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LGBT & AIDS ANNUAL UPDATE

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Table of Contents

Freedom has never been of security, giving up free shame and regret.

the price of safety. Instead

dom has always bought us

The "Unitary Executive," Anti-Gay Constitutional Amendments, and the Trashing of Basic American Values

Twenty-seven states have passed constitutional amendments banning marriage for same-sex couples. Most of them also ban civil unions and comprehensive domestic partnerships.

BY MATT COLES

For those who admire the American constitutional system, few things could be as distressing as President Bush's campaign to dismantle it. For LGBT people, few things have been as distressing as the decision of voters in 27 states to amend their constitutions to keep same-sex couples from getting married. However, constitutionalists should also be deeply worried about those state amendments, and gay people should be deeply worried about the president's push to get America to accept a "unitary executive." In fact, everyone who depends on the American constitutional system's promises of equality and autonomy are threatened by both the president and the state marriage amendments.

The Constitution's reputation for greatness mostly rests on the promises set out in the Bill of Rights and the 14th amendment; promises of rights to belief and expression, autonomy and equality. But for those who wrote the Constitution, the decentralization of power—the "separation of powers"—was at least as important as a guarantee of liberty. Following models proposed by 18th century philosophers, the federal and all state constitutions split government into a policy-making branch (Congress or the state legislatures), an operations division (the executive) and a dispute resolving system (the courts). The thinking was that dividing the government would keep any of its parts from getting so much power that it could trample basic liberties. Critical to making the division work was the system of checks and balances: each part of government had some power over the other, and most critically, the weakest branch, the courts, had the power to see to it that the other branches stayed within constitutional limits.

President Bush's lawyers insist that the federal constitution's division of powers is no longer workable. Honoring it, they say, will make it impossible to for us to protect ourselves. The only answer, they say, is an unwritten rewrite of the Constitution, concentrating power in the executive. The president, they say, should need no authorization from a court to wiretap, no permission from Congress to set up prisons overseas or to create new systems for charging and trying those accused of crimes. The courts, they say, should have no power to call the president to account for holding people without charges or for acting without authorization from Congress.

George Bush is hardly the first president to try to unbalance the checks and balances of divided government. Abraham Lincoln suspended the writ of habeas corpus during the civil war, significantly limiting the power of the courts to check executive abuse. Woodrow Wilson's administration blew off the courts and ran raids on political dissidents without warrants or evidence of wrongdoing. Franklin Roosevelt locked up Japanese-Americans in the 40s, forcing many to forfeit everything they owned in the process. It's hard to know where to begin to describe what Richard Nixon tried to do—and did.

These past campaigns to consolidate power taught us two things. First, the framers were right: divided government does help protect liberty. Second, no matter the threat, abandoning the design has never been necessary. Freedom has never been the price of safety. Instead of security, giving up freedom has always bought us shame and regret.

That this president's effort to junk the separation of powers is likely to bring more shame and regret seems clear. And as it proceeds in Washington, people are junking the separation of powers at the state level in order to head off same-sex marriage.

Twenty-seven states have passed constitutional amendments banning marriage for same-sex couples. Most of them also ban civil unions and comprehensive domestic partnerships.

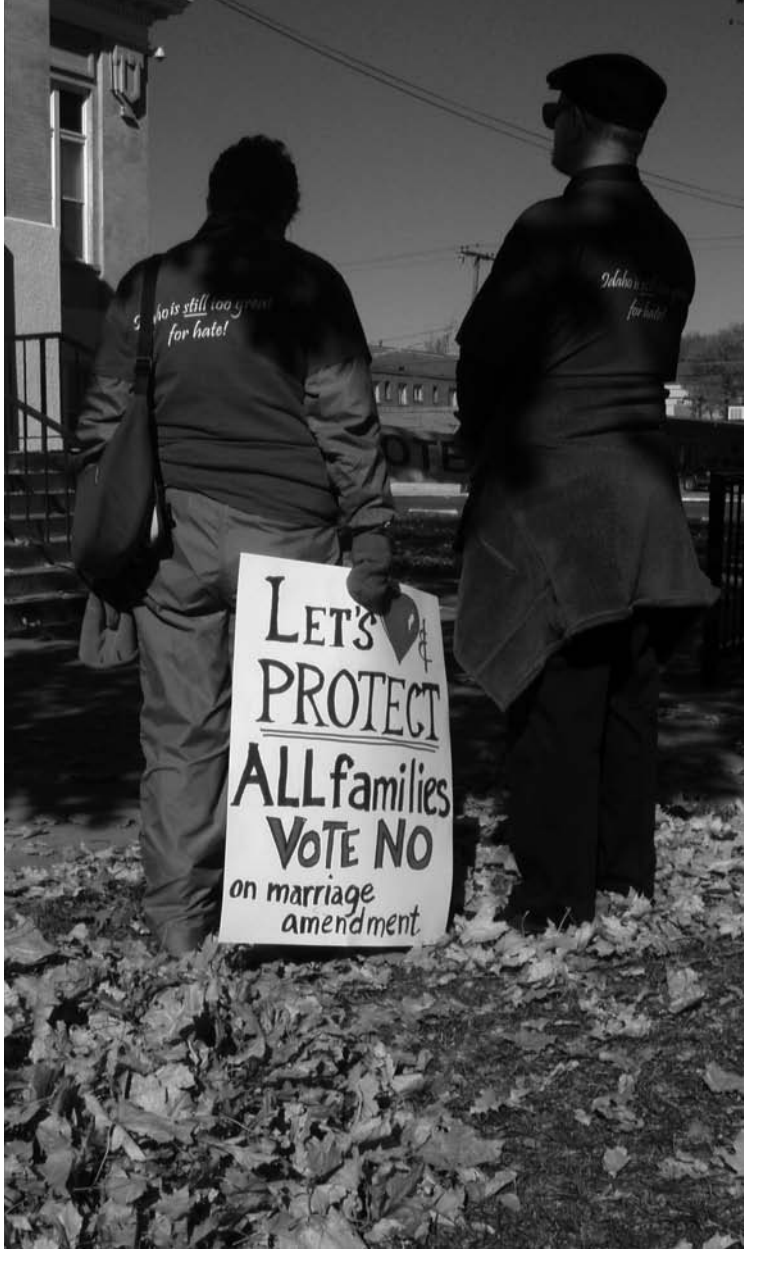
These are not laws against marriage and civil unions. Every state but one that has passed a constitutional marriage amendment already had a law excluding same-sex couples from marriage. Instead, these amendments take away the power of state legislatures ever to open marriage, or pro-

vide any other comprehensive protection, for same-sex couples. In addition, they take away the power of the courts to decide if keeping same-sex couples unprotected can be squared with state constitutional promises of equality and fairness.

This is every bit as radical a revision of constitutional design as President Bush's is. Most critically, both destroy the crucial check of the courts for fairness and even-handedness. Revisionist popular history to the contrary, that check has rarely been popular at the moment of exercise. "Impeach Earl Warren" billboards were once a feature of most American highways. But it has been singularly important in preserving liberty.

Moreover, both the president's revision and the amendments take the power to make policy away from a representative body. True, in the president's plan, the representative body—Congress—cedes power to the president, while in the design of most of the state amenders, any power to protect one minority—gay people—is completely extinguished.

But the separation of power in the state and federal systems was aimed not only at protecting against a runaway branch; it was also designed to check "passionate" majorities bent on imposing their will at the expense of other people's rights. We put the power to make policy in a representative body instead of having direct lawmaking to bring reflection to the process and temper the passions of the majority.



■ Local activists urge Idaho voters to reject HJR 2, a proposed constitutional amendment to ban both marriage and civil unions for same-sex couples. Voters approved the amendment.

About the only thing that could get Americans to jettison the basic principles of their constitutional system is real fear. And like the president's argument for the "unitary executive," the argument for the amendments is based on fear. If the constitutions aren't amended, the argument goes, at some point in the future state courts or state legislatures will decide that it is not fair to exclude same-sex couples from the legal protections of marriage.

What makes the appeal to fear of the courts and the legislatures so effective is that the opponents of marriage can't seem to come up with a good argument that it *is* fair to exclude same-sex couples from marriage. If there isn't any good argument that the exclusion is fair, it is hard to believe that at some point the courts or the legislatures won't put an end to it. Ironically, then, the fear driving the amendments is not that the constitutional system will fail, but rather that it will work.

This isn't the first time the American people have been unhappy because the system functioned (or, in this case, might begin to function) as it was supposed to, and it is not the first time people have tried to restructure the system to get what they want even if it meant betraying basic values. In 1964, for example, California voters took away the state legislature's power to end race discrimination in housing (a move the U.S. Supreme Court later struck down).

But the scope of these amendments is unlike anything we've seen before. During the civil rights movement in the 60s, there were a handful of amendments. On marriage, there is a good chance we'll reach 30 in a few years.

There are obvious immediate dangers in what the president is doing—people will be arrested, some will be tortured, some will die—and in what the states are doing—changing the Constitution to harm an unpopular minority. But there is a less obvious danger lurking in the fact that both are happening at the same time. Once you decide to junk one crucial part of the constitutional system because you think it inconvenient, it becomes all too easy to start thinking about junking others which also seem inconvenient at the moment.

After Lincoln's, Wilson's, Roosevelt's and Nixon's abuses, we got our balance back. So too, after the racist initiative of the 60s. Perhaps we will this time as well. But perhaps, as so many people accept abandoning the basic values of separated powers in the name of such different causes, we'll become accustomed to giving up the structure that has protected us for the fear du jour. Each vote to amend a state constitution to head off a future court decision on same-sex couples probably makes it easier to accept a presidential declaration that we can't trust our antiquated court system to try terrorists. Once you accept the idea that the president has to be able to tap phones without a court order, it probably becomes easier to say that we don't have to listen to courts tell us it isn't fair to deny gay couples any legal protection. Tomorrow, it may seem expedient to amend a constitution to ban affirmative action, or employment for noncitizens, or...

"Separation of powers" may seem like a political philosopher's abstraction, but the consequences of abandoning it are hardly abstract. Our republic has endured because of respect and restraint. For most of us, even though we think a person's ideas repugnant, we accept the right to have and express them. We believe in equality before the law, even for people we think stupid or abusive.

Once we decide that convenience trumps restraint and respect, we're finished. No document, no matter how thought-through, can endure in the teeth of a people who no longer accept it. And once we give up that restraint and respect, everything that made this country great, that spurred its creativity, its initiative, and tolerance, everything that gave it justice, will be a memory.

It's not just constitutionalists and LGBT people who should be worried about our willingness to compromise the system; everyone should be worried. ■

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Reporting the Truth About the Science on LGBT Parenting

BY PAUL CATES

Every major children's health and welfare organization—including the American Academy of Pediatrics, the American Psychological Association, the National Association of Social Workers, the Child Welfare League of America, and the American Medical Association—has come out in support of the rights of lesbian and gay people to parent.

It's hard not to have at least some sympathy for Mary Cheney these days. It can't be pleasant for an expectant mom to receive the kind of criticism she's faced since announcing that she and her long-term partner Heather Poe will be raising a child together.

Of course it's not surprising that anti-gay activists have grabbed onto the news to disparage LGBT people raising children. Branding lesbians and gay men as unfit parents has been one of their more vicious tactics since the dawn of the gay rights movement. Although the rhetoric has become tamer since the days of Anita Bryant and her infamous "Save our Children" campaign that resulted in the Florida ban on adoptions by gay people, the lies and stereotypes that anti-gay activists spread about the ability of gay people to parent still cause devastating harm. These lies are used against lesbian and gay people in custody and visitation determinations, they are used to justify laws and policies barring gay people from fostering and adopting and they are used to justify barring same-sex couples from marriage and other types of relationship recognition.

After nearly 30 years of consistent social science research proving that same-sex couples are just as capable of being good parents as straight couples and that their children are just as well adjusted, you would think that this kind of rhetoric wouldn't fly anymore. After all, every major children's health and welfare organization—including the American Academy of Pediatrics, the American Psychological Association, the National Association of Social Workers, the Child Welfare League of America, and the American Medical Association—has come out in support of the rights of lesbian and gay men to parent.

But the anti-gay activists have worked hard to discredit the science. They've suggested that the research isn't conclusive; they've misrepresented the findings; and they've even created their own "reports" by nonscientists that are dressed up to look like scientific research. And while you wouldn't necessarily expect our opponents to be honest about the science, you would expect the media to make our opponents accountable for what they say about the science in the press.

Time Magazine clearly doesn't seem concerned with accountability. After the Cheney announcement, *Time* gave prime ink space to James Dobson. With boldface audacity, he completely distorts the research of several scientists, claiming that the research shows that children need a mother and a father.

Time is by no means the only media outlet that has left unchecked false statements about the social science research on parenting by lesbians and gay men. National Public Radio's *Morning Edition* aired a story on the Project's successful challenge to an Arkansas policy that barred same-sex couples from foster parenting. The story included a quote from a Republican state senator that there are over 10,000 studies proving that the "the homosexual family or the environment is problematic for the child." Had the reporter simply asked the senator to name even one of these 10,000 studies, he would have been unable to do so, because they do not exist.

An October 30th story in the *Los Angeles Times* on the social science research on parenting by same-sex couples ran under the headline, "Do Children of Gay Parents Develop Differently? Research suggests there's no distinction. But the field is a young one, and studies are often colored by politics." The article uses quotes from the writings of sociologist Judith Stacey about the positive attributes of same-sex parents to suggest that her research is biased. The article backs up these claims with a quote from Family Research Council "report" by a nonscientist that claims the social science research is "compromised by methodological flaws and driven by political agendas." Incredibly, the article concludes with the assertion that, "Both sides agree that large numbers of cases will need to be studied." Yet, in fact, social scientists uniformly agree that the three decades of consistent and increasingly sophisticated research has proven that there are no downsides to having same-sex parents.

■ Scott Emanuel, public education manager at the ACLU of Eastern Missouri, addresses a crowd in St. Louis as part of the affiliate's campaign to foster dialogue on LGBT families and their lack of legal protections.

Prior to oral arguments before Maryland's high court in the ACLU's lawsuit seeking marriage for same-sex couples, we organized a press conference with some of the state's leading children's health and welfare leaders to talk about the social science research and announce their support for marriage for same-sex couples. While the press that resulted was mostly very positive, the *Baltimore Sun* included a quote in its coverage from a Focus on the Family spokesperson claiming that the research is unreliable and that there are hundreds of studies finding that children do best when raised by a biological mom and dad. To its credit, the *Sun* printed the quote directly beneath a quote from ACLU of Maryland attorney David Rocah noting that our opponents often try to distort the research.

Of course some would argue that the journalists responsible for allowing these untruths to go unchecked were simply trying to be neutral. After all, aren't journalists supposed to present both sides?

It's one thing to give our opponents an opportunity to express their opinions about gay people, but clearly the line is crossed when our opponents aren't telling the truth and the media fail in their responsibilities by letting such misrepresentations go unchecked. In fact, we rely on the media to keep our political leaders and policy-makers honest.

Fortunately, it looks like the *Time* incident may have finally put media outlets on notice that they can no longer get away with sloppy journalism. Three of the social scientists whose work was misrepresented by James Dobson have now come out against Dobson. New York University educational psychologist Carol Gilligan, PhD, took the extraordinary step of recording a video posted on YouTube rebuking Dobson for mischaracterizing her work. Media watchdogs have taken notice and have criticized *Time*.

So thanks to Mary Cheney, it may now be a little easier to make people understand that we are good parents and our families need protections too. ■

Parenting DOCKET

■ *The Lofton-Croteau family enjoys time together at their home in Florida. Steve Lofton (front right) and Roger Croteau (back right) fought a long battle to adopt their children, but the state will not recognize gay parents in adoption.*

2006 was a big year for the ACLU's parenting work, with the Project winning cases that overturned statewide anti-gay foster care bans in both Arkansas and Missouri and another that upheld the rights of an adoptive lesbian mother in Michigan. We were involved in eight cases nationwide involving issues affecting LGBT parents and lobbied against anti-gay parenting bills in five states.

ALABAMA

In a child custody dispute between a lesbian mother and a father, the court granted custody to the mother but ordered her not to let her son be in the presence of her long-time live-in partner, thus requiring her to live in a separate home, and not to speak with her son about her sexual orientation. At the mother's request, the Project and the ACLU of Alabama asked the court to reconsider the order, arguing that it unconstitutionally interfered with her parental autonomy rights and the right established in *Lawrence v. Texas* to have a relationship with her partner. The court denied the ACLU's request and the mother decided not to appeal the ruling for personal reasons.

ARKANSAS

In 1999, Arkansas enacted a regulation prohibiting anyone from serving as foster parent "if any adult member of that person's household is a homosexual." That same year, the Project and the ACLU of Arkansas brought a case challenging the regulation on behalf of prospective foster parents who were disqualified by it. In 2004, in *Howard v. Child Welfare Agency Review Board*, the trial court struck down the regulation, concluding, based on the testimony of an array of expert witnesses, that the scientific evidence "overwhelmingly showed that there was no rational relationship between the blanket exclusion and the health, safety, and welfare of the foster children." The state appealed. In 2006, after seven years of litigation, the case finally came to an end with the Arkansas Supreme Court upholding the trial court's decision. The Court agreed that the exclusion serves no child welfare purpose, but rather, was based on the Board's "standard of morality and its biases." Indeed, the Court wrote, the State's negative characterization of gay people as dangerous to children and otherwise unsuitable to be parents "flies in the face" of the scientific evidence.

DELAWARE

The ACLU of Delaware, together with the Project, filed a friend-of-the-court brief with the Supreme Court of Delaware in *Smith v. Smith*, a child custody case where the biological mother challenged the Family Court's determination that her partner, with whom she had jointly raised their children, was a de facto parent and entitled to petition for custody. The Family Court also required the partner to pay child support. The biological mother appealed the joint custody decision, but accepted child support payments as she awaited the court's decision. The Delaware Supreme Court dismissed the case because it found that the biological mother had voluntarily accepted benefits from the judgment she was appealing. The result of the court's decision was to leave the Family Court's order granting joint custody in effect, but it also left critical questions unanswered about the legal status of families headed by same-sex couples and the rights their children will have in the event of parental separation.

MARYLAND

A lesbian couple who had broken up went to court to fight over custody of their child. The ACLU of Maryland, in collaboration with the Project, filed a friend-of-the-court brief supporting the recognition of the non-biological mother's parental rights as a de facto parent. The state intermediate appellate court ruled partially in favor of the non-biological mother, treating her as a parent for the purposes of visitation but not for custody.

MASSACHUSETTS

This past year, the ACLU of Massachusetts resisted the efforts of Catholic Church leadership and Governor Romney to obtain a religious exemption from state law prohibiting discrimination on the basis of sexual orientation in

■ Craig Stoopes, a librarian, and his partner Matthew Lee Howard, a teacher, have been together for nearly 20 years. The couple is raising two children, and they have sought to become foster parents in Arkansas, where LGBT people are barred from foster care.

the adoption process. Catholic Charities, after eight years of placing children in homes headed by same-sex couples, was instructed by the Vatican and the Archdiocese of Boston to stop making such placements because they were deemed "gravely immoral," and church leadership claimed that the organization's right of religious freedom entitled it to an exemption from the state law and rules on agencies contracting with the state to provide foster care and adoption services. Catholic Charities' 42-member board of trustees opposed the bishop's plan and voted unanimously to continue placing children with gay couples. However, the organization eventually closed its adoption operations altogether, unable to reconcile the conflict between church teachings and legal obligation. Governor Romney then introduced a bill, titled "An Act Protecting Religious Freedom," which, notwithstanding any law to the contrary, allowed religiously affiliated organizations to "take any action with respect to the provision of adoptive or foster placement services which is calculated . . . to promote its religious principles," providing the action refrains from discrimination based on race, creed, national origin, gender, disability or any classification triggering strict scrutiny under the federal or state constitutions. The ACLU took the position that there was no right to a religious exemption from laws that protect children's welfare by ensuring that they have access to all available good homes and that qualified parents are not thrown out based on criteria unrelated to their ability to provide a loving family. The bill has yet to receive significant support in the Massachusetts legislature.

MICHIGAN

Karen Hansen and Martha McClellan, a lesbian couple, had twins through donor insemination, and in 1999, McClellan, the non-biological mother, adopted the children through second-parent adoption. Seven years later, the couple separated and Hansen filed a lawsuit asking the court to declare the second-parent adoption void and in violation of Michigan law. The ACLU of Michigan, representing McClellan, filed a motion to dismiss, and the trial court ruled in McClellan's favor. Hansen has appealed the case.

The ACLU of Michigan worked with a task force to draft and lobby in favor of a bill that would permit unmarried couples to jointly adopt children and enable unmarried partners to adopt each other's children through second-parent adoption. The bill has been referred to the House Judiciary Committee, but no hearing has been scheduled yet. The ACLU of Michigan also prepared LGBT family lobbyists for their meetings with legislators for the LGBT Family Lobby Day in Lansing.

Two proposed bills would prohibit the state from denying a license or government contract to a child placement agency that bases its placement decisions on "religious" or "moral" beliefs. The ACLU of Michigan has actively opposed the legislation by lobbying legislators and engaging in public education about the harm the proposals would cause.

MISSOURI

The Missouri Department of Social Services denied Lisa Johnston's application to become a foster parent simply because she is a lesbian. Along with the Project, the ACLU of Kansas & Western Missouri and the ACLU of Eastern Missouri filed *Johnston v. Missouri Department of Social Services*, asking a state trial court to overturn the agency's decision. The court ruled that the agency improperly denied the application and held that the agency could not rely on a constitutionally unenforceable criminal prohibition on same-sex sodomy to deem Ms. Johnston a person of disreputable character. It further held that the agency could not invoke a fear that foster children placed with Johnston would be stigmatized because doing so would be a constitutionally impermissible accommodation of community bias against gay and lesbian people. Citing the trial court ruling, the agency issued a regulation reversing its policy that barred gay and lesbian people from being foster parents in Missouri.

The Missouri affiliates worked with PROMO, Missouri's statewide LGBT civil rights organization, to sponsor LGBT parenting forums throughout the state in response to the case of Lisa Johnston, whose application to become a foster parent was denied solely because she is a lesbian.

PENNSYLVANIA

A proposed bill to facilitate the recognition of foreign decrees of adoption in Pennsylvania would have covered only adoptions by married couples. The ACLU of Pennsylvania worked to have the bill amended, and it was revised so as to refer to "parent or parents" rather than "married couples." Governor Rendell signed the revised bill into law in July.

UTAH

The ACLU of Utah lobbied against a bill that was intended to prohibit non-biological parents in same-sex relationships from obtaining visitation or custody rights of the children they've raised if those relationships end and the biological parents no longer want them to be a part of their children's lives. The bill's consequences, however, were much further reaching than its anti-gay intent, and for this reason Governor Jon Huntsman vetoed the bill.

VIRGINIA

Janet and Lisa Miller-Jenkins were joined by a Vermont civil union when Lisa gave birth to their daughter Isabella. The couple has since separated and the ACLU of Virginia is representing Janet, the non-biological mother, in a custody dispute. After a Vermont court ruled that Janet was entitled to visitation with Isabella, Lisa moved to Virginia and filed a new custody proceeding. Ignoring state and federal statutes on child custody jurisdiction, the Virginia judge took jurisdiction over the case and granted sole custody to Lisa, relying on Virginia's "Marriage Affirmation Act," which declares civil unions and other agreements "purporting to bestow the privileges and obligations of marriage" between persons of the same sex to be unenforceable. The ACLU of Virginia awaits a ruling in *Miller-Jenkins v. Miller-Jenkins* from the Virginia Court of Appeals. In the meantime, in August 2006, the Vermont Supreme Court reaffirmed its prior rulings, recognizing Janet's parental rights, and found Lisa in contempt of court for disregarding the rulings.

After living together for several years and deciding to have a child together, a lesbian couple broke up when the child was about a year and a half old. When the non-biological mother filed a petition for visitation with the court, the biological mother immediately cut off all contact between her and the child. The ACLU of Virginia joined the case in order to argue that the non-biological mother is a legal parent with a right to visit and seek custody of her child. The family court ruled against the non-biological mother and the case is on appeal to the circuit court with a trial scheduled for late 2006.

The ACLU of Virginia opposed a bill that would prohibit both parties of a same-sex couple from being listed on a Virginia birth certificate following the adoption of a child in another jurisdiction. The bill failed in committee. ■

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Stifling Student Speech Threatens Equality for All Americans

BY NICK WUNDER

The principal and other school officials stepped in at the last minute and demanded the student journalists pull the articles before sending the first issue to press, citing vague and unsubstantiated threats to gay students.

When students at East Bakersfield High School wrote a series of articles about sexual orientation and gender identity for the school's award-winning newspaper, they were prepared for mixed reactions, but censorship wasn't one of them.

"We had the support of our parents, the parents of those interviewed, the entire editorial staff, our journalism advisor and even the editorial board of the Bakersfield Californian," said Maria Krauter, a former student in the Kern High School District and editor-in-chief of the student newspaper, *The Kernal*. But the principal and other school officials stepped in at the last minute and demanded the student journalists pull the articles before sending the first issue to press, citing vague and unsubstantiated threats to gay students. The ACLU, joined by the Gay-Straight Alliance Network, filed suit.

"The principal was wrong to censor these well-researched, balanced articles," said Christine Sun, the ACLU lawyer representing the students. "The law is clear that the principal may not just throw up his hands and resort to censorship when he is concerned about student safety. The right to free speech requires that the principal protect students who want to speak out about important issues, and not cede control of the campus to school bullies."

Yet school administrators chose to silence students speaking out about LGBT issues rather than use the articles as an opportunity to address bullying and discrimination at the school. And despite a court request for more information regarding the district's reasoning for censoring the journalists, school officials failed to produce evidence that lesbian, gay, bisexual or transgender students would be harmed by the publication of the articles, and took no steps to inform either parents or the police officer assigned to East Bakersfield High School of the alleged threats, leading many to suspect that perhaps the administration was not acting in the best interests of LGBT youth.

All Americans enjoy the protections of free speech and expression guaranteed by the First Amendment, but for lesbian, gay, bisexual or transgender individuals, these rights are central to our ability to live open, public lives. Attempts to place restrictions on ideas traded in the public marketplace work to stifle more than speech. "When our principal said the articles on sexual orientation could not be published in *The Kernal*, it made me feel like I was back in the closet again, hiding," said Janet Rangel, a former East High student interviewed for the story.

The ACLU succeeded in securing a court order affirming that "all students have the right to exercise freedom of speech and of the press" a year and a half after school officials in Bakersfield attempted to censor student journalists covering issues of sexual orientation. "I'm glad that because we didn't back down the articles will be printed," Rangel said. "It's important for schools to be a place where students learn and feel comfortable."

Bakersfield aside, schools across the United States have been proactive in taking steps to protect students from harassment and discrimination on the basis of sexual orientation. Gay-straight alliance clubs (GSAs) have sprung up in thousands of schools, working to create a safe space for LGBT youth. But at White County High School in Cleveland, Georgia, school administrators repeatedly rebuffed student efforts at forming a GSA.

When White County High student Kerry Pacer attempted to form a gay-straight alliance club to address violence and harassment against gay students, the school administration initially denied her proposal. But Pacer refused to back down, and presented school officials with documents outlining the school's legal obligation to recognize the club. "I understand that not everyone supports this club, and those people have a right to their opinion," Pacer said. "But we also have a right to exist, and nobody's rights should be trampled on."

The administration soon changed its position, but then stalled on delivering a final decision after

news of the dispute became public. The school went so far as to announce that it would shut down all non-curricular student clubs in an effort to prevent the GSA from meeting. In February 2006, the ACLU of Georgia filed a suit on behalf of the students and succeeded in obtaining a permanent injunction against the school, requiring White County High School to honor its obligation under the federal Equal Access Act to allow for the organization of student-led non-curricular clubs.

Charlene Hammersen, founding member of the GSA, experienced firsthand the anti-gay harassment pervasive at White County High School. "I've been assaulted at school twice and called names more times than I can remember, and I know gay students who have had to drop out of our school because the harassment was so bad. We need a gay-straight alliance because it would make our school safe for everyone," Hammersen said. "Being a safe place for its students is something that White County High School should want, too."

Like the attempt to silence student journalists in Bakersfield, California, White County High School's refusal to recognize a student-organized gay-straight alliance club sent a message to LGBT youth and their allies: "We do not support you." These efforts to curtail the student's constitutional rights have a chilling effect on young people struggling to come to terms with their identity, especially when handed down from school administrators and teachers—figures tasked with providing guidance and emotional support to our youth.

But more broadly, measures attempting to restrict LGBT expression—whether taking the form of censorship, harassment or discrimination—limit our ability to more publicly strengthen the case for equality. Progress in the fight for fairness remains inextricably wed to our ability to be out and open members of society, to go public with our relationships and ourselves.

Discrimination against members of the LGBT community—in schools, at work, or in marriage and parenting—is an attempt to silence us, to deny LGBT people the protection and respect to which all Americans are entitled. The ACLU remains committed to fight for LGBT equality for precisely this reason: to secure protections for LGBT Americans is to secure protections for all Americans, everywhere. ■

Schools & Youth DOCKET

■ *Charlene Nguon hugged and kissed her girlfriend while on the campus of her high school in Orange County, California, just like many other students, but Charlene was suspended because her affection was shared with another girl.*

The Project had several significant victories in its work on behalf of LGBT youth this year, including a preliminary injunction and settlement that will bring sweeping changes at a Hawaii youth detention facility and a free speech win for student journalists in California who wanted to publish stories about the lives of LGBT youth. We were involved in nine cases defending the rights of young people and participated in successful advocacy efforts on behalf of several others. The Project also lobbied against 15 bills that sought to restrict students' rights and others that provide for protections against anti-gay harassment in schools in twelve states.

CALIFORNIA

The ACLU of Southern California filed *Nguon v. Wolf* in September 2005 on behalf of a 17-year-old lesbian high school student in Orange County. The previous academic year, Charlene Nguon and her girlfriend were disciplined and suspended for expressing public affection (hugging and kissing) toward one another, while straight students were not disciplined for similar behavior. Nguon was also disqualified from the National Honor Society because of her disciplinary record. Near the end of the year, the principal, Ben Wolf, "outed" Nguon to her mother when he told her that he wanted either Nguon or her girlfriend to leave the high school because he wanted to split them up. Nguon volunteered to leave to spare her girlfriend further disruption at home. Nguon had to bike almost five miles each way to a school that is not as academically challenging. In a first-of-its kind ruling, the judge held that the right to privacy included the right of students to control the disclosure of highly personal information to their parents, even if that information is public in another context. The case went to trial in December 2006, and we are awaiting a decision from the judge.

Five East Bakersfield high school students and their parents filed *Paramo v. Kern County High School District* in 2005, seeking publication of a series of articles about sexual orientation and gender identity in the school newspaper, *The Kernal*. School officials stopped publication just before the paper went to press. The stories were from varying perspectives on sexual orientation and gender identity, and included students' personal stories. The ACLU sought an emergency ruling from the Superior Court that would have allowed the stories to appear in the last paper of the school year. The judge ruled that there was no irreparable injury to the students (many of whom were graduating seniors) and denied the request for immediate relief. Over the summer and fall, school officials failed to produce evidence of their claims that lesbian and gay students would be harmed as a result of the publication of the articles. The school finally relented, and the articles appeared in the November 2005, edition of the paper. In late 2006, the school board agreed to change its policy to ensure that it would no longer censor student speech simply based on a fear of how others would react.

AB 606, the Safe Place to Learn Act, which is currently pending in the California Senate Education Committee, would require each school district in the state to establish and publicize an antidiscrimination and anti-harassment policy that prohibits discrimination and harassment based on specified characteristics including actual or perceived gender identity and sexual orientation. The ACLU's California affiliates support the bill, which requires a district to take specified actions to increase the awareness of, prevent, and ensure appropriate responses to incidents of discrimination and harassment based on those protected characteristics.

The ACLU's California affiliates opposed a bill, AB 349, which would have prohibited certain types of sexual instruction in California. The bill would have prohibited education regarding HIV/AIDS, "homosexuality," masturbation, and the domestic partnership law, and prohibited counseling of pupils in kindergarten to the sixth grade. Additionally, the bill would have required schools to get written permission from parents or guardians before providing such instruction or counseling for students in grades seven to twelve. AB 349 failed.

AB 2311 would have amended an existing law that prohibits a teacher from advocating or teaching communism to include the prohibition of advocating or

■ **Student journalists at East Bakersfield High School in California speak out after their student newspaper was censored for discussing LGBT issues.**

teaching of socialism, humanism, or "homosexuality" in public education. The ACLU's California affiliates opposed this bill, which was defeated in committee.

AB 2891 would have prohibited questions related to gender or sexual orientation on school health surveys without first obtaining a parent's permission. The bill would also limit the ability of schools to gather information on students' sexual orientation, which could play an important role in health education and prevention. The ACLU's California affiliates opposed this bill, which failed.

COLORADO

A group of high school students at Palmer High in Colorado Springs started a gay-straight alliance in January 2003, but school authorities repeatedly refused to recognize the club. Without recognition, the GSA was prohibited from meeting on school property on the same terms as other student groups, from posting club-related information at the school, from using the public address system to make announcements, and from being included in the school yearbook. The ACLU of Colorado filed *Palmer High School Gay/Straight Alliance v. Colorado Springs School District* on the students' behalf in federal court. As a result of this case, Palmer High School agreed to treat the GSA the same as all other student groups. The ACLU of Colorado continues to monitor the school's compliance with the agreement.

FLORIDA

For years, students at Colonial High School in Orlando faced resistance from school officials when they attempted to form a gay-straight alliance. After teacher Lance Rouch agreed to sponsor and supported the students' efforts to form the GSA, he was informed that despite his exemplary professional record his contract would not be renewed for the following year. The ACLU of Florida wrote letters to the school district and spoke at a school board meeting to protest the decision not to renew Rouch's contract. Rouch was ultimately rehired but transferred to a different school.

The ACLU of Florida lobbied in favor of LGBT-inclusive anti-harassment legislation and lobbied against a separate anti-harassment bill that failed to prohibit the harassment of LGBT students in express terms and prohibited districts from adopting more protective policies. Ultimately, the state legislature passed a bill that did not specifically ban the harassment of LGBT students but permitted districts to adopt more protective policies.

When parents submitted petitions objecting to the existence of gay-straight alliances in Hillsborough County schools, the Hillsborough County School Board convened an Extracurricular Clubs Task Force to evaluate the school board's policy on student organizations. The ACLU of Florida lobbied the school board and the task force urging them to comply with their federal legal obligation not to discriminate in their treatment of student organizations. The task force has recommended that the school board amend its policy to require permission slips for students to join any extracurricular organizations. This recommendation is being debated, with the ACLU advocating against it as a violation of students' free speech and association rights.

GEORGIA

In January 2005, a group of White County High School students attempted to organize a gay-straight alliance. Federal law mandates that, where a public secondary school plays host to extra-curricular clubs, it must allow a gay-straight alliance to meet. To deny the students their right to form the gay-straight alliance, the school officially discontinued all extracurricular clubs. Because the school allowed extracurricular clubs to continue to meet despite its official policy, the ACLU of Georgia, in collaboration with the Project, filed *White County High School P.R.I.D.E. v. White County School District* in federal district court on behalf of the gay-straight alliance, as well as individual students who had suffered harassment and censorship on account of their sexual orientation. In July 2006, the court issued a permanent injunction requiring the school to allow the gay-straight alliance to meet.

Bills were introduced into the state legislature that would have required parental permission for student participation in extracurricular activities – a so-called "opt-in" requirement. They were intended to discourage students from joining gay-straight alliances. Working with teacher groups, the ACLU of Georgia succeeded in improving the bills, which were ultimately enacted into law, to provide for only an "opt-out" requirement under which a parent may only opt a student out of an extracurricular activity by informing the school of his or her desire in writing.

HAWAII

Three teenagers faced relentless anti-gay and anti-transgender abuse and harassment from both their peers and the staff at the Hawaii Youth Correctional Facility (HYCF). The ACLU of Hawaii and the Project sued HYCF in federal court in *R.G., et al. v. Koller, et al.*, the first case in the country to challenge anti-LGBT conditions in a juvenile facility. In February, a federal judge agreed with the ACLU that conditions at HYCF are dangerous, that harassment is pervasive, and that the facility is "in a state of chaos." HYCF ultimately agreed to settle the lawsuit. As part of the settlement, the state of Hawaii will cover the costs of a court-appointed consultant to train staff, help HYCF craft new policies and procedures that will help protect LGBT youth from harm, and create a functioning grievance system for wards who need to report abuse.

IOWA

The ACLU of Iowa lobbied in support of proposed legislation that would require Iowa schools to adopt anti-harassment policies expressly forbidding the harassment of LGBT students. The ACLU also encouraged its legislative

email activists to contact their representatives to persuade them to support the bill. The bill has yet to make it out of committee.

ILLINOIS

SB 2267 would have created a grant program administered by the Illinois Department of Human Services for school districts that wish to provide comprehensive sex education in cooperation with community-based organizations. The program would have provided funding for sex education programs that include information about the proper use of contraceptives to reduce the risk of transmitting HIV/AIDS and that develop healthy attitudes about sexual orientation and gender roles, among other requirements. The affiliate lobbied for the bill, which passed the House but wasn't called for a vote in the Senate.

The ACLU of Illinois worked as part of a coalition to get the Chicago Public School Board to pass a comprehensive sex education policy that requires instruction "on transmission and the prevention of . . . HIV, through the use of medically recommended protective/barrier methods," and retain it in the face of complaints from some Chicago residents.

KENTUCKY

In 2003, the ACLU brought a lawsuit on behalf of students who wanted to form a GSA club at Boyd County High School. The ACLU won, and the Boyd County Board of Education agreed to enact anti-harassment policies and conduct mandatory student trainings. However, the school board failed to develop an appropriate training for all students to attend. After negotiations with the Board, the ACLU returned to court to seek enforcement of the initial agreement in *Boyd County High School Gay Straight Alliance v. Board of Education*. The Project and the ACLU of Kentucky intervened in that lawsuit, *Morrison v. Boyd County Board of Education*, on behalf of five students in the original GSA, and one parent of a student who wanted to have an anti-harassment training at the school. In February 2005, the Alliance Defense Fund filed a lawsuit to shut down the anti-harassment trainings aimed at reducing anti-gay harassment. The plaintiffs alleged that the trainings, which were required by an agreement reached in *Morrison v. Boyd County Board of Education*, violated students' freedom of religion. In February 2006, a federal judge ruled that there is no religious right to opt out of school trainings aimed at reducing anti-gay harassment.

■ **Rosa Villasenor, now 18 and graduated, led her fellow students on a successful campaign against LGBT harassment in her California high school.**

LOUISIANA

After the principal of Denham Springs High School in Livingston Parish announced that same-sex couples would not be allowed at the prom, a concerned student at the school contacted the ACLU of Louisiana. After consulting with the Project, the affiliate sent a demand letter to the principal. Soon after, the principal contacted the ACLU of Louisiana and promised that the school would welcome same-sex couples at the prom.

The ACLU of Louisiana, in collaboration with ACLU college chapters at the University of New Orleans and Loyola University as well as Planned Parenthood, presented a daylong workshop to African-American students ages 12 to 17 from eastern New Orleans. The students, who had been identified as leaders in their community, explored issues of LGBT rights and were taught important skills such as writing letters and petitions to legislators, organizing protests, and engaging with the media. Students designed action plans that included creating gay-straight alliances at local high schools; establishing monthly reproductive freedom sex education parties where information about birth control options and reproductive health would be dis-

■ *left* **These t-shirts with the slogan "Gay? Fine by me." were banned by school officials in Alabama.**

■ *above* **"Know Your Rights" palm cards, key outreach tools in the Project's Youth & Schools program are being passed around in public schools across the country. The Project partnered with GLSEN to help distribute over 100,000 cards in as many public schools as possible.**

tributed; and forming the youth-run Cultural Welcome Committee to orient new neighbors and foster understanding, exchange, and friendship between the increasing number of Vietnamese families and the established residents in the traditionally African-American neighborhood.

To a large and receptive audience at Louisiana State University, the ACLU of Louisiana hosted a film screening of *The Education of Shelby Knox*, a film about gay-straight alliances in schools and comprehensive sex education for all students, followed by a discussion of LGBT rights and reproductive freedom. The screening and discussion were part of the ACLU of Louisiana's campaign to organize undergraduate chapters of the ACLU at local universities and colleges in order to reach out to the next generation of activists. A similarly successful screening and discussion was held during the New Orleans International Human Rights Film Festival.

MAINE

The Maine Civil Liberties Union's Southern Maine Student Civil Liberties Conference this year featured a workshop lead by Outright titled, "You Have the Right NOT to Remain Silent: Examining equality for ALL students regardless of sexual orientation."

MASSACHUSETTS

The ACLU of Massachusetts is working with the Public Safety and Education Committees to create a program for schools to develop rules and penalties for bullying, to train faculty in creating a supportive anti-bullying atmosphere at school, and to report bullying. The bill remains in committee awaiting a review before coming to the floor.

The ACLU of Massachusetts has been working to require that schools throughout the state teach comprehensive health education, including anti-violence and sexuality components. The bill is a positive response to lobbying from other groups for anti-gay and abstinence-only components in health education. The House has refused, in its budget, to take abstinence-only funds from the federal government and the ACLU of Massachusetts is working to ensure that the Senate does the same. The Education Committee has referred all of the bills on these subjects to "a study," effectively killing them.

The ACLU of Massachusetts has filed a friend-of-the-court brief in *Parker v. Town of Lexington*, a federal court case in which four parents have demanded that the Lexington public schools give them prior notice of any school discussion of families headed by same-sex couples, marriage by same-sex couples, or even the very existence of gay people. The parents claim that not notifying them in advance of such discussions violates their religious freedom. The ACLU

■ Kerry Pacer, Coretta Scott King, Lindsay Pacer, and Charlene Hammersen were presented with awards at the ACLU of Georgia's 2005 Bill of Rights Awards Dinner. The late Mrs. King, in one of her last public appearances, was honored with the affiliate's National Civil Liberties award. The young women, White County High School students, were recognized with Student Civil Liberties awards for their efforts to create a Gay-Straight Alliance.

takes the position that the Constitution does not require that parents get notice whenever schools decide to teach about diversity, tolerance, and equality.

MICHIGAN

The ACLU of Michigan helped draft an LGBT-inclusive anti-bullying bill that would require school districts to establish policies containing a definition of harassment, consequences for students violating harassment policies, and procedures for investigating complaints. The legislation would also require that school district anti-harassment policies protect against harassment based on sexual orientation and gender identity and expression. The ACLU engaged in public education efforts at Pride-related events to generate support for the bill. Both bills are before the House and Senate Committees on Education, with hearings yet to be scheduled.

MINNESOTA

The ACLU of Minnesota filed *SAGE v. Osseo Area Schools* in federal court on behalf of Straights and Gays for Equality ("SAGE"), a student club at Maple Grove Senior High School, challenging the school's refusal to recognize SAGE and treat it like other student organizations. The court granted the ACLU's preliminary injunction motion, ordering the school to treat SAGE as it does other extracurricular student groups. The school district appealed the district court's order to the appeals court. The appeal is pending.

MISSOURI

The ACLU of Eastern Missouri, along with other community partners, supported students at the 5th Annual Gay-Straight Alliance Convention in St. Louis. The ACLU of Eastern Missouri led "Know Your Rights" workshops. This event coincided with the Gay, Lesbian & Straight Education Network (GLSEN) Day of Silence, which is meant to peacefully bring attention to the pervasive problem of anti-LGBT bullying and harassment in schools.

In October, the ACLU of Eastern Missouri, along with community partners, hosted the First Annual Rainbow Youth Summit. The event brought together LGBT people under the age of 21 from all over the state. They learned how to collaborate and hone advocacy skills, and the summit resulted in the formation of a Rainbow Youth Coalition.

MONTANA

The ACLU of Montana, as part of the Montana Safe Schools Coalition, worked with the Board of Public Education to establish significant protection for LGBT and other vulnerable students. Their efforts resulted in a change to statewide school accreditation standards that now require all school districts to develop and implement a policy to address bullying, intimidation, and harassment of students and school personnel.

NEBRASKA

The school administrators at a Lincoln high school prohibited two students—one transgender, the other a straight male ally—from wearing skirts and kilts to graduation. After the ACLU of Nebraska threatened a lawsuit, the school backed down and permitted students to wear skirts and kilts regardless of their gender.

The ACLU of Nebraska lobbied in favor of proposed legislation in the Nebraska Legislature that would have required all schools to adopt anti-bullying policies and would have included sexual orientation and gender identity among the categories of protected classes. While the bill received committee approval, it did not reach the floor for a full debate before the session ended.

Representatives from the ACLU of Nebraska gave speeches and distributed materials on safe schools and bullying issues facing LGBT students at a variety of venues, including college education courses, churches, and PFLAG meetings.

NEW JERSEY

Michelle Geissel, a student in 11th grade at Bridgeton High School, was sent home for wearing a t-shirt that said "I [heart] lesbians" despite the fact that other girls were able to wear "I [heart] boys" t-shirts. Geissel contacted the ACLU of New Jersey to complain of the discrimination, and the ACLU sent the school a letter pointing out that her rights to freedom of expression and equal treatment were being violated. The school subsequently agreed that Geissel could wear the shirt without being disciplined.

Michael Coviello, a senior at Hasbrouck Heights High School, was disciplined for wearing skirts and dresses to school in protest of a no-shorts policy. He contacted the ACLU of New Jersey, which advocated on his behalf, arguing that the school was engaging in gender discrimination and infringing on his right to free expression. The school eventually agreed to allow Coviello to wear skirts and dresses to school.

L.W., a public school student in New Jersey, was subjected to anti-gay peer harassment and bullying based on his perceived sexual orientation. The ACLU of New Jersey argued as a friend-of-the-court on behalf of several child advocacy organizations in *L.W. v. Toms River Regional Schools Board of Education*, urging the appellate court to interpret New Jersey's Law Against Discrimination to apply to student-on-student bias-based harassment. The appellate court ruled in L.W.'s favor, holding that schools may be liable for permitting such harassment. The case has been appealed to the New Jersey Supreme Court, where decision is pending.

NEW MEXICO

The basketball coach of a rural New Mexico high school gave Bible verses to a lesbian player and refused to permit her (and only her) to sign herself off the team bus during trips. In February 2006, the ACLU of New Mexico and Equality New Mexico sent a demand letter to the school. The school immediately agreed to cease its arbitrary sign-off policy and counseled the coach on his misconduct. A local essay contest asked students to argue that "preserving marriage between men and women is vital to society" and to discuss "why unborn children merit respect and protection." Students in a sophomore English class at Piedra Vista High School in Farmington, New Mexico, were required to participate in the contest as a homework assignment. After an unsuccessful attempt to resolve the issue with the principal, the ACLU of New Mexico joined NARAL and Equality New Mexico in a public protest of making such a slanted essay contest mandatory. As a result, the school agreed to no longer incorporate such essay contests into its curriculum.

NEW YORK

The NYCLU has issued legislative memoranda in support of the Dignity for All Students Act and has provided testimony on how harassment should be defined by the law to the Assembly Standing Committee on Education. Working with the lead sponsor of the bill, the NYCLU helped craft language that balances the legislative objective of banning discrimination based on categories such as students' sexual orientation while still protecting their rights of speech and free expression. The NYCLU also helped to get a similar bill passed in the New York City Council, and now plans to keep watch, and fight if necessary, to ensure that Mayor Bloomberg enforces the bill.

■ **Zach Hust's t-shirt caught the ire of Ohio school officials who demanded he take it off, but protests from fellow students and intervention by the ACLU restored his right to free expression.**

NORTH CAROLINA

In 2005, the ACLU of North Carolina helped a group of high school students in Rowan County start a gay-straight alliance club and provided students statewide with information about their rights. The school board passed a motion in the spring 2006 instructing its superintendent and the school district's attorney to draft a policy that would ban the GSA. The ACLU spoke out against this discriminatory policy in the press and wrote letters to every high school principal in the district informing them of their legal obligation to treat student groups equally. In August, the board enacted a student club policy prohibiting clubs that are "sex-based" or are based on "sexual groupings." The GSA was denied recognition based on this policy, and the ACLU is considering bringing a lawsuit on behalf of GSA members.

OHIO

Seventy participants from ten colleges from across the state attended the ACLU of Ohio's second Campus Connection Conference for LGBT college students, gay-straight alliances, and LGBT allies at Wright State University in Dayton. The conference was co-sponsored by Wright State's ACLU club and Rainbow Alliance.

OKLAHOMA

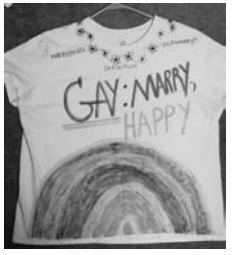
HB 2158 would have denied state funding to public libraries that refuse to place children's books addressing LGBT issues into segregated sections that may be accessed only by adults. The ACLU of Oklahoma lobbied to have the bill assigned to the Senate Appropriations Committee's Education Subcommittee, which didn't give the bill a hearing.

PENNSYLVANIA

In April 2006, students at State College Area High School encountered resistance from the school administration while preparing for their Day of Silence in support of LGBT youth and their allies. After the ACLU of Pennsylvania contacted the school solicitor and advocated for the students, students were assured that they could wear pins, stickers, and ribbons in support of the Day of Silence without fear of discipline.

The ACLU of Pennsylvania, along with the Bryson Institute of the Attic Youth Center, David M. Hall Associates, and the LEAP-Kids program of the Pennsylvania Bar Association, sponsored the Students' Constitutional Rights Institute, a day of interactive programming on the role of the law in the lives of LGBT people. More than 80 students from gay-straight alliances across Pennsylvania participated in a mock Supreme Court argument based on *Lawrence v. Texas*, learned about the workings of federal courts and their role in civil rights movements from two federal judges, participated in brainstorming discussions about LGBT student issues (drawn from ACLU cases), and discussed rights and different ways to be advocates.

In October 2005 the ACLU of Pennsylvania co-sponsored a screening of *The Education of Shelby Knox*, a documentary film about a young sex education and LGBT rights activist in Texas, for the Pittsburgh International Lesbian and Gay Film Festival. The screening was followed by two presentations. A Planned Parenthood representative discussed abstinence-only programs in and around Pittsburg, while another speaker focused on abstinence-only education's harmful effect on LGBT youth.



■ *left* **The ACLU of Eastern Missouri lead workshops and distributed materials to students from 20 school districts who attended the statewide 4th Annual Gay-Straight Alliance Convention in St. Louis.**

■ *right* **LaStaysha Myers was censored for wearing gay-themed t-shirts in her Missouri high school.**

UTAH

The ACLU of Utah was contacted by a high school student who had been removed from class and told that she had to change her t-shirt. The school administrators claimed that the shirt, which depicted two female symbols side by side, violated the school dress code because it "displayed pride in her sexual orientation." The ACLU of Utah contacted the high school on her behalf and received assurances that, in the future, students would not be asked to change out of similar apparel.

SB 97 was a much-publicized attempt to ban gay-straight alliances in public high schools while still allowing other non-curricular student clubs to meet. The bill's most troubling provision expanded the definition of "human sexuality," one of the non-curricular club topics already prohibited by Utah law, to include "promoting or encouraging self-labeling by students in terms of sexual orientation" and "disclosing attitudes or personal conduct of students or members of their families regarding sexual orientation, attitudes, or belief." The bill failed.

VIRGINIA

A proposed bill in Virginia, HB 1308, would have authorized school boards to prohibit the use of school facilities by any student club or other student group that encourages or promotes sexual activity by unmarried minor students. The ACLU of Virginia opposed this bill, which passed in the House, but died in committee in the Senate.

WASHINGTON

Students at West Valley High School in Yakima, Washington, wanted to form a gay-straight alliance at their school. After following the required procedures and presenting a draft constitution to the student senate, the supervising teacher declared the club "controversial" and said it needed further review by the school board. The ACLU of Washington sent a letter to the principal of the school explaining that the club had a right of equal access regardless of the feelings of the student senate or school board. The principal then agreed that the students could meet on campus. The GSA has since held several successful meetings at West Valley High.

It is harder to discriminate who is in the same boat as

or be fearful of someone

you.

Can 10 Couples Change the World?

BY JOEL P. ENGARDIO

When the "gay marriage" headlines in San Francisco and Massachusetts fueled the image that scared voters in 27 states to ban same-sex unions, the ACLU realized the value of personal stories: educating the public about who same-sex couples really are.

There's the "gay marriage" spectacle we see on the ten o'clock news: kissing lesbians in matching wedding gowns live at City Hall. There's the "gay marriage" threat we hear politicians talking about: banning same-sex unions will save America from itself. Then there's the "gay marriage" reality: thousands of gay and lesbian families, many raising children, living as our neighbors, mowing the lawn, paying taxes, up past midnight frosting another dozen cupcakes for the school bake sale. Yet as productive, as predictable and as common as they are, their unions and families are being harmed by a lack of legal protections every other married couple takes for granted.

Who is telling this story? This year, the ACLU teamed up with Public Interest to introduce America to "10 Couples." Not ten "gay" couples, not ten "gay married" couples. Just ten couples, who love, laugh, cry, have dreams and fears, hardships and celebrations like any couple does. They just happen to be of the same sex. And because they can't get married, they face an extra burden. Like the decorated U.S. Navy veteran who served his country and was forced to leave, because his partner was born in Hong Kong and neither homeland will recognize their relationship. Or the elderly couple who have been together for 50 years, and face separation if they have to move to a nursing home that won't allow unmarried couples to share a room. Not to mention the issues around health care, medical decision-making, ownership of property and adoption of children that threaten the security of all these committed couples.

When the "gay marriage" headlines in San Francisco and Massachusetts fueled the image that scared voters in 26 states to ban same-sex unions, the ACLU realized the value of personal stories: educating the public about who same-sex couples really are. Only when the public meets and gets to know same-sex couples will a reasonable public see more similarities than differences. Reasonable Americans won't support discrimination; they'll understand that same-sex unions don't threaten their own marriages. The ACLU believes a majority of Americans are indeed reasonable people who value fairness and a Constitution that equally protects all its citizens. The inclusion of same-sex couples in that equation depends on how well we tell the story.

The "10 Couples" campaign is our attempt to tangibly demonstrate what we mean by personal stories. Our hope is twofold. We want "10 Couples" to win the hearts of Americans who view these short videos. But we also want "10 Couples" to show others how powerful personal stories can be in changing public opinion. If we are all committed to the concept of quality storytelling in an effective way, together our impact can be magnified.

We now live in the Internet era of Google and YouTube. In designing the "10 Couples" campaign, we felt it was vital that we take advantage of this new technology and make it work for our cause. That's why "10 Couples" is in the form of ten short videos housed on a web site. Visit www.10couples.org and you will be able to watch four-minute films on the lives of each couple. You'll also be able to link to other pages that tell you how to take action and make a difference in your area.

Of course, forwarding and sharing the videos with friends and family is part of the game plan. This is one web site that needs to "go viral" to counter the public's unfounded fears about who we are.

We spent a lot of time finding our "10 Couples." It was important that they illustrate how same-sex couples exist in every social, ethnic, economic

and geographic demographic. We want America to see that these couples look like America in every way. It is harder to discriminate or be fearful of someone who is in the same boat as you.

Many couples answered our call, and it was difficult to narrow the choices down to just ten. We were heartened during the process to see just how many couples in every part of the country were doing the best they can to live the American dream—even when things weren't easy—while at the same time having the courage to stand up for the fair treatment they deserve. We hope many more Americans, gay and straight, are equally moved and inspired when they meet our "10 Couples." ■

Relationships DOCKET

■ *Clients in the Washington affiliate's marriage lawsuit, Pamela Coffey (back) and Valerie Tibbett show their love and enthusiasm at a rally on the steps of the Washington State Supreme Court in Olympia.*

The LGBT Project and ACLU affiliates fought hard—in the courts, legislatures, and on the grassroots level—for marriage and relationship recognition in at least 30 states last year. We argued in state courts for marriage protections for same-sex couples. We won domestic partner health care, pension and benefits for state employees in Alaska, and proceeded with similar cases in other states. And we lobbied legislatures and voters for protections for LGBT relationships, and to stop discriminatory bans on relationship recognition. With the help of the ACLU of Arizona, Arizona became the first state to defeat a proposed constitutional amendment to ban marriage for same-sex couples by popular vote.

ALASKA

In *Alaska Civil Liberties Union v. State of Alaska*, the ACLU of Alaska and the Project won a unanimous ruling requiring Alaska to provide domestic partner health care, pension and other benefits to state employees. The Alaska Supreme Court sent the case back to the trial court to oversee the state's implementation of a domestic partner system. After resisting implementation for many months, the state will begin offering benefits in January 2007.

In response to the Alaska Supreme Court's decision requiring domestic partnership protections for state employees, members of the legislature proposed a constitutional amendment designed to take those protections away. The ACLU of Alaska helped form Alaska Won't Discriminate, a broad-based coalition dedicated to eradicating discrimination against lesbians and gay men in Alaska. The group successfully defeated the proposed constitutional amendment. A state constitutional amendment that reserves marriage itself to opposite-sex couples is already in place.

ARIZONA

The ACLU of Arizona helped defeat a proposed constitutional amendment to ban marriage between people of the same sex. The ACLU of Arizona drafted briefing papers, distributed them at public events, and opposed the initiative.

CALIFORNIA

The California courts once again rebuffed efforts by anti-gay groups to strike down AB 205, California's Domestic Partners Rights and Responsibilities Act. In 2005, the Court of Appeals upheld the landmark law, which was passed by the California Legislature in 2003. AB 205 has provided domestic partners with basic protections and responsibilities including community property, mutual responsibility for debt, parenting rights and obligations such as custody and support, and the ability to claim a partner's body after death. In 2006, the intermediate appeals court in California rejected another challenge to AB 205. The plaintiffs didn't appeal the decision to the California Supreme Court, thereby ending the last challenge to AB 205. The three California ACLU affiliates, along with Lambda Legal and the National Center for Lesbian Rights, represented Equality California and same-sex couples as defendants in *Campaign for Children and Families v. Schwarzenegger.*

The ACLU's California affiliates, along with the National Center for Lesbian Rights and Lambda Legal, are seeking marriage for same-sex couples through the courts. While the case claimed victory at a trial court, an intermediate appeals court ruled against the plaintiffs. The ruling has been appealed to the California Supreme Court, which has agreed to take the case.

AB 849, the Religious Freedom and Civil Marriage Protection Act, would allow same-sex couples in California to marry. The Act would acknowledge that same-sex couples are due equal protection under California law by amending California family code from defining marriage as "a personal relation arising out of a civil contract between a man and a woman" to defining marriage as "a personal relation arising out of a civil contract between two persons." The ACLU's California affiliates strongly supported this bill, which was the first

bill of its kind to pass in a state legislature. Unfortunately Governor Schwarzenegger vetoed the bill.

California legislators in both the Assembly and the Senate have proposed amending the California Constitution to say that only marriage between a man and a woman is valid or recognized in California. The ACLU's California affiliates opposed these anti-marriage constitutional amendments, which would repeal all domestic partnership rights for same-sex couples in California. Both bills failed.

As of January 1, 2005, California state law granted many protections to the same-sex partners of public employees. However, public employees who retired before this date were not explicitly included in the protections of the law. SB 973 allows employees who retired prior to January 1, 2005 to prove that they were in a domestic partnership when they retired, and thus allows them to elect the death benefit of their partner. The ACLU's California affiliates supported SB 973, which passed the legislature and was signed into law.

COLORADO

Same-sex couples in Colorado do not have the same protections and responsibilities under state law as married couples do. The ACLU of Colorado lobbied the legislature to solve this problem. The legislature responded by passing HB 1344, the Colorado Domestic Partnership Benefits and Responsibilities Act, which put the issue of whether to extend the protections and responsibilities of marriage to same-sex domestic partners on the November 2006 ballot. The ACLU supported passage of this amendment, but it narrowly failed at the polls.

Until recently, Boulder had an ordinance that imposed a limitation on the number of non-related occupants in a dwelling. Since Colorado law does not recognize same-sex relationships, this ordinance subjected same-sex couples to housing discrimination. In April 2005, the Boulder Chapter of the ACLU of Colorado, working with Boulder Pride, succeeded in changing the ordinance. As a result of their efforts, the Boulder City council extended equal occupancy rights to registered domestic partners and to couples who have a government-sanctioned civil union or marriage.

CONNECTICUT

With Gay and Lesbian Advocates and Defenders, the Connecticut affiliate has challenged the exclusion of same-sex couples from marriage under Connecticut law. A state trial court ruled against the plaintiff couples in *Kerrigan & Mock v. Department of Public Health* in July 2006. The case is currently on appeal.

FLORIDA

The Project, the ACLU of Florida, and the National Center for Lesbian Rights asked the Florida Supreme Court to invalidate a proposed amendment to the Florida Constitution that would ban marriage and other forms of protections for same-sex couples. Representing six lesbian and gay couples, the American Federation of State, County and Municipal Employees-AFL-CIO, and Equality Florida, we argued that the amendment violated Florida's single-subject rule for ballot measures because it addressed not just marriage but other protections such as civil unions, and that it was misleading to voters. Although the Florida Supreme Court rejected the challenge, the proponents of the initiative failed to garner enough signatures to get it on the 2006 ballot, so the earliest it could be voted on is November 2008.

GEORGIA

In 2004 Georgia voters approved a state constitutional amendment that bans both marriage for same-sex couples and other legal unions between same-sex couples that provide "the benefits of marriage." The ACLU of Georgia, along with Lambda Legal, brought *O'Kelley v. Perdue*, a procedural challenge to the amendment, claiming it violated the single subject rule by presenting voters with two distinct questions about which they could have had divergent opinions. Unfortunately, the Georgia Supreme Court reversed a victory at the trial court level.

■ Dan Furmansky, executive director of Equality Maryland, speaking to members of the press following the oral argument before the Maryland Court of Appeals. Project attorney Ken Choe is at the far left, and clients in the lawsuit are in the background.

IDAHO

For the third year in a row, the ACLU of Idaho testified against a proposed constitutional amendment banning marriage and civil unions for same-sex couples. The proposed amendment, HJR 2, provides that "[a] marriage between a man and a woman is the only domestic legal union that shall be valid or recognized in this state." Despite the ACLU's lobbying against the amendment, this year HJR 2 was approved by the Idaho House and Senate and was approved by the electorate. The ACLU of Idaho engaged in a significant public education campaign aimed at defeating the amendment and organizing the local LGBT community.

ILLINOIS

As a part of the Equal Marriage Illinois Project, a joint effort with Lambda Legal and Equality Illinois, the ACLU of Illinois has helped to set up local groups around Illinois who can work on educating the public about the many ways that lesbian and gay male couples are harmed by denying them access to marriage. The coalition has begun work on developing a new web site, preparing advertisements, and developing written educational materials. The groups have also held town meetings at which lesbian and gay couples, religious leaders, and child welfare experts have talked about marriage.

The ACLU of Illinois provided volunteer support and other assistance to Fair Illinois, a joint project of various LGBT and LGBT-supportive groups in Illinois, which reviewed the petitions gathered by a group seeking to put a non-binding question on the November 2006 ballot that would urge the Illinois General Assembly to pass an amendment limiting marriage to heterosexual couples and barring the recognition of other relationships. The state ultimately found that the groups failed to gather enough valid signatures.

INDIANA

The Indiana legislature passed a constitutional amendment that defines marriage as being between one man and one woman. To amend the state constitution, the proposed amendment must pass two consecutive General Assembly sessions without change before going to voters in 2008. The ACLU of Indiana lobbied and testified in opposition to the amendment in 2005 and is part of a statewide coalition currently working to oppose its passage next year.

IOWA

The ACLU of Iowa will file a friend-of-the-court brief in *Varnum v. Brien* in support of the six Iowa couples challenging a state law that prohibits marriage for same-sex couples. Lambda Legal is representing the couples, who are chal-

lenging the prohibition as violating the due process and equal protection guarantees of the Iowa State Constitution.

MARYLAND

In collaboration with the Project, the ACLU of the National Capital Area, Equality Maryland, and the law firm Rosenberg Martin Funk Greenberg, LLP, the ACLU of Maryland filed *Deane & Polyak v. Conaway* in July 2004 on behalf of nine same-sex couples and a gay man whose partner has died, charging that it is a violation of the state constitution to deny same-sex couples the ability to marry. In January 2006, a state trial court ruled in favor of the lesbian and gay plaintiffs. The court found that denying same-sex couples the ability to marry violates the state constitution's Equal Rights Amendment, which protects against discrimination based on sex. It also found that there is no rational basis for the exclusion of same-sex couples from marriage. An appeal of the ruling is currently pending before Maryland's high court.

The ACLU of Maryland, along with Equality Maryland, successfully fought off two major attempts in the state legislature to propose a state constitutional amendment that would have denied marriage and the legal protections that come with it to thousands of families headed by same-sex couples in Maryland. The first major attempt came with HB 48. The House Judiciary Committee voted unanimously against the bill, after an amendment that would have mandated civil unions was attached to the bill. Supporters of HB 48 showed their true colors in voting against civil unions, after many of them had stated that their concern was only with marriage and that they did not oppose alternative legal protections for same-sex couples. A similar anti-gay marriage bill died in the Senate.

The ACLU of Maryland released a new documentary, *The Heart of the Matter: Maryland's Same-Sex Couples Seek Justice for their Families*, which features three plaintiff couples in the Maryland marriage case. These stories show same-sex couples forming loving households and demonstrate that they and their families suffer real harm on account of their exclusion from marriage. The ACLU of Maryland, in collaboration with the Megaphone Project and Equality Maryland, produced the documentary.

MASSACHUSETTS

The ACLU of Massachusetts defended the municipal clerks of Provincetown and Somerville after Raymond Flynn, a former mayor of Boston, sued them. These clerks were among several who initially issued marriage licenses to out-of-state same-sex couples right after the historic *Goodridge* decision legalizing marriage for same-sex couples in Massachusetts took effect. Flynn sought a declaration that any marriages contracted by nonresident same-sex couples were null and void and asked the court to order municipal clerks to stop issuing marriage licenses to out-of-state gay and lesbian couples. The affiliate asked the court to throw *Flynn v. Johnstone* out, because the clerks were no longer issuing such licenses and Flynn has no personal legal interest at stake in the matter. The motion to dismiss the case is still pending.

The ACLU of Massachusetts also represented 13 city and town clerks who objected to the Attorney General's order barring them from issuing marriage licenses to same-sex couples from out of state who wanted to marry in Massachusetts. The clerks viewed that order as discriminatory because it treats nonresident same-sex couples differently from nonresident heterosexual couples. The order was based on a long-unenforced 1913 law which provided that licenses should not be issued to someone if the marriage would be void in his or her home state. While heterosexual couples only had to sign a form saying they knew of nothing that would make their marriage void at home, the governor would not allow same-sex couples to do the same. The Massachusetts Supreme Judicial Court rejected the clerk's appeal, but sent *Johnstone v. Reilly* back to the trial court, ordering it to determine whether citizens of states that didn't have laws prohibiting same-sex couples from marrying (e.g., Rhode Island) should be issued marriage licenses.

MICHIGAN

In 2004, Michigan voters passed Proposal 2, an amendment to the state constitution that banned the recognition of marriage or other "similar union[s]" for same-sex couples. The ACLU of Michigan filed suit in state court on behalf of public employees seeking a declaration from the court that Proposal 2 does not prohibit public employers from voluntarily offering domestic partner pro-

tections. The ACLU received a favorable decision from the Circuit Court in *National Pride at Work, Inc. v. Granholm*. The decision was appealed to the Court of Appeals, which has yet to issue a ruling.

The ACLU of Michigan worked to educate the LGBT community and its allies regarding the dangers of the proposed Federal Marriage Amendment, which would prohibit marriage and other protections for same-sex couples, and to mobilize them to contact their Senators to express their opposition. Both of Michigan's Senators voted against the Amendment, which died in the Senate on June 7, 2006.

The ACLU of Michigan has engaged in community education and lobbying efforts to oppose a bill that would amend Michigan laws by designating the next of kin who can make funeral and body disposition decisions, even in cases where the person who dies has a will expressing a different wish. The legislation would also prevent those not designated as next of kin from petitioning the court to make such decisions, effectively barring widowed lesbians and gay men from making these critical end-of-life decisions for their partners. The bill passed in the State House and is now in the Senate before the Judiciary Committee.

MINNESOTA

The ACLU of Minnesota lobbied against a bill in the state Senate that would have put a constitutional amendment on the ballot to ban marriage and other protections for same-sex couples. The bill died in committee.

NEBRASKA

In 2000, Nebraska voters amended the state constitution to prohibit marriage and any recognition of same-sex relationships. The Project, the ACLU of Nebraska, and Lambda Legal filed suit in federal court to challenge the constitutionality of the amendment. The district court in *Citizens for Equal Protection v. Bruning* ruled that the amendment was unconstitutional on First Amendment and equal protection grounds. The state appealed the case, and in July 2006 a panel of the appellate court reversed, upholding the amendment. The plaintiffs asked for a rehearing before all of the judges on the appellate court, which was denied.

The ACLU of Nebraska worked to educate the public about relationship protections for same-sex couples. At a conference on LGBT rights held at the University of North Dakota, representatives from the ACLU of Nebraska gave a presentation on the *Citizens for Equal Protection v. Bruning* lawsuit and participated in a discussion on marriage for same-sex couples. Representatives of the ACLU of Nebraska also attended five screenings of a film on *Bruning* by a Nebraska filmmaker where they spoke on panels about the lawsuit and the issue of marriage for same-sex couples. Representatives from the ACLU of Nebraska also gave speeches and debated representatives from Focus on the Family at high schools, colleges, and churches on the issue of marriage for same-sex couples.

The ACLU of Nebraska lobbied in favor of proposed legislation that created the crime of "domestic abuse" and included same-sex partners in the definition of potential victims. After strong debate, the legislature passed the bill.

NEW JERSEY

The ACLU of New Jersey submitted a friend-of-the-court brief in *Lewis v. Harris*, a case filed by Lambda Legal seeking marriage for same-sex couples. The brief argued that the constitutional rights of a minority may not be subjected to a majority vote and constitutional rights cannot be read to exclude particular groups from protection. The brief was joined by several civil rights organizations. The New Jersey Supreme Court ruled that excluding same-sex couples from all the protections that come with marriage is unconstitutional. The court referred the matter to the state legislature, allowing 180 days to either amend existing marriage laws or create some other system to give same-sex couples the same marriage protections under the law. The legislature passed a civil union bill, which was signed into law by Governor John Corzine.

■ James Esseks, LGBT Project litigation director, speaking at a rally in New York City after the New York Court of Appeals ruled that the state could continue to bar same-sex couples from marriage.

NEW YORK

The Project, the New York Civil Liberties Union, and the law firm Paul Weiss Rifkind Wharton & Garrison LLP filed *Samuels & Gallagher, et. al., v. New York Department of Health* in Albany on behalf of couples from throughout New York who wish to marry in the state, asking the court to strike down New York marriage laws because they violate the state constitutional guarantees of equality, liberty, and freedom of speech. The trial judge dismissed the case, and the plaintiffs appealed the decision. In 2006 the highest court in New York ruled against the plaintiffs and upheld the marriage laws. The NYCLU will now focus its efforts lobbying the state legislature to end the discrimination in New York's marriage laws.

The NYCLU represents Patricia Martinez, an employee of Monroe County Community College (MCCC), in her lawsuit against the college for its refusal to extend her same-sex spouse the same health care protections that the different-sex spouses of heterosexual employees receive. Martinez's complaint claims that New York law requires the state to recognize her Canadian marriage and that MCCC's failure to do so constitutes sexual orientation discrimination, but the trial court rejected her claims in a decision handed down in July 2006, based in large part on the decision of the New York Court of Appeals that same-sex couples don't have a right to marry under the New York Constitution. The NYCLU is considering its options in *Martinez v. Monroe County Community College* on appeal.

The Project and the NYCLU filed a friend-of-the-court brief in support of the New York City Council, which passed a law requiring companies bidding on city contracts over $100,000 to extend domestic partner protections to their gay employees just as they offer health care benefits to the spouses of straight employees. New York City Mayor Bloomberg refused to enforce the law. In the brief in *Council of the City of New York v. Bloomberg*, the NYCLU and the Project argued that local governments in New York can legally extend greater protections to their citizens than the State does. However, the New York Court of Appeals ruled that state and federal law preempted the Equal Benefits Ordinance, thus rendering it invalid.

The NYCLU has collaborated with various LGBT and allied organizations to lobby for state legislation to provide marriage for same-sex couples. As part of the statewide advocacy effort, the NYCLU co-sponsored community events in Suffolk, Rochester, and New York City on the eve of the oral arguments in the marriage cases before the Court of Appeals, and helped organize rallies across New York State after the disappointing ruling from the court. The NYCLU has also attended Congressional debriefings regarding lesbian, gay, bisexual, and transgender issues with Congressman Nadler.

The NYCLU has worked in Albany and with legislative allies to tailor the Family Health Care Decisions Act so that it protects the rights of same-sex partners. In an attempt to get the Act passed, the NYCLU has visited legislators, done

press and public education activities, and mobilized members through action alerts to lobby their legislators by email and fax. The Assembly passed a version of the act and delivered it to the Senate in June 2006, where it has been referred to the rules committee.

When the New York City Council was considering the passage of the Local Civil Rights Restorations Act, which adds "partnership status" to categories protected from discrimination under the local human rights law in New York City, the NYCLU testified in support of the act. The amendments passed.

NORTH CAROLINA

A proposed state constitutional amendment in North Carolina would not only bar marriage for lesbian and gay couples, but would also prohibit the state from recognizing civil unions, domestic partnerships, and similar same-sex relationships. The ACLU of North Carolina lobbied against the amendment and, thus far, the bill has not made it out of committee.

Shortly after starting her job as a 911 dispatcher, Debora Hobbs was informed by her employer that North Carolina's 201-year-old law against cohabitation required her to marry her live-in boyfriend, move out of their home, or leave her job. When she was fired after refusing to move out or marry, the ACLU of North Carolina filed suit in state court on her behalf. In 2006 the court ruled that the cohabitation statute violated Hobbs's constitutional right to liberty, citing *Lawrence v. Texas*.

OHIO

In November 2004, Ohio voters approved an amendment to the state constitution banning marriage for same-sex couples or any legal status that "intends to approximate" marriage. Since its passage, unmarried criminal defendants have used the amendment to claim that it's unconstitutional to prosecute them in domestic violence cases because, they say, doing so recognizes a legal status for unmarried couples. The ACLU of Ohio has filed friend-of-the-court briefs in support of the State in several of these cases, arguing against this broad interpretation of the amendment and asserting that domestic violence protection needs to include all household members. The intermediate Ohio appellate courts have split on this issue. One of the cases, *State v. Carswell*, is headed to the Ohio Supreme Court, which will decide the issue once and for all.

PENNSYLVANIA

The ACLU of Pennsylvania joined with other organizations in the Value All Families Coalition in an effort to defeat a proposed amendment to the state constitution that would ban marriage and other protections for same-sex couples. The ACLU lobbied against the amendment in Harrisburg, engaged in grassroots activism throughout the state, and reached out to potential coalition partners and the media. Additionally, the ACLU issued an informational pamphlet for the so-called Marriage Protection Amendment featuring real people who would be hurt by the proposed amendment. The amendment stalled before the end of the legislature's session.

RHODE ISLAND

The Campaign for Marriage Equality, of which the ACLU is a member, once again promoted passage of a bill allowing marriage for same-sex couples. The bill died in committee, but each year the number of co-sponsors on the bill grows.

The Rhode Island General Assembly overwhelmingly approved a bill supported by the ACLU of Rhode Island clarifying that domestic partner health insurance benefits are not taxable income for state income tax purposes, and explicitly entitling state employees and their partners to the protections of COBRA and the state's Family Medical Leave Act. In a separate action, the legislature approved a bill, on which the ACLU lobbied, allowing the domestic partners of police officers or firefighters killed in the line of duty to receive the same death benefits available to other surviving family members.

SOUTH DAKOTA

The ACLU of the Dakotas worked in collaboration with South Dakotans Against Discrimination to prevent the ratification of an amendment to the state constitution that would limit marriage and other forms of legal relationship recognition to a man and a woman. The amendment passed.

TENNESSEE

ACLU of Tennessee v. Darnell, filed in April 2005, challenged a proposed amendment to the Tennessee Constitution that would ban same-sex couples from being able to marry in the state. The ACLU filed the lawsuit on behalf of ACLU members; the Tennessee Equality Project, a statewide lesbian, gay, bisexual and transgender lobbying organization; state legislators; and a number of private citizens. The lawsuit charged that the text of the proposed amendment was not published six months prior to the preceding general election as required by the state constitution, and therefore was invalid. Unfortunately, the state high court ruled that the plaintiffs did not have standing to file the suit and dismissed it.

TEXAS

The ACLU of Texas aggressively fought Proposition 2, an anti-gay ballot measure voted on by the Texas electorate in November 2005. Proposition 2 amended the Texas Constitution to define marriage as the union between "one man and one woman" and to prohibit the recognition of any institution similar to marriage. The ballot measure passed.

UTAH

In September, the mayor of Salt Lake City signed an executive order to extend health and other employment benefits to city employees' same-sex and heterosexual domestic partners. The Utah State Retirement Board, which administers health insurance for government employees, asked a state court for clarification about whether the new anti-gay relationship amendment to the Utah Constitution prohibited Salt Lake City from offering health insurance protections to domestic partners. In November, the ACLU of Utah, the Project, Salt Lake City Police Department employee Dianna Goodliffe, and the local branch of the American Federation of State, County and Municipal Employees filed a friend-of-the-court brief in support of Salt Lake City's executive order, arguing that health insurance is not "substantially equivalent" to marriage and therefore does not violate the amendment. In February, the Salt Lake City Council replaced the Mayor's benefit plan with one that allows unmarried city employees to sign up "adult designees" for health insurance. In addition to domestic partners, such designees could be relatives or roommates. In May, the court found in *Norman v. Anderson* that the City Council's new benefit plan was not in violation of Utah law. Salt Lake City has indicated that it will implement the new benefits plan immediately.

The ACLU of Utah lobbied against HB 327, which would have restricted the definition of "dependent" to an employee's spouse, child, or stepchild; allowed for the extension of benefit plans to non-dependents only through an action by a legislative body, such as a city council; and prohibited cities from putting any public funds toward benefit plans for non-dependents. If passed, HB 327, "Public Employer Benefit Plans," might have caused problems for Salt Lake City's proposal to provide domestic partner benefits for its employees. However, the bill failed.

The ACLU of Utah also lobbied against HB 304, "Voiding Transactions Against Public Policy," an attempt to ban contracts between same-sex couples about such things as property, medical power of attorney, and child custody. The bill failed.

VIRGINIA

The ACLU of Virginia worked to defeat a proposed amendment to the Virginia Constitution that would limit marriage to unions between one man and one woman and would prevent the state from creating or recognizing any status that approximates marriage. The ACLU opposed the original version of the amendment in the legislature because it would have deceptively abridged the language of the amendment, and supported a version of the bill requiring that the entire amendment be printed on the ballot. The bill requiring the full lan-

■ Student volunteers worked with Fair Winsconsin to oppose a constitutional ban on same-sex marriage. Voters approved the measure on November 7, 2006.

guage passed. The ACLU of Virginia also worked to oppose the amendment in the November 2006 election, but the voters approved it.

The ACLU of Virginia supported HB 751, an attempt to repeal the 2004 "Marriage Discrimination Act," that prohibited civil unions, partnership contracts, or other arrangements between persons of the same sex. The bill is still pending in the House Courts of Justice Committee.

WEST VIRGINIA

The ACLU of West Virginia successfully lobbied against a discriminatory proposal to amend the state constitution. If it had been adopted, the amendment's broad language would attack legal protections for gay and lesbian families. Delegate Tim Armistead, a sponsor of this legislative proposal, tried to circumvent the process by attempting to have the amendment discharged onto the House floor for a vote. His maneuver failed by a vote of 35 to 63.

WASHINGTON

Same-sex couples who wish to marry are barred from doing so under Washington State law, depriving same-sex couples of the full array of protections and obligations available to married couples in Washington. In *Castle v. State*, the ACLU of Washington sued on behalf of 11 same-sex couples. Over a strong dissent, the State Supreme Court held that the state could continue to deny same-sex couples the protections of marriage.

WISCONSIN

In *Helgeland v. Dept. of Employee Trust Funds*, the ACLU of Wisconsin and the Project filed suit on behalf of six lesbian state employees and their partners seeking health insurance and other protections available to married heterosexual employees. The Wisconsin Legislature, represented by the Alliance Defense Fund, and several school districts and municipalities sought to intervene in the case, but the trial court rejected their motions and the intermediate appellate court affirmed. The proposed intervenors have sought review by the Wisconsin Supreme Court. Once this issue is resolved, plaintiffs will be able to proceed with their case at the trial court.

A government is only as most disenfranchised cit

just as its treatment of its izens.

Bias Behind Bars: Transgender Inmates Face Discrimination

BY CHRIS HAMPTON

A 2005 report issued by Amnesty International reported several incidents in which correctional staff and police officers have subjected LGBT prisoners to verbal abuse, revealed the sexual orientation or biological sex of LGBT people to other prisoners, and conducted degrading strip searches in front of others.

C.P., a 17-year-old transgender girl, ended up at Hawaii Youth Correctional Facility in February of 2004 after a series of minor run-ins with the law. HYCF, in Oahu, is the only secure detention facility in the state for youth. Although she was first housed in the girls' wing, C.P. says she wasn't allowed to have a bra or any girls' clothes, even though she'd been taking hormones for almost a year at that point and her breasts had already developed. She says staff members threatened to cut off her hair and refused to step in when other wards harassed her. A court found that staff members had called her names like "cupcake," "fruitcake," "twinkle toes," and "fairy" in front of the other wards.

C.P. was released five months after entering HYCF, but she was sent back shortly thereafter when she ran away from her foster home. Not long after that, she was moved to live with the boys in the facility. She says the boys targeted her almost immediately, calling her a "fucking faggot," pulling her hair, throwing things at her, and telling her she should perform oral sex on them. Most of these incidents, a court found, happened in front of HYCF staff who did nothing. Instead of protecting her, C.P. says staff members told her she shouldn't sit with, speak to, look at, or interact with the boys in any way. C.P. felt more isolated and alone than ever.

"I got really lonely and wanted to talk to some of the nicer boys so I kept asking the staff for permission. It was really hard on me to be separated from everyone; I wanted to socialize with some people. The staff always said no," C.P. said afterward. "I was unable to sleep and found myself crying all the time. Some days it was so bad that I wouldn't eat at all. Other days I would stuff myself. I was miserable."

Sadly, C.P.'s treatment by the staff at the youth facility really isn't that uncommon. Although the government is legally required to protect those in its custody from abuse and provide for their medical care, it's all too common for lesbian, gay, bisexual, and transgender people in youth and adult correctional facilities to be targeted on the basis of their sexual orientation and gender identity for mistreatment, abuse, and neglect by correctional staff.

Given the way prisons are portrayed in movies, television, and other media, it probably comes as no surprise that abuse of LGBT people at the hands of police, prison guards, and correctional staff is rampant. A 2005 report issued by Amnesty International reported several incidents in which correctional staff and police officers have subjected LGBT prisoners to verbal abuse, revealed the sexual orientation or biological sex of LGBT people to other prisoners, and conducted degrading strip searches in front of others.

Transgender prisoners and wards are especially singled out for mistreatment. Segregating transgender prisoners and wards based on their biological sex rather than by their gender identity or expression, like C.P. experienced, is widespread. According to testimony given at a 2005 hearing of the National Prison Rape Elimination Commission, 76 out of the 77 incarcerated clients the Sylvia Rivera Law Project served in a three-year period were placed according to their birth gender in the facilities that they were in. Experts agree the practice puts those prisoners at greater risk of abuse from other detainees.

Transgender prisoners are also often denied the hormone medications they need, at great risk to their health. As Dr. Randi Ettner, a clinical and forensic psychologist who specializes in working with transgender people, noted, "Blocking people

from access to hormone treatment after they have been on the treatment could cause life-threatening damage, including hypertension, diabetes, muscle wasting, osteoporosis and potentially even heart failure." Yet in spite of the medical risks and even though the policy of the U.S. Bureau of Prisons is to provide hormones at the level that was maintained prior to incarceration, the Wisconsin legislature passed a bill in December of 2005 that bars prison doctors from deciding the best course of treatment for transgender people by denying them access to any type of hormone therapy or sex reassignment surgery while in state custody.

A month later, prison doctors told Kari Sundstrom and Andrea Fields, who are both serving time and have been on hormone therapy since the 1990's, that their dosage was being halved immediately, would be halved again in 30 days, and terminated entirely 30 days after that. Since the dramatic reduction in her hormone therapy, Sundstrom experienced mood swings, crying fits, hot flashes, bloating, and severe headaches. Having a history of suicidal thoughts, she feared she would become suicidal again because of the reduction in her hormone dosage. Fields experienced depression, nausea, muscle weakness, loss of appetite, increased hair growth, and skin bumps.

In January of 2006, the Project, along with Lambda Legal, filed a federal challenge to the Wisconsin law on behalf of Sundstrom and Fields. And in Hawaii, the Project and the affiliate litigated a federal civil rights lawsuit on behalf of C.P. and two other youth —the first case in the country to specifically address the treatment of lesbian, gay, bisexual, and transgender youth in juvenile facilities. A federal judge issued a preliminary injunction against the facility in February 2006, and the case settled seven months later when the state of Hawaii agreed to pay $625,000 to the three plaintiffs, to their attorneys, and to cover the costs of a court-appointed consultant to train staff, help HYCF craft new policies and procedures that will help protect lesbian, gay, bisexual, and transgender youth from harm, and create a functioning grievance system for wards who need to report abuse.

Through cases like those of C.P., Sundstrom, and Fields, the LGBT Project hopes to continue to protect the rights of lesbian, gay, bisexual, and transgender people who are in government custody. Most prisoners will return to their home communities, and the public interest is ill-served if they return battered in body and spirit and angry at their treatment by society. A government is only as just as its treatment of its most disenfranchised citizens, and the Project is committed to ensuring that all LGBT Americans—including those in our criminal justice system—are treated fairly.

Transgender DOCKET

■ *Diane Schroer, an Army veteran, accepted a position at the Library of Congress, but the job was rescinded because she is transgender.*

The LGBT Project and ACLU affiliates continue in our efforts to end transgender discrimination through litigation and public education. We participated in cases protecting the right of transgender people to change the names and sex designations on identity documents to reflect their gender expression. We lobbied for changes in policies concerning transgender people, as well as for transgender non-discrimination laws at the state and local level. We fought on behalf of transgender people who were fired from their jobs for being transgender.

ARIZONA

The ACLU of Arizona was successful on an administrative request for veteran's benefits for a transgender person. The plaintiff transitioned surgically from male to female in 1969. She married in 1970 and has been married for 36 years. The Department of Veteran's Affairs listed her as single and administered her benefits accordingly, contending that she was the same sex as her husband at the time of marriage and therefore the marriage was invalid. After the ACLU of Arizona sent a letter of inquiry, the department provided the requested benefits.

DISTRICT OF COLUMBIA

The ACLU of the National Capital Area successfully supported an amendment to the D.C. Human Rights Act to make explicit its protection of transgender people against discrimination. The D.C. Human Rights Act now includes gender identity and expression in the list of unlawful grounds for discrimination in employment, education, housing, public accommodations, and dealings with the DC government. The ACLU of the National Capital Area is currently working with the DC Human Rights Commission on draft regulations that will further elaborate on this new provision of the law.

Diane Schroer is a distinguished Army veteran who accepted a job as a terrorism research analyst with the Library of Congress. When Schroer told her future supervisor that she was in the process of gender transition, the Library of Congress rescinded the job offer. In March 2006, the federal district court rejected the government's motion to dismiss *Schroer v. Billington*, and the case has now moved into the discovery phase. The ACLU of the National Capital Area and the Project are representing Schroer in a Title VII sex discrimination case.

MICHIGAN

The ACLU of Michigan engaged in public education work on transgender issues. At a town hall-style meeting on transgender issues, a representative from the ACLU of Michigan served on a panel discussing the problems transgender people encounter when trying to use restrooms. At the Transgender F-to-M Conference in Kalamazoo, a representative from the ACLU of Michigan gave a presentation on the state of the law in Michigan regarding equality for transgender people.

NEW YORK

The NYCLU and the Project represent a transgender client who wishes to legally change his name in *the Matter of the Application of Sarah Rockefeller for Leave to Change Name to Evan Rockefeller*. In July 2006, a state judge in Rochester denied Rockefeller's petition on the ground that he had failed to prove that he has undergone "permanent and completely irreversible" steps to become a man. Advocating on Rockefeller's behalf, the Project and the NYCLU have argued that New York's name change statute requires no such showing, and requiring transgender individuals to disclose personal medical information would violate New York public policy, which protects the privacy of individuals' medical information, as well as state and federal constitutional guarantees.

The Project's lawsuit *Hispanic AIDS Forum v. Estate of Bruno*, originally filed

in 2001, is pending before a trial court. The Hispanic AIDS Forum (HAF) was forced out of its home of 10 years in Queens because other tenants in the building complained about HAF's transgender clients using the restrooms. A state appeals court ruled in 2005 that the state's law against sex discrimination does not require that transgender people be allowed to use the restroom consistent with their gender-identity. The Project continues to litigate the remaining issues in this case, including disability discrimination claims, in the trial court.

The NYCLU has been working with the Sylvia Rivera Law Project, a nationally recognized transgender advocacy organization, on numerous projects and collaborative efforts, including efforts to ensure that transgender people in New York City and New York State can obtain updated birth certificates reflecting their gender, and can access a full range of medical and governmental services throughout New York State.

PENNSYLVANIA

In November 2005, the ACLU of Pennsylvania provided a speaker and a workshop on transgender rights at the first-ever Steel City Gender Conference in Pittsburgh, which focused on transgender issues.

PUERTO RICO

After completing sex-reassignment surgery, Alexandra Delgado Hernandez filed a request to change the sex designation on both her birth certificate and driver's license, which was denied. When both the trial and appellate courts confirmed the denial of the petition, the ACLU of Puerto Rico filed papers in support of Delgado Hernandez's petition for reconsideration by the Puerto Rico Supreme Court. The Supreme Court denied her petition.

The Executive Director of the ACLU of Puerto Rico gave a presentation on the legal issues facing transgender people at an LGBT conference hosted by the Puerto Rico Bar Association. More than 200 lawyers and judges attended the presentation.

UTAH

The ACLU of Utah and the Project filed a friend-of-the-court brief in federal appeals court on behalf of Krystal Etsitty, a former Utah Transit Authority bus driver who was fired shortly after she revealed to her employers that she is transgender. Her employers had received no complaints about her, yet they informed her that she was being fired because they could not determine which restroom she should use while on the job. Etsitty, who identifies and lives as a woman, has legally changed her name from Michael to Krystal, and has changed her Utah driver's license designation from male to female. The transit authority told her that she would be eligible for rehire only after undergoing sex reassignment surgery. Etsitty's lawyers argued in federal court that she was protected by Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on sex, including nonconformity to sex stereotypes. The trial court ruled against her, finding that Title VII did not protect transgender individuals from discrimination. *Etsitty v. Utah Transit Authority* is still pending in the federal appeals court.

VERMONT

The ACLU of Vermont supported a bill that would have added gender identity or expression to the list of protected classes in Vermont's anti-discrimination laws. Both chambers of the legislature passed the bill, but the governor ultimately vetoed it.

WISCONSIN

In 2005, the Wisconsin legislature passed a statute prohibiting the use of state or federal funds to provide hormone therapy or sex reassignment surgery for prisoners in the Wisconsin prison system. Although taking people on hormone therapy off the medications has been shown to have drastic negative health consequences and prison doctors were opposed to the statute, it would discontinue hormone therapy to prisoners who had been taking hormones prior to incarceration. The statute would also prevent the state from starting any inmates on hormones or providing sex reassignment

surgery to any inmate even if a state doctor has found such treatments to be medically necessary. In *Sundstrom, et al. v. Wisconsin Department of Corrections*, the ACLU of Wisconsin, the Project, and Lambda Legal brought a lawsuit on behalf of several transgender prisoners who had been on hormone therapy prior to incarceration, and in 2006 the district court granted a preliminary injunction requiring the Department to continue providing the therapy to them. The ACLU has moved to have the transgender prisoners certified as a class, but the court has yet to rule on that motion.

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Civil Rights Protections Needn't Threaten Religious Freedom

BY ROSE SAXE

Often backed by the support of anti-gay legal organizations like the Alliance Defense Fund, some religious individuals or groups have filed lawsuits arguing that the government cannot enforce laws that protect LGBT people against discrimination.

Lesbian, gay, bisexual and transgender people are gaining increasing protections against all sorts of discrimination—in housing, employment and public accommodations—through state and local laws prohibiting discrimination because of sexual orientation and gender identity. Seventeen states and many more municipalities now have laws protecting LGBT people from discrimination. As we gain these protections, however, we are increasingly facing arguments from our opponents that our freedom from discrimination intrudes on the religious rights of those who have religious objections to LGBT people.

While many religious faiths are inclusive and accepting of LGBT people, not all are, and we recognize that any faith has the right to determine its own guiding principles. Recently, however, religious groups and individuals have claimed that the nondiscrimination policies designed to ensure that LGBT people are not excluded from civic life prejudice those who hold strong religious beliefs about sexual orientation. Often backed by the support of anti-gay legal organizations like the Alliance Defense Fund, some religious individuals or groups have filed lawsuits arguing that the government cannot enforce laws that protect LGBT people against discrimination. While the ACLU is fully committed to protecting the important constitutional principles behind the rights of free speech and freedom of religion, we also work to ensure that our laws fully protect LGBT people from discrimination.

This is not the first time that we've seen tension between deeply held religious beliefs and nondiscrimination laws. Only forty years ago, a restaurant owner in South Carolina argued that his religious beliefs prohibited him from serving African-Americans alongside white customers in his restaurant. He claimed that enforcing the newly enacted federal civil rights laws that prohibited businesses from refusing to serve anyone because of their race would force him to violate his religious beliefs. The court rejected his claim and held that he was not entitled to discriminate, regardless of the reasons for his actions.

Religious beliefs about the proper roles of men and women have also been used by businesses, such as private religious schools, to try to justify paying women less than men, or to justify refusing to offer health insurance to the families of female employees, because of a religious belief that men are supposed to be the heads of household. But when these practices have been challenged, courts have held that our laws guaranteeing men and women equal pay for equal work do not allow this kind of different treatment, even when it's based on religious beliefs.

And in the early years of the HIV epidemic, religious convictions led many to view HIV and AIDS as divine punishment that called for differential treatment. Once more, however, courts generally rejected attempts to justify disability discrimination based on religious convictions.

While these religious beliefs may not be held by many these days, it is important to remember that these convictions about people of color, women, or people living with HIV, for example, were no less deeply held than those that some hold about LGBT people today.

These court decisions show that it generally doesn't matter why someone is denied the opportunities protected by our nondiscrimination laws. Instead, our laws are designed to ensure that all people have an opportunity for inclusion in civic life *regardless* of the reasons that some might have for wanting to exclude them. These basic principles should not be changed just because LGBT people are now the ones targeted for different treatment.

Of course, some circumstances present harder issues. We believe that people have the right to express themselves, even—and especially—when everyone might not agree with what they say. So, for example, when a group of parents argued last year that their children's religious rights had been violated by a public school in Kentucky that adopted a school anti-harassment policy prohibiting any speech that might "insult or stigmatize" another student, we agreed that the policy went too far. But, we insisted that the schools may generally have anti-harassment policies to protect the ability of all kids to learn in a safe environment. We also argued that the school was allowed to require all students to attend a mandatory anti-harassment training designed to ensure the safety of all students regardless of their sexual orientation and gender identity. The court agreed that the fact that some parents had religious objections to the suggestion in the training that it was acceptable for a student to be gay or lesbian did not give them a constitutional right to refuse to permit their kids to attend the training.

As the above cases show, defining the rules and drawing the lines that enable all Americans to enjoy the freedoms guaranteed in the Constitution isn't always easy. Everyone should be free to form their own beliefs, but our democracy would fall apart if everyone were allowed to use their beliefs to justify discrimination against those who don't share those same beliefs. Ultimately those who participate in the public sphere must abide by a set of rules that is respectful to all beliefs while guaranteeing everyone an equal opportunity to participate in society. While this may sometimes cause a tension between the rights of free speech and religion, on the one hand, and equality, on the other hand, resolving this conflict does not require sacrificing our commitment to either. ■

Discrimination

DOCKET

■ *Major Margaret Witt, a decorated flight and operating nurse and Gulf War veteran, was discharged from the U.S. Air Force for being a lesbian. The ACLU of Washington filed a federal lawsuit challenging her dismissal.*

Despite significant gains in recent years, LGBT people continue to face discrimination in employment, housing, public accommodations, and within the criminal justice system. In 2006, the LGBT Project and ACLU affiliates participated in 11 lawsuits aimed at fighting discrimination against LGBT individuals in eight states. We lobbied in support of bills prohibiting discrimination on the basis of sexual orientation and gender identity in 12 statehouses, and supported an amendment to the California Civil Rights Act clarifying that sexual orientation and gender identity are protected categories; the bill passed the California legislature and was signed into law.

CALIFORNIA

Barnes-Wallace et al. v. City of San Diego et al. is a challenge to the City of San Diego's preferential lease agreements with the Boy Scouts of America for use of city park property. It was filed in 2000 on behalf of an agnostic family and a gay family barred from utilizing the city land controlled by the Boy Scouts because of the Scouts' formal exclusion of nonbelievers, gays, and lesbians from its membership. The ACLU settled with the City and prevailed against the Boy Scouts in federal district court. The Boy Scouts appealed, and the case was argued before the federal appeals court on February 14, 2006, where the case awaits a decision.

The three California ACLU affiliates filed a friend-of-the-court brief in June 2006 supporting review of *Benitez v. North Coast Women's Care Medical Group*, a religious exercise/sexual orientation discrimination case. The case involves a lesbian who sought infertility treatment from the defendant doctors. The plaintiff, represented by Lambda Legal, claims the doctors violated California civil rights law by refusing to perform intra-uterine insemination because of her sexual orientation. The doctors alleged that their actions were an exercise of religious beliefs protected by the state constitution, and claimed that their discrimination was legal because it was based on marital status and not sexual orientation. The ACLU seeks clarification from the Court that there is no such free exercise defense to the sort of discrimination alleged in this case. The Court subsequently granted plaintiffs' petition for review. Since the filing of the case, the state legislature has amended state law to confirm that discrimination based on both marital status and sexual orientation is prohibited.

San Diego State University and California State University at Long Beach require student groups who seek "official recognition" not to discriminate on the basis of religion or sexual orientation in accepting members and electing leaders. Every Nation Campus Ministries at San Diego State University and other student groups have refused to comply and have consequently lost benefits, including funding. These groups filed *Every Nation Campus Ministries at San Diego State University, et al. v. Reed et al*, alleging that their constitutional rights to free expression have been violated. The ACLU of San Diego and Imperial County and the ACLU of Southern California have filed a friend-of-the-court brief in support of dismissing the groups' claims, arguing that the groups should remain free to associate and practice their religions as they see fit, on and off campus, but that they have no right to obtain university funding without complying with neutral rules that prohibit discriminatory conduct.

U.S. ex rel Glenn Goodwin v. Old Baldy Council of the Boy Scouts of America, Inc. was filed in July 2002 under the Federal False Claims Act. It charges that the Old Baldy Council of the Boy Scouts fraudulently obtained $15,000 in federal taxpayer funds to sponsor its recruitment activities. The Council signed a certification of compliance with state and federal anti-discrimination laws, despite the Scouts' own rules prohibiting the hiring of (or accepting as youth or adult members) gays and lesbians and people who refuse to swear an oath to God. The trial court dismissed the case, the ACLU of Southern California has appealed, and the case is now awaiting an oral argument date before the federal appeals court.

The ACLU's California affiliates, along with Lambda Legal, filed a friend-of-the-court brief before the California Supreme Court in *Angelucci v. Century Supper Club*. The intermediate appeals court had held that a victim of discrimination prohibited by the Unruh Act and the Gender Tax Repeal Act (collectively, "the Acts") must affirmatively request equal treatment from the business prior to bringing suit. Our brief argued that the Court of Appeal

■ San Francisco Foundation CEO Sandra Hernandez, M.D., honoree Tanya Neiman, Ambassador James Hormel, ACLU Deputy Executive Director Dorothy Ehrlich, and Neiman's partner Brett Mangeles celebrate achievements in LGBT rights. The ACLU of Northern California presented Neiman, Director of the Volunteer Legal Services Program of the Bar Association of San Francisco, with the "On the FrontLine Award" for her contributions in protecting the rights of LGBT people and those living with HIV and AIDS.

wrongfully imposed an additional requirement under the Acts that conflicts with the plain language of the statutes.

After a letter from the ACLU of Southern California, Northwest Airlines changed a discriminatory policy that barred employees' domestic partners from using companion airline tickets readily available to spouses and children. A California man had won a round-trip domestic airfare for himself and a companion at a Northwest holiday party last December. When he tried to redeem the ticket, the airline told him it could only be used by a spouse, another airline employee, or a dependent child, and that Northwest would not recognize his domestic partner of 15 years as a "spouse." The policy clearly violated California's Unruh Civil Rights Act, which "mandates 'full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever' without regard to sexual orientation or marital status."

The ACLU of Northern California and the Project successfully defended blogger Justin Watt's right to parody an anti-gay billboard advertising so-called "reparative" therapy. The original billboard said, "Gay? Unhappy?" and urged people to log on to Exodus International's website. Watt's parody showed the same billboard with the message, "Straight? Unhappy?" and urged people to log on to Gay.com. After Exodus sent Watt a letter threatening to sue him for copyright infringement, the ACLU fired back a letter explaining that Watt had

a legal right to lampoon the billboard under fair use laws, and Exodus backed off. The "ex-gay" organization's attempt to silence Watt's critique backfired, focusing public attention on mainstream mental health and medical groups' denunciation of reparative therapy as ineffective and potentially harmful.

The California legislature amended the California Civil Rights Act (the Unruh Act) to clarify that sexual orientation, gender identity, marital status and familial status are protected categories. AB 1400 also declared that the Legislature intended this list to be illustrative rather than restrictive. The ACLU's California affiliates supported this bill, which passed the legislature and has been signed into law.

California's hate crimes law protects residents from threats or violence on the basis of race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute. While the existing law allowed one year to file a civil action against any person who threatened or assaulted a person in violation of the hate crimes law, the ACLU's California affiliates supported AB 378, which increased the statute of limitations to bring an action to three years.

The Nondiscrimination in State Programs and Activities Act, SB 1441, would add sexual orientation and gender identity to the list of characteristics on which discrimination may not be based in any program or activity that receives funds from the state. The ACLU's California affiliates support this bill, which passed the Senate and is currently awaiting a vote on the Assembly floor.

The ACLU's California affiliates support AB 2800, the Civil Rights Housing Act of 2006, which would amend various housing-related nondiscrimination provisions in California law to make them consistent with the Fair Employment and Housing Act (FEHA). This bill would strengthen parts of the California Code and clarify that people are protected from housing discrimination regardless of their sexual orientation or gender identity. The bill has passed in the Assembly and is awaiting consideration by the Senate Appropriations Committee.

COLORADO

Colorado law does not currently protect LGBT people from employment discrimination. The Colorado ACLU testified and lobbied in favor of SB081, a bill that would have added sexual orientation to the current Colorado employment discrimination laws and would have expanded the definition of "sexual orientation" to include transgender people. The Colorado legislature passed the bill, but the governor later vetoed it.

GEORGIA

In *Sklar v. Clough,* students at the Georgia Institute of Technology challenged, among other things, the public university's sexual orientation-inclusive anti-harassment policy as a violation of their constitutional right to free expression. The ACLU of Georgia, along with the Project, submitted a friend-of-the-court brief in support of neither party, agreeing in part with the students that the anti-harassment policy was overly broad and vague at its margins, but disagreeing with the students that the proper remedy was to prohibit the university from enforcing the policy altogether. The students and the university ultimately settled with respect to the anti-harassment policy.

IDAHO

The ACLU of Idaho met with the mayor of Boise and members of the city council to present information about other communities and corporations who offer protections from discrimination based on gender identity or sexual orientation. The ACLU of Idaho also helped the mayor and members of city council to meet with transgender persons. The city council voted unanimously on April 26, 2006 to revise the city's policy to include protection against employment discrimination based upon gender identity or sexual orientation.

ILLINOIS

The ACLU of Illinois and the Project filed a friend-of-the-court brief in *CLS v. Walker*, in which the Christian Legal Society (CLS) chapter at Southern Illinois University (SIU) sued the university for revoking its status as an official stu-

dent group. SIU had taken away CLS's student group status because the group's eligibility requirements for officers and voting members discriminate on the basis of religion and sexual orientation. The ACLU argued that SIU could uniformly enforce its non-discrimination policy to deny official student group status to organizations such as CLS without violating the First Amendment. The ACLU further contended that the federal appeals court should affirm the trial court's denial of CLS's motion for a preliminary injunction because the evidence was so incomplete that it was impossible to know whether SIU was enforcing its policy uniformly when it denied CLS official student group recognition. The appeals court reversed the district court and ordered it to enter a preliminary injunction for CLS.

LOUISIANA

Bills were introduced in the state legislature that would have made discrimination based on actual or perceived sexual orientation illegal in state employment. This was an attempt to codify an existing executive order that prohibits such discrimination. The ACLU of Louisiana participated in a number of strategy meetings with other LGBT activists in the state and expressed support for the bills to the House and Senate. Both bills passed out of committee, but were defeated on the floor.

MAINE

The Maine Civil Liberties Union has developed an advocacy campaign to support the repeal of the Congressional ban on lesbians and gay men serving in the armed forces. In support of that campaign, it produced an episode of the Maine Freedom Files featuring a gay veteran that was aired on eight public access stations around the state. The MCLU has also worked with a coalition to lobby in support of repealing the discriminatory ban.

MASSACHUSETTS

The ACLU of Massachusetts helped ensure that the First Church of Quincy was able to hang a banner from the front of the church, proclaiming, "People of Faith for Marriage Equality." Several city agencies were poised to deny the church the right to display the banner until the ACLU intervened.

MICHIGAN

The ACLU of Michigan has advocated in favor of proposed state legislation that would amend Michigan's civil rights laws to prohibit discrimination based on sexual orientation and gender identity. The ACLU has distributed informational packets, given presentations, and lobbied the chairs of the House and Senate Judiciary Committees to support the legislation. The bills are still in the House and Senate Judiciary Committees with no hearings scheduled.

The affiliate has also worked to educate the public on the need to amend Michigan's hate crimes laws to include hate crimes based on sexual orientation and gender identity. Both bills have been referred to the House and Senate Judiciary Committees but have not yet received hearings.

The ACLU of Michigan has organized public education efforts and contacted legislators in an effort to defeat two proposed pieces of legislation that would permit health care corporations, HMO's, and health insurance companies to refuse to provide health care services based on "moral" or "religious" grounds, as long as such grounds are stated in the company's articles of incorporation, bylaws, or adopted mission statement. The bills have been referred to the House Committee on Insurance, but no hearing has been scheduled.

MISSOURI

The ACLU of Eastern Missouri was one of 20 cosponsoring organizations for the 2006 LGBT Equality Day. There was record attendance by the LGBT community at the state capital, thanks in part to the ACLU of Eastern Missouri's outreach efforts. Participants advocated for a statewide anti-bullying bill in schools and the Missouri Nondiscrimination Act, which would prohibit discrimination based on sexual orientation and gender identity in housing, employment, and public accommodations. The anti-bullying bill passed, but unfortunately the final version did not include protections specifically for LGBT youth. The Missouri Nondiscrimination Act will be re-filed during the next legislative session.

NEBRASKA

On Valentine's Day, student activists from the University of Nebraska-Lincoln attempted to stage "street theatre" protests against marriage inequality by asking for marriage license applications from the county clerk in Lincoln. When the clerk refused to provide the application forms, the ACLU of Nebraska threatened suit, arguing that under the First Amendment, the provision of a public form should be made to anyone upon request. The clerk's office apologized, and application forms have since been provided to other activists upon request.

A gay prisoner in Nebraska was denied access to gay-themed magazines that the prison falsely claimed were sexually explicit, while heterosexual prisoners were granted access to comparable magazines. After the ACLU of Nebraska threatened to sue, the prison changed its policy and granted the prisoner access to the magazines.

The ACLU of Nebraska lobbied for two proposed bills that would add sexual orientation to the list of protected classes in Nebraska's housing and employment discrimination statutes. The opponents of the housing discrimination bill narrowly defeated it in the state legislature. While the legislature passed the employment discrimination bill, the governor vetoed it.

NEVADA

The ACLU of Nevada persuaded the legislature to pass a bill establishing that it is against Nevada state policy to discriminate in public accommodations on the basis of actual or perceived sexual orientation. However, the bill does not make discrimination illegal and does not explicitly state that victims of discrimination can sue. The ACLU of Nevada intends to lobby the legislature to include explicit language giving victims of discrimination the right to sue under the law.

NEW JERSEY

The ACLU of New Jersey, along with Garden State Equality, requested an investigation into whether police and municipal court practices at Palisades Interstate Park discriminated against gay men. The affiliate and GSE were concerned about allegations that the police targeted gay men and that courts sentenced gay men more harshly than straight people convicted of similar conduct. The ACLU is awaiting the results of the investigation.

NEW MEXICO

The ACLU of New Mexico represents the owners of a gay health club that was raided by the state police for allegedly operating in violation of liquor control laws. The search warrant for the raid stated the police agents were "afraid of sexual assault" at the health club and the raid included SWAT teams and excessive force apparently driven by anti-gay sentiment.

United Way, a philanthropic channel for individuals to fund community organizations of their choice, has refused to admit Albuquerque Gay and Lesbian Pride as a potential recipient of funding. This is despite admitting various other advocacy organizations into its program. Along with the New Mexico Lesbian and Gay Lawyers Association, the ACLU of New Mexico is working to address the situation

NEW YORK

Pre-trial information gathering continues in *Bizzari et al v. Charles T. Sitrin Health Care Center, Inc.*, a discrimination lawsuit on behalf of a Louise Bizzari and Barbara Hackett, a couple from Utica who were kicked out of a wellness program at the Charles T. Sitrin Health Care Center because they are lesbians. Bizzari suffers from severe osteoarthritis and other medical conditions and needs to use the facility's pool to avoid losing her leg.

OKLAHOMA

The Reverend Dr. Lonnie Latham invited another adult man to accompany him to a hotel for consensual sex. Latham did not offer money in exchange. The man was an undercover police officer, and he arrested Latham for soliciting a lewd act. The ACLU of Oklahoma and the Project filed a friend-of-the-court brief to urge the District Court of Oklahoma County to dismiss the

charge against Latham. The ACLU's brief in *State of Oklahoma v. Latham* argued that the charge should be dismissed against Latham because non-commercial sex between consenting adults in private is a constitutionally protected activity under *Lawrence v. Texas*. The ACLU asserted that it is a violation of the Constitution's free speech guarantee for the state to criminalize speech that is merely an invitation to engage in lawful behavior. The court failed to rule on the motion to dismiss but found Latham not guilty.

HB 1746 would have nullified county and municipal policies that prohibit employment discrimination based on sexual orientation. The ACLU of Oklahoma lobbied to have the bill assigned to the Senate Health and Human Resources Committee, which did not give the bill a hearing.

SB 813 would have added sexual orientation as a class protected from hate crimes. In spite of support from the ACLU of Oklahoma, the bill was assigned to the Senate Judiciary Committee, which did not place it on its agenda.

PENNSYLVANIA

In 2002, the city of Allentown passed an ordinance prohibiting discrimination on the basis of sexual orientation and gender identity in employment, housing, and public accommodations. A group of rental property owners and taxpayers, backed by the Alliance Defense Fund, challenged the ordinance in *Hartman v. City of Allentown*, arguing that it violated Pennsylvania law. The ACLU of Pennsylvania, representing a large group of friends of the court, and the Pennsylvania Human Relations Commission asked the court to uphold the ordinance. When the trial court held that the ordinance could not be applied to employers and other businesses, the city appealed, and in 2005 the appellate court reversed, reaffirming the ability of Pennsylvania municipalities to enact strong local anti-discrimination laws.

The ACLU of Pennsylvania worked with other organizations to obtain cosponsors for a bill that would amend the Pennsylvania Human Relations Act to add sexual orientation and gender identity or expression to the categories protected under the Act. The bill was introduced on March 16, 2006, and referred to the Senate Judiciary Committee. No further action has been taken on this legislation.

TENNESSEE

The ACLU of Tennessee successfully lobbied against a bill that would have prohibited state institutions from including sexual orientation as part of the admissions criteria for state universities. In addition, the ACLU continued its legislative advocacy and public awareness campaign to debunk the myth that lesbians and gay men are not good parents. ACLU-TN distributed ACLU's *Too High a Price: The Case Against Restricting Gay Parenting* to targeted legislators, the media, and activists and discussed the issue with a range of civic, school, and social organizations. While the sponsors of the pending anti-gay adoption/ foster care parenting bills did not move the bills in 2006, they promise to return to pursue the initiatives next year. The ACLU also prepared a brochure, "ACLU-TN and the Fight for LGBT Equality," which it plans to distribute widely in an effort to explain the work we have pursued over the last 25 years and the types of attacks that still threaten the LGBT community.

VIRGINIA

The ACLU of Virginia supported a number of proposed laws to provide greater protection for LGBT people throughout the Commonwealth. Specifically, the ACLU supported legislation that would have prohibited sexual orientation discrimination statewide in public employment and housing, and supported a bill to add sexual orientation to the non-discrimination law in Fairfax County. None of these measures passed, but the ACLU of Virginia will continue to work in support of these efforts at the state, county, and local levels.

WASHINGTON

The ACLU of Washington supported a bill that would extend the jurisdiction of the Human Rights Commission to include discrimination based on sexual orientation. They organized phone banks in targeted legislative districts, worked closely with LGBT allies, held an online campaign, and lobbied legislators. The bill passed in the house and senate. The bill is now being challenged by a referendum, which the ACLU of Washington is working to defeat.

Major Margaret Witt was a flight nurse and operating room nurse assigned to

an Air Force base near Tacoma, Washington. During her 18-year career in the Air Force, Witt served in the Persian Gulf, received many medals and commendations, and always had superb evaluations from her superiors. From 1997 to 2003, Witt was in a committed relationship with another woman. In 2004, she was notified that she was under investigation for violating military policy prohibiting service members from intimate relationships with people of the same sex. She was placed on unpaid leave and told she could no longer participate in any military duties, pending formal separation proceedings. The ACLU of Washington filed a federal lawsuit, *Witt v. United States Air Force*, on her behalf, challenging her discharge on the grounds that the investigation violated her constitutional right to privacy and free expression. The Air Force's motion to dismiss was granted by the trial court, and the case is on appeal to the federal appeals court.

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The High Price of Easing HIV Testing Regulations

BY ROSE SAXE, TAMARA LANGE, AND PAUL CATES

Many advocates appear to be interpreting the CDC's recommendations as suggesting that any state laws requiring pre-test counseling of any kind should be eliminated in order to encourage more testing.

Through a well-orchestrated PR campaign, the Centers for Disease Control (CDC) issued new HIV testing recommendations in the fall of 2006 urging doctors to test more people for the disease. While the CDC should be applauded for wanting to test more people for HIV, the new recommendations unnecessarily eliminate critical protections that guarantee that testing remain voluntary and informed.

Although only recommendations, the CDC's guidelines are heavily relied upon by the states, which are responsible for establishing the laws on testing. Since the announcement, we have already seen some states pushing for legislation that does away with long-established laws requiring written consent and pre-test counseling.

It's not surprising that some doctors and health care workers are welcoming what they see as time-saving measures. But testing people without informed consent doesn't ensure that people with HIV get the care they need. A physician's duty to obtain a patient's informed consent before providing medical treatment is not merely a legal formality. Tangible benefits result from the doctor-patient dialogue that the informed consent requirement envisions, including increased trust and, as studies have proven, a greater likelihood that a patient will get the follow-up care they need.

Requiring informed consent is also necessary to make sure that people considering getting tested for HIV have important information about the consequences of testing positive. Unlike high cholesterol or high blood pressure, the government requires mandatory confidential reporting of the names of anyone diagnosed with HIV. If the government is going to collect names and deeply personal information, people tested deserve to know that this information is being collected and how it will be used.

People should also be told that they have the option of getting tested anonymously if they prefer (if this is available in their state).

Equally problematic is the CDC's recommendation that states eliminate pre-test counseling. Many advocates appear to be interpreting the CDC's recommendations as suggesting that any state laws requiring pre-test counseling of any kind should be eliminated in order to encourage more testing. In fact, the CDC recommendations focused on whether a very specific form of pre-test HIV prevention counseling had been proven to make a difference, and they concluded that there was not enough evidence to agree that pre-test counseling for everyone is a good prevention tool.

But in many states, the rules requiring "counseling" simply require doctors to tell patients what an HIV test means, what will be done with the test results, and some basic info about HIV and how it is transmitted. This is the exact same information that the CDC maintains is a necessary component of informed consent. Before providers rush to abandon all counseling, it is very important to examine what kind of information is required under state law.

Without pretest prevention counseling, we lose a critical opportunity to educate people about the disease and how it is spread. The reason people aren't getting tested is not consent requirements or even stigma about testing. People don't get tested because they still don't understand HIV. A recent survey found that 22% of Americans wrongly believe that you can get HIV from sharing a glass of water. And 25 years into the epidemic, people continue to lose jobs and housing because of prejudice. Can we really afford to abandon this chance to help people understand HIV?

The opportunity to educate prior to testing is especially critical when you consider the implications for those who test negative. Most HIV testing screens for antibodies to the virus. These antibodies develop from within a month to up to six months after infection. During this time after initial infection but before developing antibodies, test results will come back negative, but the person will actually have a significantly higher viral load than is typical later, placing his or her sexual partners at higher risk of infection. In fact, studies have estimated that almost half of all HIV transmissions occur during this time when a person with acute HIV infection unknowingly transmits HIV to others. Thus, a person who tests negative during this period needs to know that they may still have HIV, and that testing negative, on its own, is not a form of prevention. Without counseling to explain this critical information, people may unknowingly continue to put themselves and their loved ones at even higher risk.

Early in the epidemic, our government put in place safeguards around HIV testing — informed consent requirements, pre-test counseling, confidentiality — after persistent protests by gay people. As the demographic of the disease shifts to include more women and people of color, why are we abandoning those safeguards? And why is the government so heavily focused on promoting testing, while continuing to fund misleading sex education and refusing to adequately support proven programs, such as needle exchange, that reduce the transmission of HIV in the first place?

Written consent and counseling need not be barriers to HIV testing. Everyone wins when people are able to make informed decisions to protect their health. ■

HIV/AIDS DOCKET

■ *The ACLU of Illinois, the AIDS Foundation and supporters rally at the state capitol to call attention to a number of HIV prevention and AIDS health care bills.*

A quarter-century into the epidemic, the AIDS Project and ACLU affiliates continue to fight for the equal treatment of people living with HIV/AIDS. During the past year we were involved in three lawsuits and lobbied statewide agencies to ensure fair treatment of people with HIV in prison. Not only did we aggressively lobby legislatures in three states on behalf of people with HIV and AIDS, but we also sponsored a bill in the California State Senate. The ACLU continues to advocate for the privacy rights of individuals with HIV/AIDS, and opposed the Centers for Disease Control and Prevention's (CDC) new recommendations regarding the administration of HIV tests, which called for the elimination of written consent and mandatory pre- and post-test counseling—measures that provide a privacy safeguard and an opportunity to impart knowledge necessary to managing life after testing positive.

CALIFORNIA

In response to action taken by the ACLU of Southern California, the state Department of Corrections has reversed its policy excluding HIV-positive inmates from its spousal family visitation program. A married couple wasn't allowed to have family visits even though the wife had offered to sign a release saying she knew of her husband's HIV status. Family visits are typically granted to low-security inmates and are widely regarded as integral to keeping families intact after incarceration. After the ACLU sent a demand letter and a public records act request on behalf of the couple, the DOC and its Office of Legal Affairs concluded that "to deny inmates participation in family visiting with their spouse because they have HIV is discriminatory," and violates United States Supreme Court precedent. The Department also agreed that from now on, it will generally allow inmates with HIV to have family visits with their spouses as long as the spouses sign confidential agreements that they are aware of the inmates' health.

SB 235 would have made it a crime for any person knowingly to expose another to HIV by engaging in unprotected sexual activity, with "willful or wanton disregard for the health of the other person." The ACLU affiliates in California opposed this bill, which failed.

The ACLU's California affiliates supported AB 1217, which would have required comprehensive sexual health education to provide instruction and materials on sex outside of marriage, and on refraining from making and accepting unwanted physical and verbal sexual advances. However, the bill failed.

The ACLU's California affiliates sponsored a bill, SB 1471, that would require community-based organizations that provide sexually transmitted disease prevention education or sexual health education to provide medically accurate, bias-free, and age appropriate information. This bill is currently pending in the California Senate Health Committee.

The ACLU's California affiliates oppose a bill, AB 2383, that would require every person committed to a state prison and some people committed to a state hospital to be given a health screening, including HIV testing, prior to being released from the facility. The bill is pending in the Assembly Appropriations Committee.

DISTRICT OF COLUMBIA

Lorenzo Taylor applied to the United State Foreign Service and was refused employment based on the fact that he was HIV-positive. The ACLU of the National Capital Area and the Project wrote a friend-of-the-court brief in *Taylor v. Rice* on behalf of the American Academy of HIV Medicine, the HIV Medicine Association and the Whitman Walker Clinic. The Court of Appeals for the D.C. Circuit found that the policy of categorically denying employment based on HIV status was a violation the Americans with Disabilities Act.

ILLINOIS

The ACLU of Illinois worked to try to defeat House Bill 4396, a bill that would authorize a police officer, without judicial review, to force someone to be test-

ed for HIV if a doctor has said that the officer could have been exposed to the blood or bodily fluid of the individual. The bill passed the House, but was held in the Senate.

The ACLU of Illinois supported the passage of SB 1001, the African-American HIV/AIDS Response Act, to fund HIV prevention programs for the African-American Communities in Illinois. The bill was passed and signed into law.

MAINE

A middle school in Maine attempted to force one of its students to be tested for HIV after he pricked his finger with a sewing needle in class and his teacher subsequently pricked herself with the same needle. There was no bleeding from either injury, and there was no legitimate reason to believe that the student, a young West Indian immigrant, was HIV-positive. Even though the teacher tested negative for HIV over three months after the incident, she and the school district announced their intention to seek a court order to forcibly test this student for HIV. After the Maine Civil Liberties Union and the Project advocated on behalf of the student and his parents, the school has declined to move forward with legal action.

NEW YORK

The New York Civil Liberties Union has met with Assembly Member Dick Gottfried to present concerns about a proposed New York City Department of Health rule that would diminish the privacy protections afforded HIV testing and reporting.

NYCLU attorneys testified at New York City Department of Health hearings to voice concerns over Commissioner Thomas R. Frieden's planned expansion of HIV testing. The NYCLU has developed a website to highlight the main problems with his plan: the threats to personal privacy and elimination of the pre-testing counseling requirement.

The NYCLU and the Project, along with the HIV Law Project and South Brooklyn Legal Services, sent a demand letter to the New York State Department of Health challenging the legality of emergency HIV regulations that the State first promulgated in Spring 2005, and has continued to reissue on an emergency basis without any meaningful opportunity for public comment and discussion. The letter prompted the state to start a formal notice-and-comment rulemaking to replace the emergency regulations.

The NYCLU also advocated on behalf of People of Color in Crisis (POCC), a New York City-based organization serving the needs of LGBT people of color and those living with HIV/AIDS, who were having difficulty securing permits from the National Parks Service for its annual Pride in the City event at Riis Park. As a result of the NYCLU's assistance, POCC secured the permits that it needed and the event was a great success.

PUERTO RICO

The ACLU of Puerto Rico organized the HIV Working Group, a coalition of HIV advocacy organizations and service providers. The ACLU serves as legal counsel to the organizations in the Working Group and has engaged in public education on the dangers of reducing public funding for HIV services.

RHODE ISLAND

As a condition of receiving significant federal funding for HIV/AIDS prevention and treatment, states are required to report to the federal government the numbers of people who are diagnosed as HIV-positive and who have AIDS. In order to gather this information, Rhode Island previously required health care providers to report the names of those who were diagnosed with AIDS to the state health department, but also required doctors to report new HIV diagnoses using a unique identifier system that protected patient privacy. States have now been informed by the federal government that they must begin collecting the names of HIV-positive patients, in addition to those who have an AIDS diagnosis. When the Rhode Island Department of Health introduced legislation to implement this new mandate, the ACLU of Rhode Island and the Project worked with the department to ensure that strong safeguards were included in the revised law. Among other things, the new statute guarantees that HIV testing remains fully voluntary by requiring specific informed consent

■ **Hair Tech Beauty College in Paragould, Arkansas *(shown in above photo)* expelled student Alan Dugas out of an irrational fear of HIV transmission. At the Project's urging, a state agency clarified that a person living with HIV/AIDS poses no threat in cosmetology school or practice.**

for HIV testing, ensures that anonymous testing will remain available in Rhode Island, provides that any name reporting is prospective only, and provides penalties for any breaches of confidentiality.

The ACLU of Rhode Island is co-counsel in an employment discrimination case on behalf of a man who was terminated from his job in a donut shop after his employer learned that he was gay and HIV-positive. The Rhode Island Commission for Human Rights found probable cause to believe the employer violated the state's Fair Employment Practices Act, and the case is now pending in Rhode Island Superior Court.

About Us

THE ACLU

The American Civil Liberties Union is headquartered in New York City and coordinates with independent affiliate offices in 47 states and the District of Columbia (California has three affiliates in San Francisco, Los Angeles and San Diego/Imperial Counties). The national office maintains chapters in North and South Dakota, Wyoming and Puerto Rico. Most of the direct legal, legislative and public education work is handled by the affiliates. As experts in their own backyards, this report illustrates the breadth of affiliates' efforts in lobbying, litigating and advocating on behalf of LGBT and HIV/AIDS issues.

The affiliates and the national ACLU share the same commitment to defend the basic rights guaranteed to all by the federal constitution, especially the Bill of Rights. National staff members consult with affiliates in setting priorities and developing strategies, managing cases and campaigns, and taking the lead on important national lawsuits. The affiliates operate with their own boards of directors and staff, litigation docket, local and state legislative lobbying, and public education campaigns. The state affiliates are linked to the national by electing the governing board of the national ACLU and sharing financial support with the headquarters. People who join the national ACLU automatically become members of a state affiliate. Donations are shared between the local affiliate and national.

THE PROJECT

The Lesbian Gay Bisexual Transgender & AIDS Project is part of the ACLU's Legal Department. Our staff are specialists in constitutional law and civil rights who undertake impact litigation to change the law, advocacy to improve public policy, and outreach to move public opinion on the rights of LGBT people and persons living with HIV and AIDS. Nine staff lawyers monitor legal work regionally. The public education team ensures that our litigation informs and impacts the general public, and the development team helps raise the necessary funds to make our work possible. A federal legislation director manages relevant bills and lobbying in Washington, D.C. The senior strategist coordinates long range development and public education plans.

Five affiliates (Illinois, Florida, Michigan, Northern California and Tennessee) have staff and attorneys focused on LGBT rights, and several others have activist member/volunteer groups working on LGBT rights and AIDS concerns (Delaware, Eastern Missouri, Kansas and Western Missouri, Ohio, Pennsylvania, Nevada, Southern and Northern California, and Washington).

YOUR SUPPORT

The LGBT & AIDS Project works in your state and across the country, and we rely on you to ensure our success in 2006 and beyond. If you would like to contribute, please send a check to:

ACLU Foundation – LGBT
125 Broad Street, 18th Floor
New York, NY 10004
212-549-2627
aclu.org/lgbtdonate

Staff

■ *back row: L-R* (Back row: L-R) Matt Coles, Eric Eagan, Leslie Cooper, Rose Saxe, Paul Cates, Nick Wunder, and Nora Ranney; *middle row: L-R* Maritsa Cholmondeley, Sharon McGowan, Genie Cortez, Chris Hampton, Marissa Gonzalez, Robert Nakatani, and Ken Choe; *front row: L-R* Leigh Thompson, Michael Mitchell, James Esseks, and Lexi Adams.

LEXI ADAMS is the major gifts officer. She joined the staff in 2002 to work on our development and public education programs.

CHRIS ANDERS is the federal policy director and legislative counsel to the ACLU's Washington National Office, responsible for advancing the Project's mission on Capitol Hill and in the White House.

PAUL CATES is the public education director. A former attorney for the New York City Legal Aid Society, he came to the ACLU after working at Pro-Media Communications.

KEN CHOE, senior staff attorney, has been with the Project since 2000. Before joining the ACLU, he was a political appointee in the Clinton administration focusing on health care law and policy.

MARITSA CHOLMONDELEY is a grant writer with the ACLU National Office's Development Department. Before coming to the ACLU, she worked in development for the East Harlem School, a middle school for children from low-income families.

ALEX CLEGHORN is a staff attorney, and has been a member of the Board of Directors for the Transgender Law Center since 2005. Prior to joining the Project in December 2006, Alex worked for California Indian Legal Services and also worked in private practice, representing the interests of Native Americans.

MATTHEW COLES has been director of the Project since 1995. Previously, he was a staff attorney at the ACLU of Northern California.

LESLIE COOPER, senior staff attorney, joined the Project in 1998. She was an attorney at Robinson Silverman Pearce Aronsohn & Berman LLP in New York.

GENIE CORTEZ is the development director. Prior to joining us, she worked as a senior director for Changing Our World, Inc., a national fundraising and philanthropic services consulting firm.

ERIC EAGAN is a public education associate, providing support for the Project's marriage cases and initiatives. Eric joined the Project in 2006 after working as an account executive in the healthcare practice at Fleishman-Hillard, Inc., a global public relations firm.

JOEL ENGARDIO is a consultant who serves as a public education specialist for public education and marriage issues. Before working with the Project, he was a writer at the Los Angeles Times and San Francisco Weekly and an associate producer at ABC News.

JAMES ESSEKS is the Project's litigation director. James was a partner at New York's Vladeck, Waldman, Elias & Engelhard, P.C.

MARISSA GONZALEZ is the paralegal. She joined the Project after working as a case manager for Safe Horizon.

CHRIS HAMPTON is the public education associate. Previously, she worked for Lambda Legal and the University of Kansas and was a reporter and editor for a gay newspaper.

JOHN A. KNIGHT is a senior staff attorney based in Chicago and also the Director of the Lesbian and Gay Rights Project at the ACLU of Illinois. Previously, he was a trial attorney with the Equal Employment Opportunity Commission.

TAMARA LANGE is a senior staff attorney, based in San Francisco, who splits her time with the Project and the ACLU of Northern California. She joined the Project after working at Caldwell, Leslie, Newcombe & Pettit in Los Angeles and clerking in federal trial and appellate courts.

SHARON MCGOWAN started as a staff attorney in August 2004 and was previously the ACLU's Brennan First Amendment Fellow. She previously worked for Jenner & Block and was part of the litigation team on Lawrence v. Texas.

MICHAEL MITCHELL is the Marriage Campaign manager. He joined the Project after serving four years as Executive Director of Equality Utah, the statewide LGBT organization.

ROBERT NAKATANI is senior strategist. Previously, he was the Project's Development Director for seven years.

NORA RANNEY is deputy campaign manager for the Marriage Campaign. Nora joined the Projected after working as a policy analyst for the New York City Council Speaker, and previously worked with the U.S. Department of Health and Human Services and several issue-based and candidate campaigns.

ROSE SAXE started as a staff attorney in the fall of 2004. Before joining the ACLU, she was an associate at Rosen Preminger & Bloom LLP, a small firm in New York City specializing in employee benefits law.

MICHAEL SMITH is a public education strategist, crafting compelling stories to shape public opinion and working to increase dialogue within the African American community on LGBT issues. Prior to joining the Project, Michael produced television programming for PBS, Court TV and A&E.

CHRISTINE SUN joined the Project and the ACLU of Southern California as a staff attorney in 2005. Previously, she worked on LGBT rights issues with the ACLU of Northern California and was an associate at Keker & Van Nest, LLP.

LEIGH THOMPSON is the staff assistant for the Project. He moved to New York from Omaha, Nebraska, and is pursuing a master's degree at New York University. He is also a transgender rights advocate and community organizer.

NICK WUNDER is a public education coordinator. Nick joined the Project in 2006 after working as an editorial associate at the Social Science Research Council.

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