense Network (SLDN) on behalf of 12 members of the military who were discharged because of DADT. The First Circuit also agreed with Lambda Legal, saying that "*Lawrence* did indeed recognize a protected liberty interest for adults to engage in private, consensual sexual intimacy" in a way that is intruded upon when DADT is applied to "homosexual conduct occurring off base between two consenting adults in the privacy of their home." Unfortunately, this court backed the lower court's dismissal of the

lawsuit, because it deferred entirely "to congressional decision-making in the area of military affairs."

Though only one of these cases has had a good outcome so far, both show that, even when *Lawrence* is given force, the result is likely determined by how closely a court examines the DADT policy. Rather than waving the talisman of unit morale, both the courts and Congress should look carefully at how the policy actually operates. As the Ninth Circuit noted, "Major Witt was a model officer whose sexual activities hundreds of miles away from base did not affect her unit" adversely. Indeed, as the court explained, "it was her suspension pursuant to DADT, not her homosexuality, that damaged unit cohesion."

In July a House panel held the first congressional hearing to examine the repeal of DADT, where retired officers, gay and straight, advocated for doing away with the policy once and for all. Though there were representatives from organizations that spoke in favor of maintaining DADT, perhaps tellingly, no one from the military or Department of Defense testified.

Because Lambda Legal, SLDN, the ACLU, courageous servicemembers and allies have continued to ask and tell — that is, ask the right questions and tell the truth about this misguided policy — a recent CNN poll reported that more than 79% of Americans now believe that those who are openly gay should be allowed to serve. It's well past time that all Americans should be allowed to do so — openly and with pride.

JON W. DAVIDSON
LEGAL DIRECTOR

Save the Date:
**Lambda Legal
Liberty Awards**



May 4, 2009 at Pier 60, Chelsea Piers. New York, NY.
For more details and for a complete up-to-date list of
our events, visit www.lambdalegal.org/events.

**Take the Power toolkit and
Emergency Documents Pouch**



Request the *Take the Power* toolkit and the Emergency Documents Pouch, free with a tax-deductible gift to Lambda Legal. Visit www.lambdalegal.org/takethepower to request the items — it's a cool idea!

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