



HUMAN  
RIGHTS  
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## LAWbriefs

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*LAWbriefs is a public education publication of the Human Rights Campaign Foundation, highlighting recent developments in sexual orientation and gender identity law. Inclusion of cases and legislative actions in LAWbriefs should not be construed to indicate involvement by the Human Rights Campaign or the Human Rights Campaign Foundation unless otherwise noted. HRC and the HRC Foundation applaud the work of the many national, state and local litigation, legislative, policy and advocacy organizations working for equal rights for lesbian, gay, bisexual and transgender people.*

*(NOTE: Production of LAWBriefs was on hiatus during 2007. This publication covers primarily the period between September 2007 and September 2008 with the exception of a few key developments in early 2007)*

### RECENT DEVELOPMENTS IN SEXUAL ORIENTATION & GENDER IDENTITY LAW

#### MARRIAGE

##### **Arizona Again Puts Rights of Gay and Lesbian Couples Up to a Vote.**

Led by state Sen. Ron Gould (R) and Rep. Eddie Farnsworth (R), the Arizona Legislature has put a constitutional amendment proposal on the November 2008 ballot that would ban marriage between people of the same sex. With a vote of 33-25 in the state House and 16-4 in the state Senate, the amendment will go on the ballot. A similar, but broader, amendment was rejected by Arizona voters in 2006. Passage of the amendment is supported by presidential candidate Sen. John McCain (R-Ariz.). *S.C.R. 1042, 48<sup>th</sup> Legislature, 2<sup>nd</sup> Regular Session (Ariz. 2008).*

##### **California Recognizes Marriage Rights for Gay and Lesbian Couples; Opponents Put Amendment on Ballot to Overturn California Supreme**

**Court Ruling.** Despite previous successful attempts by the California state Legislature to pass marriage equality legislation, which were repeatedly vetoed by Gov. Arnold Schwarzenegger (R), the latest being the veto of AB 43 in October 2007, California became the second state to legally marry gay and lesbian couples. On May 15, 2008, the Supreme Court of California ruled in *In re Marriage Cases* that statutes limiting marriage to different-sex couples are unconstitutional and can not survive strict scrutiny. In an effort to overturn this decision, opponents of marriage equality have successfully put on the Nov. 4, 2008, general election ballot an initiative (Proposition 8) to define marriage as a union between a man and a woman. *In re Marriage Cases*, 43 Cal.4th 757 (2008).

**Connecticut Supreme Court Rules in Favor of Marriage Equality.** In October 2008, the Connecticut Supreme Court ruled that the state constitution's guarantee of equal protection provides gay and lesbian couples the right to marry. The Court explained that though marriage and civil unions embody the same legal rights under state law, "they are by no means equal." *Kerrigan v. Connecticut Department of Public Health*.

**Florida Puts Amendment on Ballot to Ban Recognition of Marriages for Gay and Lesbian Couples.** In February 2008, a Florida amendment to ban marriage between gay and lesbian couples was certified to go on the November 2008 ballot. Although marriage for gay and lesbian couples is already illegal in Florida, the amendment is sought to prevent any state court from intervening. The amendment needs 60 percent approval to amend the Florida constitution.

**Iowa Couple Marries Before Court Order Allowing Marriage Equality is Stayed.** Sean Fritz and Tim McQuillan of Iowa exchanged vows and secured a marriage license at a Polk County Courthouse in August 2007 following a court order allowing marriage for gay and lesbian couples. The Polk County judge immediately stayed his own order allowing gay and lesbian couples to marry and striking down the Iowa Defense of Marriage Act. The decision to strike down Iowa's DOMA has been appealed to the Supreme Court of Iowa. *Varnum v. Brien*, Iowa Dist. Ct. for Polk County, CV 5965 (2007).

**Maryland Court of Appeals Upholds Ban on Gay and Lesbian Couples Marrying.** In a split 4-3 decision, Maryland's highest court upheld in September 2007 the law banning gay and lesbian couples from marrying. Grounding itself on the theory that the ban promotes the state's interest in different-sex marriage as a means of having and protecting children, the Maryland court considered

the ban constitutional under rational basis review. *Conaway v. Deane*, 401 Md. 219 (2007).

**Massachusetts Allows Gay and Lesbian Couples from All States to Marry in Massachusetts; Opponents Attempting a Constitutional Amendment to Overturn Repeal.**

On July 31, 2008, Gov. Deval Patrick (D) signed the repeal of a 1913 anti-interracial marriage law that prevented couples whose relationships are not recognized by their home state from marrying in Massachusetts. The law was revived and used by former Gov. Mitt Romney (R) to prevent most out-of-state gay and lesbian couples from marrying in the state. Prior to the repeal, out-of-state couples from Rhode Island and Connecticut were the only gay and lesbian couples who could marry in Massachusetts. The legislation was passed by a voice vote with no objections in the Massachusetts state Senate and by a 119-36 vote in the state House. A proposed amendment to go on the November 2010 ballot to overturn the ruling and uphold the 1913 law is currently moving through the petition process.

**Native American Tribe Approves Law Recognizing Marriage Equality.**

The Coquille Indian Tribe of Oregon adopted a law recognizing marriage for gay and lesbian couples in August 2008. They are believed to be the first tribe in the nation to legalize gay and lesbian couples' marriages. The ramifications of this are unclear, considering that the tribe is a federally recognized sovereign nation not bound by the Oregon constitutional prohibition against same-sex marriage.

**New York Recognizes Marriages for Gay and Lesbian Couples.**

Recognition of marriages for Gay and Lesbian couples moved forward on three fronts in New York this past year. In May 2008, Gov. David Paterson (D) directed New York state agencies to recognize gay and lesbian marriages performed in other jurisdictions. In May 2008, New York's highest court, on a technicality, declined to hear an appeal to *Martinez v. County of Monroe*, a lower court ruling that held that the state must recognize gay and lesbian couples' marriages because it recognizes out-of-state marriages in general. It is not clear if this issue will be revisited by the courts. New York legislators in the state House have also passed a bill allowing gay and lesbian couples to marry, but it has not been put forward by the political leadership in the Republican-controlled state Senate. The governor has indicated, however, that he will sign such a bill if it should come to his desk and has noted that it will be one of his priorities in 2009 should Democrats take control of the Senate.

**Rhode Island Supreme Court Denies Lesbian Couple's Divorce.** On December 2007, the Rhode Island Supreme Court ruled, in a 3-2 split decision, that a Lesbian couple married in Massachusetts cannot obtain a divorce in Rhode Island family court because the court does not have authority over marriages of gay and lesbian couples. In the ruling, both the majority and dissenters agreed that the legality of marriage for gay and lesbian couples is best answered by legislators. *Chambers v. Ormiston*, 935 A.2d 956 (R.I. 2007).

## **CIVIL UNIONS AND DOMESTIC PARTNERSHIPS**

**New Hampshire Permits Civil Unions.** On May 31, 2007, New Hampshire Gov. John Lynch (D) signed a bill designed to give New Hampshire's committed gay and lesbian couples the same rights, responsibilities and obligations as different-sex couples. The law provides practical protections such as hospital visitation, medical decision-making and inheritance rights, and went into effect in January 2008. The measure received bipartisan support, receiving 243 out of 372 votes in the House, and 14 out of 24 votes in the Senate. *H.B. 437/S.J. 15, 2007 Sess. (N.H. 2007)*.

**New Jersey State Panel Issues Interim Report Suggesting that Civil Unions Fall Short.** New Jersey's Civil Union Review Commission issued an interim report in February 2008. It noted the second-class status given by civil unions and the "deleterious effect" on children of LGBT parents by the New Jersey Civil Union Act. Gov. Jon Corzine (D) has suggested that he may be willing to support marriage legislation in 2009. *Civil Union Review Commission, First Interim Report (February 19, 2008)*.

**Oregon Establishes Domestic Partnerships.** In May 2007, Gov. Ted Kulongoski (D) signed a bill into law establishing domestic partnerships. The state Senate and House had passed the bill on a 21-9 vote and 34-26 vote, respectively. The domestic partnerships will provide the same privileges, immunities, rights, and benefits given to married couples in the state of Oregon. The original enactment date was January 2008, but it did not take effect until February 2008 because of a court challenge. *H.B. 2007, 74th Leg. Assem., Reg. Sess. (Or. 2007)*.

**Vermont's Commission on Family Recognition and Protection Issues Findings Showing Benefits of Marriage Equality.** In April 2008, Vermont's state-created commission issued a report noting the benefits of marriage equality. While it did not make a final recommendation and thus left it for state legislators to interpret its findings, it noted that allowing gay and lesbian couples to

marry in Vermont would give access to the “less tangible incidents of marriage” (including terminology as “wedding, married, celebration, divorce” and its cultural and historical significance). It also noted how allowing it would likely enhance the portability of the legal protections over current civil union law. *Vermont Commission on Family Recognition and Protection, Commission Report (April 21, 2008)*.

**Washington State Enacts and Expands Domestic Partnership Law.** On April 21, 2007, a bill that establishes domestic partnerships in Washington state became law with the signature of Gov. Christine Gregoire (D). The domestic partnerships bill originally provided hospital visitation rights, inheritance rights when there is no will and the power to authorize medical procedures, among other things. The law authorizes domestic partnerships for gay and lesbian couples over the age of 18 who share a home and are not already the domestic partner of another. Different-sex couples may also register if one partner is over the age of 62. In March 2008, the state further expanded domestic partnership rights by adding 160 rights already provided to different-sex couples. *S.B. 5336, 60th. Leg., Reg. Sess. (Wash. 2007)* and *H.B. 3104, 60<sup>th</sup> Leg., Reg. Sess. (Wash. 2008)*.

#### **DON'T ASK DON'T TELL**

**First Circuit Rejects Constitutional Challenge to “Don’t Ask Don’t Tell.”** In June 2008, the U.S. Court of Appeals for the 1st Circuit rejected the challenge to DADT despite suggesting that DADT is subject to an intermediate scrutiny under *Lawrence v. Texas*, 539 U.S. 558 (2003). The appellate court noted that the act forbade sexual activity expressly excluded from the service members’ Fifth Amendment liberty interest in adult, consensual sex in their own home as defined in *Lawrence*. It also noted the deference given to Congress in military affairs. *Cook v. Gates*, No. 06-2313 (1<sup>st</sup> Cir., June 9, 2008).

**Ninth Circuit Holds that “Don’t Ask Don’t Tell” is Subject to Intermediate Scrutiny.** In May 2008, the U.S. Court of Appeals for the 9th Circuit held that DADT is subject to intermediate scrutiny in light of *Lawrence v. Texas*, 539 U.S. 558 (2003). It has remanded the case to the lower court for further analysis. The court held, “when the government attempts to intrude upon the personal and private lives of homosexuals, in a manner that implicates the rights identified in *Lawrence*, the government must advance an important governmental interest, the intrusion must significantly further that interest, and the intrusion must be necessary to further that interest.” The lower court will examine

DADT under this heightened scrutiny to see if it violates Air Force Reservist Maj. Witt's substantive due process rights. It will also examine it to see if it violates her procedural due process rights. The government will likely appeal the case to the United States Supreme Court. *Witt v. Department of the Air Force*, No. 06-35644 (9<sup>th</sup> Cir., May 21, 2008).

## **DISCRIMINATION**

### **California Supreme Court Prohibits Discrimination by Physicians Claiming Religious Defense.**

In a unanimous decision that is arguably the first of its kind in the nation, the California Supreme Court held in August 2008 that refusing to provide medical care to a gay or lesbian couple because of religious objections violates anti-discrimination laws on sexual orientation. The case, *Benitez v. North Coast Women's Care Medical Center*, arose after a lesbian couple was denied artificial insemination because of their sexual orientation. Instead of simply refusing treatment, the physicians could have referred patients they do not want to treat to other clinic doctors and avoided violation of the state's laws. *Benitez v. North Coast Women's Care Medical Center*, No. S142892 (Cal. Aug. 18, 2008)

### **Colorado Expands Sexual Orientation and Gender Identity**

**Protections.** In May 2008, Gov. Bill Ritter (D) signed into law a bill protecting against discrimination in public accommodations, housing practices, and 21 other areas for LGBT Coloradans. It passed the state House 38-26 and the state Senate 20-15. It expands upon previous protections only specifically banning discrimination in hiring practices. *S.B. 200*, 66<sup>th</sup> Gen. Assembly, 2<sup>nd</sup> Regular Session (Colo. 2008).

### **Employment Non-Discrimination Act (ENDA) Passes U.S. House of Representatives.**

In November 2007, the U.S. House of Representatives passed H.R. 3685, a version of ENDA that prohibits sexual orientation-based discrimination. Because current federal law does not protect against discrimination on the basis of sexual orientation, or comprehensively protect against discrimination based on gender identity or expression, employees have not been clearly able to seek redress or challenge that discrimination in federal courts. In April 2007, Congressman Barney Frank (D-Mass.) and Congresswoman Deborah Pryce (R-Ohio) introduced H.R. 2015, a version of ENDA that would have filled these gaps, providing protections against workplace discrimination on the basis of sexual orientation and gender identity. However, early in the fall, the bill's sponsors and House leadership determined that

there was insufficient support in Congress for a bill inclusive of gender identity, and chose to move forward a sexual orientation-only version of ENDA, H.R. 3685. That measure passed the House by a vote of 235-184, the first time any version of ENDA has cleared either chamber of the U.S. Congress. The bill has not been considered in the Senate this Congress. *H.R. 3685, 110th Cong. (2007)*.

**Louisiana Governor Refuses to Renew Order Banning Discrimination Based on Sexual Orientation.** In August 2008, Gov. Bobby Jindal (R) stated that he will not renew an executive order made by his predecessor, Gov. Kathleen Blanco (D), that bans discrimination by the state against gays and lesbians. The 2004 order had also required all businesses contracting with the state to have non-discrimination policies covering gay and lesbian workers. Gov. Jindal insists that this order was not needed and created unnecessary special categories of people.

**U.S. State Department Ends Ban on Foreign Service Officer Candidates with HIV.** In February 2008, two weeks before the start of a federal suit (*Taylor v. Rice*) challenging the policy of automatically rejecting foreign service officer candidates with HIV, the State Department ended its policy. Instead of the automatic rejection, each individual will be evaluated on a case-by-case basis to see if their health status impedes their ability to serve, a procedure the State Department normally follows for applicants with other medical conditions. The case was initiated in 2003 and moved through the courts with a 2006 appellate reversal of a lower court summary judgment, thereby ruling against the government. The case was ultimately closed in 2008 because of the change in policy. *Taylor v. Rice, 451 F.3d 898 (D.C. Cir. 2006)*

## **CRIME**

**Pennsylvania Supreme Court Rejects Expansion of State Hate Crimes Law.** In July 2008, the Pennsylvania Supreme Court affirmed a lower court ruling striking down an expanded hate crimes law that included protection on the basis of the victim's sexual orientation and gender identity. Specifically, the court noted that despite the merits of the bill, the legislative process, which involved the inserting of the amendment into legislation about agricultural vandalism and crop destruction, was unconstitutional. *Marcavage v. Rendell, (PA Sup. Ct., July 23, 2008)*.

**U.S. House of Representatives and Senate Pass Matthew Shepard Hate Crimes Bill.** In a bipartisan vote of 237 to 180, the House of Representatives (led by Rep. John Conyers [D-Mich.]) passed the Local Law Enforcement Hate Crimes Prevention Act. By adding sexual orientation, gender, gender identity and disability to existing federal hate crimes laws, the bill would ensure that enforcement officials have the resources they need to investigate and prosecute hate violence against LGBT victims. It would enable the Justice Department to assist in the investigation and prosecution of hate crimes, and provide grants to help state and local governments meet the extraordinary expenses involved in hate crime cases. The Senate, with sponsor Sen. Ted Kennedy (D-Mass.), passed a similar version of the bill in September 2007 as an amendment to the Defense Reauthorization bill. With President Bush's threatened veto of the bill to which it was attached, however, the language was ultimately stripped from the defense bill. *H.R. 1592/S. 1105, 110th Cong. (2007).*

## **PARENTING**

**Arkansas Puts Constitutional Ban to Prevent Adoption by Gay and Lesbian Couples on Ballot.** In August 2008, the Arkansas secretary of state certified a proposal that would prevent gay and lesbian couples from adopting in Arkansas. It will appear on the November 2008 ballot. Arkansas Families First is campaigning against the ballot and is threatening litigation to keep it off the ballot. A 2006 Arkansas Supreme Court decision had previously struck down a ban on foster parenting by gay and lesbian couples.

**10th Circuit Strikes Down Oklahoma Law that Prevented Recognition of Adoptions by Gay and Lesbian Couples.** In August 2007, the U.S. Court of Appeals for the 10th Circuit held that an Oklahoma law preventing the recognition by state courts and agencies of adoptions by gay and lesbian couples violates the Full Faith and Credit Clause. It is thus unconstitutional. Adoptions validly completed in other states are entitled to recognition by all other states and must be given full faith and credit. *Finstuen v. Crutcher, 2007 U.S. App. Lexis 18500 (CA10 Aug. 3, 2007).*

**Virginia Supreme Court Orders that Visitation Rights Obtained by Lesbian Mother in Former Civil Union Must be Honored.** In a June 2008 ruling, the Virginia Supreme Court upheld a lower court ruling stating that the Virginia courts must give full faith and credit to a Vermont ruling allowing visitation rights by a lesbian mother in a civil union. The long protracted battle involved one of the partners fleeing to Virginia with the child and multiple



state court filings by each side. *Miller-Jenkins v. Miller-Jenkins*, No. 070933, (Va. June 6, 2008).

## **SCHOOLS**

**1st Circuit Rules that Teachers Can Read Stories Including Diverse Families Without Need for Parental Notification.** In January 2008, the U.S. Court of Appeals for the 1st Circuit affirmed a lower court ruling dismissing claims against the Lexington, Mass., school district for not notifying them and giving them the opportunity to exempt their children from exposure to literature that they find religiously offensive. In this case, the materials involved books depicting gay and lesbian couples. The court rejected the plaintiffs' constitutional claims of free exercise and due process, including the indoctrination claim noting that exposure to such literature did not prevent parents from teaching a contrary view. It also noted that public schools are not obligated to shield students from matters their parents may find religiously offensive. The case has been appealed to the U.S. Supreme Court. *Parker v. Hurley*, 2008 U.S. App. LEXIS 2070 (1st Cir. Mass., Jan. 31, 2008).

**6th Circuit Dismisses Case Challenging School Ban on Language Stigmatizing Sexual Orientation After Policy Was Changed.** In April 2008, the U.S. Court of Appeals for the 6th Circuit dismissed a case arguing the constitutionality of Boyd County Board of Education policy that prohibited stigmatizing others based on sexual orientation. The Boyd County Board of Education had changed its policy to have a specific exclusion based on the First Amendment and the case was thus dismissed for lack of standing. Despite arguments that the policy had a "chilling effect" on free speech, the change in policy and the lack of action on the part of the Board of Education to punish the student, who did not say anything in the first place, led to the case's dismissal. *Morrison v. Board of Educ. of Boyd County*, 521 F.3d 602 (6th Cir., 2008)

## **IMMIGRATION**

**Law Passed Repealing Travel and Immigration Discrimination Based on HIV Status.** In July 2008, the President's Emergency Plan for AIDS Relief (PEPFAR) bill became law. With Sen. Joe Biden (D-Del.), Harold Berman (D-Calif.) and other co-sponsors, the bill, among other things, repealed the travel and immigration ban that prevented HIV-positive foreign nationals from entering the country unless they obtain a waiver. The special waiver originally required was both difficult to obtain and only granted a short-

term visit. Originating in 1987 and codified in 1993, the ban explicitly named HIV (and no others) as a communicable disease of public health significance that would be a basis of exclusion of foreigners. The PEPFAR bill which included this repeal provision passed the Senate 80-16 and the House 303-115. *H.R. 5501/S.2731, 110<sup>th</sup> Cong. (2008).*

**3rd Circuit Finds that Verbally and Physically Beaten Indonesian Gay Man Can Be Removed from U.S.**

In May 2008, a gay man who was verbally harassed and was physically beaten in Indonesia for his sexual orientation was not granted asylum or withholding from removal. The court concluded that the plaintiff here did not compel a finding that his life would be threatened or would be tortured if he is removed to Indonesia. *Liu v. AG of the United States, No. 07-3031 (3d. Cir May 20, 2008).*

**3rd Circuit Refuses to Grant Asylum to Gay Colombian Domestic Partners.**

In an unpublished opinion, the U.S. Court of Appeals for the 3rd Circuit refused to grant withholding of removal to two HIV-positive domestic partners from Colombia. They reported being fired from a job and being briefly arrested at a gay disco. The court noted, in particular, the "increasing tolerance" of gays and lesbians in Colombia including the lack of a prohibition on gay persons serving in the military and the Colombian Constitutional Court ruling that gay and lesbian teachers cannot be fired on the basis of their sexual orientation. It should also be noted that the court refused to treat the couple as a "family unit" for their claims despite being domestic partners in New Jersey. *Torres v. Attorney General, 2008 Westlaw 683930 (3rd Cir., March 14, 2008) (not selected for official publication).*

**TRANSGENDER-SPECIFIC**

**New Jersey Passes Gender Identity/Expression Hate Crime and School Anti-Bullying Law.**

With a 65-10 and 35-0 majority, the New Jersey legislature passed a bill that adds gender identity and expression to the state's hate crime law. It also establishes a commission on bullying in New Jersey schools. Gov. Jon Corzine (D) signed the bill into law in January 2008. *A4591/S2975, 212<sup>th</sup> Legislature (2008).*

**10th Circuit Dismisses Transgender Woman's Discrimination Claim.**

In September 2007, the U.S. Court of Appeals for the 10th Circuit dismissed a discrimination claim of a transgender woman who was fired while undergoing gender transition. Prior to undergoing any surgical treatment, the bus driver began to present on the job as female and to use women's restrooms available along her route. The

Utah Transit Authority fired her fearing liability if her use of women's restrooms was discovered. The court held that transsexuals are not protected under Title VII's prohibition of discrimination "because of...sex," concluding that the employer's concern regarding her restroom use was a legitimate, nondiscriminatory reason for her termination. *Etsitty v. Utah Transit Authority*, 10th Cir., No. 05-4193 (Sept. 20, 2007).

**Transgender Mexican Granted Asylum.** In September 2007, the U.S. Department of Homeland Security granted asylum to Valeria, a transgender woman from Mexico. Valeria was emotionally, physically and sexually abused as a child in Mexico. She was kicked out of her house at age 13 and eventually moved to the U.S., where she received a beauty school scholarship and where she became a successful hair stylist. During her return visit to Mexico (and attempt to reconcile her relationship with her family), she was attacked, mutilated, and left bleeding to death. After her recovery, she moved back to the U.S., where she dealt with post-traumatic stress disorder and serious depression. She applied for asylum in 2005 and was granted asylum in September 2007. *In re Valeria*.

## **INTERNATIONAL**

**Argentina Grants Gay Survivor the Right to Collect Deceased Partner's Pensions.** In August 2008, Argentina granted gay and lesbian survivors the right to collect their deceased partner's benefits. A key requirement is that the couple shows that they have lived together for at least five years. The Roman Catholic Church strongly fought and failed in preventing these rights, using similar tactics as it did in the 1980s regarding divorce. Currently, marriage equality is allowed in only a few Argentine cities.

**Great Britain Grants Asylum to Iranian Teenager.** In May 2008, Great Britain granted asylum to a gay Iranian teenager who was at risk for deportation in a highly publicized case (involving numerous human rights organizations and senior British parliamentarians). In 2005, the 19-year-old man went to London to study English, but found out later that his boyfriend was arrested by Iranian police for engaging in anal sex and was hanged (the Islamic country prohibits homosexuality). In 2000, the teen was denied asylum in the U.K. He then fled the U.K., intending to get to Canada, but was blocked by German border guards. He was then sent to Holland (a country known for granting asylum to gay Iranians), but the U.K. asked for his return to Britain so that it could proceed with his deportation. After much publicity and

protests, he was granted a reprieve in March 2008 and asylum in May 2008 by the U.K.

**Nepal's Highest Court Rules that Rights of Gays and Lesbians Must Be Protected.** In December 2007, Nepal's highest court ruled that the Nepalese government must create laws that protect gay and lesbian rights. After hearing a petition by four gay and lesbian rights groups in Nepal, the court issued the order. Exact ramifications regarding laws that ban homosexuality and the recognition of marriage by gay and lesbian couples are unclear. The court spokesperson noted that it was up to the Nepalese government to determine the ruling's implementation.

**Nicaragua Decriminalizes Intercourse Between People of the Same Sex.** In March 2008, Nicaragua decriminalized intercourse between people of the same sex. The previous 1992 law prevented not only sex between people of the same sex, but was possibly so broad as to permit prosecution of those who campaign for LGBT rights or perhaps even those who provide sexual health information. The president of the Nicaraguan Parliament's Commission of Justice and Legal Issues noted that this decriminalization marked a modernization of the country placing legal rights over the state's moral code as dictated by the Roman Catholic Church.

**Norway Paves Way for Marriage and Adoption Equality; State Church Eases Ban on Clergy in Gay and Lesbian Relationships.** In June 2008, Norway's parliament voted 84 to 41 to allow gay and lesbian couples to marry, adopt and, in the case of lesbian couples, to be artificially inseminated. It is the sixth country in the world to grant gays and lesbians the right to "marry" (many countries, including Norway, had already granted civil unions and similar rights). On a related note, in November 2007, the Norwegian state Lutheran Church had lifted its ban on allowing those in gay partnerships to serve in the clergy.

**U.N. High Commissioner for Human Rights Backs LGBT Rights.** In a November 2007 statement, coinciding with a historic session of the third committee of the U.N. General Assembly, U.N. Commissioner Louise Arbour noted that sexual orientation and gender identity should be protected just as with race, religion and social status. Stating that the criminalizing of harmless private relations between consenting adults violates their fundamental right to life, security and privacy, she reiterated her office's commitment to promote the rights of all people regardless of their sexual orientation or gender identity.

**Uruguay Becomes First Latin American Country to Allow Civil Unions.** In December 2007, Uruguay's president signed into law a bill allowing civil unions for gay and lesbian couples. It is the first country-wide recognition of gay and lesbian couples in the Roman Catholic-influenced Latin and South American region, where only cities have previously allowed such rights. The legislation requires that the couples have to be together for at least five years and that they sign a registry. Although marriage for gay and lesbian couples will remain illegal, this law gives gay and lesbian couples the same rights as married couples including health benefits, inheritance, parenting and pension rights.

#### **PENDING**

**Iowa Supreme Court to Hear Case Regarding Rights of Gay and Lesbian Couples to Marry.** After the aforementioned lower court ruling granting the rights of Gay and Lesbian couples to marry in Iowa, the Iowa Supreme Court is set to hear the case. *Varnum v. Brien, Iowa Dist. Ct. for Polk County, CV 5965 (2007)*.

**Federal District Court Case Filed Challenging Wisconsin Law Prohibiting Hormone Therapy or Sex Reassignment Surgery for State Prisoners.** The ACLU and Lambda Legal are currently challenging the constitutionality of a Wisconsin law banning hormone therapy or sex reassignment surgery to state prisoners. This potentially crucial case is still pending and will be moving through the courts. *Sundstrom. v. Frank, No. 06-C-112, (E.D. WI 2006)*.

**Federal Challenge to IRS Ruling that Plaintiff's Hormone Therapy and Sex Reassignment Surgery are Not Legitimate Medical Deductions.** A transgender woman is suing the IRS for refusing to treat as medical deductions expenses for hormone therapy and sex reassignment. Although the trial was completed in August 2007, a decision is still pending in this potentially precedent-setting case. *O'Donnabhain v. Commissioner of Internal Revenue, \_\_\_T.C.\_\_\_ (2007)*.