

Necessary Care

Lambda Legal's recently launched lawsuit in Oregon and a victory in Wisconsin illustrate why we're fighting for transition-related care. By Transgender Rights Attorney **M. Dru Levasseur**



Alec Esquivel (left), denied health care coverage, faces reporters with Levasseur at the launch of Lambda Legal's suit on his behalf.

THE TYPES OF HEALTH CARE associated with gender transition have too often been misunderstood as cosmetic, experimental or simply unnecessary. Because of this misconception, transgender people face widespread discrimination in accessing vital health care by the majority of public and private insurance companies and employers.

The medical community has had consensus for years that transition-related health care, including hormone therapy and sex reassignment surgery, is medically necessary for many transgender people. Even the American Medical Association in 2008 issued a resolution calling upon private and public health insurance companies to remove discriminatory exclusions of care for transition-

related health care. In spite of the support by the medical community and the growing trend by some large, LGBT-friendly businesses to provide trans-inclusive insurance for a perfect score on the revised Human Rights Campaign's Corporate

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Equality Index, we still have a long way to go. Lambda Legal has prioritized transgender health care as an important area of work and is tackling this critical issue through our litigation, policy work and public education.

In June, we filed a case on behalf of Alec Esquivel, a 42-year-old law clerk for the Oregon Court of Appeals. Although Alec was assigned the sex of female at birth, he has a strong, consistent and deeply-rooted male gender identity. In 2001,

Alec was diagnosed with Gender Identity Disorder (GID), and began taking steps in accordance with the World Professional

Association for Transgender Health Standards of Care to bring his body into alignment with his gender identity. In 2010, Alec's doctor informed him that a hysterectomy was medically indicated

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TRANSITION-RELATED HEALTH CARE

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MY STORY I AM 35 YEARS OLD AND I AM TRANSGENDER. I WAS BORN AS A BOY AND I AM NOW A MAN. I AM CURRENTLY TAKING HORMONE THERAPY AND I AM PLANNING TO GET SURGERY. I AM CURRENTLY WORKING AS A LAWYER AND I AM CURRENTLY TAKING HORMONE THERAPY AND I AM PLANNING TO GET SURGERY. I AM CURRENTLY WORKING AS A LAWYER AND I AM CURRENTLY TAKING HORMONE THERAPY AND I AM PLANNING TO GET SURGERY.

Lambda Legal

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FIND OUT MORE ABOUT TRANSGENDER RIGHTS

The movement toward a more equitable future for transgender health care starts with education. Lambda Legal's new *Transgender Rights Toolkit* fact sheet, "Transition-Related Health Care," explains the medical community's current framework for understanding transition-related care as medically necessary and gives an overview of how Lambda Legal and other advocates are applying this in the legal domain to challenge denial of such care as discriminatory. It also highlights the ways that private industry and municipal governments have begun to follow the medical mainstream by dropping barriers to health care for transgender people and setting standards for a more equitable future.

TO ORDER A COPY OF THE GUIDE, GO TO www.lambdalegal.org/trans-toolkit

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reiterate these pre-existing exemptions. Thus, for example, religious exemptions in New York’s Marriage Equality Act largely reiterate First Amendment and statutory religious exemptions.

Sixth, more sweeping proposals for religious exemptions should be rejected as out-of-step with core non-discrimination principles. It is not acceptable, for example, to exempt government employees from the requirement that they process marriage licenses for same-sex couples. Businesses and their employees engaged in public commerce or government-funded faith-based social service providers cannot refuse to provide services to married couples because of religious beliefs. Such proposals open the door to discrimination in the public sphere not only against same-sex couples but also against others whose relationships might conflict with certain religious beliefs—including inter-faith and interracial couples and those who marry after a spouse’s divorce. No couple should have to face such discrimination when accessing a government service or in the public marketplace.

Finally, despite the sometimes contentious legislative debates over religious exemptions, there has been notably little actual conflict between religious objectors and couples seeking services in places where same-sex couples have the freedom to marry. There is no shortage of wedding industry vendors happy to do business with these couples.

The reality is that same-sex couples planning their weddings and seeking to live as married spouses are not looking to pick fights with religious objectors. All they want is what other Americans enjoy—a day to celebrate their commitment with friends and family, equal rights from their government and legal protections for their families. **L**

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to treat his GID and to prevent other health risks, including a serious risk of ovarian and uterine cancer. When Alec submitted a request for health insurance coverage to the State’s self-funded plan, he received a denial letter citing the plan’s categorical exclusion for all services related to a “sex-change operation.” Oregon law prohibits discrimination in employment on the basis of gender identity. The procedure Alec requested is routinely covered for other plan participants. The only factor that distinguished him from others who receive this coverage is that he was denied the care based on his gender identity.

After representing Alec in an internal and administrative appeal, Lambda Legal filed on

MEET OUR LAWYERS

SUSAN SOMMER

DIRECTOR OF CONSTITUTIONAL LITIGATION AND SENIOR COUNSEL

How did you come to work at Lambda Legal?

I had gone to law school with the intention of doing public interest work someday, but one thing led to another along the way, and I first found myself a partner at a New York City law firm. Then I had children, and I felt more strongly than ever that I should use my law degree and training to help make our country a better place for new generations (corny, but true). I heard about a job opening at Lambda Legal from my law school classmate, and I jumped on it.

What is your role at Lambda Legal?

My title is a bit of a mouthful: Director of Constitutional Litigation and Senior Counsel. I litigate an array of impact cases, supervise Lambda Legal lawyers and engage in the public education and advocacy that are other important aspects of our work. I’ve also supervised our Youth in Out-of-Home Care project since its inception.

What have been the highlights of your work since you arrived here? Or, what have you been especially proud of?

There’s so much to be proud of about Lambda Legal’s work. Some particular stand-outs for me personally include being a member of the *Lawrence v. Texas* Supreme Court team; arguing in appellate courts in New York and elsewhere to set new precedents; getting to know courageous, inspiring and just plain nice LGBT clients who have stood up against injustice; and celebrating the successes of my Lambda Legal colleagues.



It was especially sweet to see couples we had represented marrying in New York a few weeks ago. This is so much more than just a job. I feel incredibly fortunate to be able to work for a cause I know is just, and at work that never ceases to be interesting. Not every lawyer can say that.

Is there anything that the Lambda Legal community might be surprised to learn about you?

Yes, and I won’t be the one to tell!

What do you do to unwind when you’re not at work?

I’ve been trying to stave off a mid-life crisis by spending more time running. I’ve made it to half-marathons, thanks to a Lambda Legal colleague who has been coaching me and doesn’t accept age as an excuse. But I do think mid-life will keep me from going any further. I also read a lot, including books on my iPod while I run. And I have a terrific spouse and kids, and two nutty dogs.

his behalf in Oregon state court arguing that the State’s plan discriminates on the basis of gender identity in violation of Oregon’s Equality Act. This case is significant because it is the first to apply a state nondiscrimination law to discrimination on the basis of gender identity in health insurance coverage.

Also contributing to the growing movement to understand transition-related health care as medically necessary is our recent victory in *Fields v. Smith*, which set a ground-breaking legal precedent for incarcerated transgender people seeking care in the hands of the government. In this case, Lambda Legal and the ACLU challenged the constitutionality of a 2005 Wisconsin state law—“the Inmate Sex-Change Prevention Act”

—which barred transition-related health care for transgender inmates. After hearing testimony of medical experts at trial, in 2010 the Wisconsin District Court found in our favor, ruling that the law violates both the 8th Amendment and Equal Protection Clause of the Constitution. On August 5, 2011, the 7th Circuit upheld this ruling based on the 8th Amendment. The appeals court wrote: “Refusing to provide effective treatment for a serious medical condition serves no valid penological purpose and amounts to torture.” The court understood that medical care should be left in the hands of doctors, not legislators who may be acting based on bias and misinformation about the medical needs of a marginalized population. **L**