



HUMAN
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RECENT DEVELOPMENTS IN SEXUAL ORIENTATION & GENDER IDENTITY LAW

MARRIAGE AND RELATIONSHIP RECOGNITION

Civil Unions Enacted in Connecticut. Beginning Oct. 1, 2005, same-sex couples in Connecticut will be able to enter into civil unions that confer nearly all the rights and responsibilities of marriage under state law. Republican Gov. M. Jodi Rell signed the Civil Union Act April 20 after it passed the Legislature with strong bipartisan support. Connecticut's action is particularly noteworthy because it was not mandated by the judiciary, as were civil unions in Vermont and marriage in Massachusetts. Under the bill, only same-sex couples may enter into civil unions. The law also contains a statutory provision defining marriage as the union of one man and one woman.

Federal Court Throws Out Discriminatory Nebraska Marriage Amendment. A federal district judge ruled on May 12 that Nebraska's constitutional amendment prohibiting any legal rights for unmarried couples violates various provisions of the U.S. Constitution. Judge Joseph Bataillon held that the Nebraska measure infringes the First Amendment by interfering with the rights of intimate and expressive association and the right to participate in the political process. He found that the amendment imposes severe disabilities on couples who wish to enter into constitutionally protected intimate relationships outside of marriage and that it discourages people from associating with others to advocate for legislation to improve the status of unmarried couples. Bataillon also ruled that the amendment violates the Fourteenth Amendment's Equal Protection Clause by singling out gays and lesbians for unfavorable treatment without supporting any legitimate government interest. He further concluded that the amendment is an unconstitutional bill of attainder because it targets an identifiable group for punishment without trial. However, Bataillon did not rule that Nebraska must recognize marriage for same-sex couples, but held only that the state's broad ban on any legal rights for unmarried couples is unconstitutional. *Citizens for Equal Protection, Inc. v. Bruning*, 368 F. Supp. 2d 980 (D. Neb. 2005).

Oregon Supreme Court Declares Marriages Void. The Oregon Supreme Court ruled April 14 that marriage licenses granted to same-sex couples in 2004 were void. Multnomah County issued approximately 3,000 marriage licenses to same-sex couples in 2004, but the state refused to register them on the grounds that the marriages were invalid under state law. Nine same-sex couples and their allies filed suit, seeking a declaration that the statutes forbidding marriage between same-sex couples violate the Oregon Constitution. A trial court ruled that same-sex couples are constitutionally entitled to the benefits of marriage, although the court did not specify what form of

remedy was required by its holding. While appeals were pending, Oregon voters adopted a constitutional amendment in November 2004 defining marriage as the union of one man and one woman. On April 14, 2005, the Oregon Supreme Court held that the constitutional amendment extinguished any right for same-sex couples to marry in Oregon, starting on its effective date of Dec. 2, 2004. In addition, the court also held that Multnomah County exceeded its authority in granting marriage licenses to same-sex couples, and therefore all the licenses the county issued before passage of the constitutional amendment were void. Finally, the court held that the issue of whether same-sex couples are entitled to the benefits of marriage (as in a civil union, for example) was not properly before the court. *Li v. State*, 110 P.3d 91 (Or. 2005).

Marriage Equality Bill Narrowly Fails in California Assembly. A bill that would have granted equal marriage rights to same-sex couples fell four votes short of passage in the state Assembly on June 2. However, a majority of those voting favored the bill, which received 37 votes to 36 opposed, with seven members not voting. The vote marked the first time a full state legislative body considered marriage equality legislation. Opponents of marriage equality plan to put a constitutional amendment before the voters in June 2006 that would not only deny marriage rights, but also nullify all existing laws and policies that provide legal status for same-sex couples, including the state's domestic partnership law.

Discriminatory Marriage Amendments Advance in Several States. On April 5, 70 percent of voters in Kansas approved an amendment to the state constitution banning marriage as well as other legal relationships between unmarried couples. The South Carolina Legislature approved an amendment on April 26 that will go before the voters in November 2006. On May 21, the Texas Senate followed the state House in approving a discriminatory constitutional amendment that will be on the statewide ballot on Nov. 1, 2005. The Kansas, South Carolina and Texas measures also ban civil unions and possibly other formal statutory recognition for same-sex couples.

New Discriminatory Marriage Amendment Sought in Massachusetts. Opponents of marriage equality announced June 16 that they plan to begin gathering signatures to put a constitutional amendment on the ballot in 2008 that would ban marriage for same-sex couples. Supporters of the initiative amendment must have their petition approved by the Attorney General and then need to gather 66,500 signatures between Sept. 21 and Nov. 23, 2005, as well as gain the support of one-quarter of state legislators in two successive sessions to reach the ballot in 2008. Gov. Mitt Romney declared his support for the amendment. Supporters of the petition drive withdrew their support for a different discriminatory marriage amendment, initiated by the Legislature, that would have banned marriage for same-sex couples but would also have established civil unions. The Legislature's amendment passed in 2004 but appears at risk of defeat this year. If it does pass again, it will appear on the 2006 ballot for a popular vote. Polls show a majority in Massachusetts favor marriage equality. Nearly 6,000 same-sex couples have been issued marriage licenses since they became available on May 17, 2004.

New Jersey Court Rules Against Marriage Equality. On June 14, a New Jersey appellate court held that state statutes limiting marriage to opposite-sex couples are constitutional. "Marriage between members of the same sex has no foundation in the text of the constitution, this nation's history and traditions or contemporary standards of liberty and justice," the court declared. The court rejected the claims of seven same-sex couples that the state infringed the substantive due process, privacy and equal protection guarantees of the New Jersey Constitution by denying them the right to marry. A dissenting judge concluded that tradition is not a rational basis for excluding same-sex couples from marriage. *Lewis v. Harris*, 2005 N.J. Super. Lexis 186 (Super. Ct. App. Div. 2005).

U.S. District Court Upholds Part of the Federal Defense of Marriage Act. A federal judge in Orange County, Calif., held on June 16 that the section of the Defense of Marriage Act that defines

marriage as the union of one man and one woman for purposes of federal law and access to federal benefits is constitutional. The judge held that recognizing only opposite-sex unions furthers the federal government's "legitimate interest to encourage the stability and legitimacy of what may reasonably be viewed as the optimal union for procreating and rearing children by both biological parents." In addition, the judge held that the plaintiffs, a same-sex couple denied a marriage license, lacked standing to challenge the section of DOMA that permits states to refuse to recognize marriages between same-sex couples performed in other states. *Smelt v. County of Orange*, 2005 U.S. Dist. Lexis 12195 (C.D. Cal. 2005).

California Domestic Partnership Law Upheld. On April 4, a California state appeals court rejected a challenge to the state's expansive domestic partnership law, holding that it did not conflict with Proposition 22, an initiative approved by the voters in 2000 defining marriage as the union of one man and one woman. Opponents alleged that the state Legislature unconstitutionally amended Proposition 22 by conferring the "same rights, protections and benefits" as married spouses on domestic partners, effectively permitting same-sex couples to marry. The court found that Proposition 22 was not intended to affect domestic partnerships and noted that domestic partnerships differ from marriage in important ways. For example, domestic partners may not file joint tax returns, and a domestic partnership may be formed and dissolved through the filing of forms with the state, unlike a marriage. These differences show that marriage retains "greater stature" under California law than a domestic partnership, the court found. Consequently, the domestic partnership statute was constitutional, the court ruled. The California Supreme Court declined to review the case on June 29. *Knight v. Superior Court*, 26 Cal. Rptr. 3d 687 (Cal. Ct. App. 2005).

Maryland Governor Vetoes Medical Decision Making Bill. Republican Gov. Robert L. Ehrlich Jr. vetoed a bill May 20 that would have permitted unmarried couples to register with the state and exercise certain basic rights related to health care. The Medical Decision Making Act of 2005 would have guaranteed registered life partners, among other things, hospital visitation rights, medical decision making authority over an incapacitated partner and the right to make funeral arrangements for a deceased partner. Ehrlich said the bill would "undermine the sanctity of traditional marriage" by allowing unmarried couples to register with the state as "life partners." Proponents of the bill will attempt to override the veto when the General Assembly convenes in January 2006.

Ehrlich also vetoed a bill May 20 that would have eliminated a tax penalty on transfers of real property between domestic partners. The bill would have provided domestic partners the same exemption from recordation and transfer taxes that individuals enjoy when adding family members to a deed. The governor said the bill threatened traditional marriage, created opportunities for fraud and imposed administrative burdens. The bill did not receive enough votes in the General Assembly to override his veto.

Bill Introduced to Provide Equity in Taxation of Domestic Partner Benefits. Sens. Gordon Smith, R-Ore., and Charles Schumer, D-N.Y., introduced a bipartisan bill in Congress on June 30 that would end unfair tax treatment of health benefits that businesses offer to their employees' domestic partners. Under current law, an employer's contribution to health insurance benefits for the spouse of a married employee is not treated by the IRS as income to the employee and, therefore, is not taxed. However, an employer's contribution to health benefits for an employee's domestic partner is treated as taxable income to the employee, creating a substantial financial burden for many families, some of whom are forced to forgo coverage. In addition, employers that provide domestic partner benefits must pay higher payroll taxes as a result, creating a disincentive to provide them. The Domestic Partner Health Benefits Equity Act would end this disparity by treating health insurance benefits for domestic partners the same as benefits for married spouses in the Internal Revenue Code. S. 1360, 109th Cong. (2005).

Benefits for Domestic Partners of Sept. 11 Victims Upheld. On May 5, A New York state court upheld a state law that granted domestic partners of Sept. 11 victims the same workers' compensation death benefits as a spouse. Under the workers' compensation law, surviving children are entitled to the entire benefit unless the decedent died on Sept. 11, in which case the benefit must be shared with the decedent's domestic partner. The mother of a child whose father died on Sept. 11 claimed that forcing her daughter to share the benefit with the father's domestic partner violated the Equal Protection Clause because she was treated less favorably than other surviving children. However, the court said the law had a rational basis in the need to provide assistance to domestic partners, who might not receive compensation from other sources, while surviving children likely would receive aid from other sources. *Novara v. Cantor*, 795 N.Y.S.2d 133 (App. Div. 2005).

Iowa Supreme Court Rebuffs Challenge to Court Dissolution of Civil Union. The Iowa Supreme Court ruled June 17 that a group of Iowans lacked standing to challenge a district court decree that dissolved a Vermont civil union. The court said that a group consisting of state legislators, a congressman, a pastor and a church had no specific personal or legal interest in the district court's decree and suffered no special injury because of it. Consequently, they had no legal right to contest the decree. The plaintiffs contended that the district court lacked authority to dissolve a civil union, but the Supreme Court did not decide that issue. *Alons v. Iowa District Court for Woodbury County*, 2005 WL 1413164 (Iowa 2005).

ANTI-DISCRIMINATION

Colorado Governor Vetoes Anti-Discrimination Bill. Republican Gov. Bill Owens vetoed a bill that would have prohibited employment discrimination based on sexual orientation and gender identity on May 27. Polls show a strong majority of Coloradans favor the legislation.

Washington Anti-Discrimination Bill Comes Up Short. A bill prohibiting discrimination based on sexual orientation and gender identity or expression failed on April 21 by one vote in the Washington Senate. The bill would have provided protection against discrimination in employment, public accommodations and credit, insurance and real estate transactions. Although it was defeated, the bill advanced further than ever before in the legislative process. Supporters vowed to keep pushing the bill until it passes. The legislation gained national attention when Microsoft Corp. abandoned its past support of the bill, taking a "neutral" stance. After an outcry from employees and other supporters of equality, Microsoft declared it would renew its support for the measure in the future.

Hawaii Legislature Acts on Housing Discrimination, Adds Transgender Protections. The Hawaii Legislature passed a bill prohibiting discrimination in housing on the basis of sexual orientation and gender identity or expression on April 21. Another bill banning employment discrimination based on gender identity or expression passed on the same day. Republican Gov. Linda Lingle has yet to take any action on either of these bills.

Bill Introduced to Affirm Protection of Gay and Lesbian Federal Employees. Rep. Henry Waxman, D-Calif., introduced a bill in Congress on June 30 with 10 bipartisan co-sponsors that would affirm that federal employees are protected from discrimination based on their sexual orientation. The bill was prompted by the recent statements of Scott J. Bloch, head of the Office of Special Counsel, who is tasked with enforcing certain anti-discrimination protections for federal workers. Bloch made statements in a Senate subcommittee hearing on May 24 that his office lacks authority to investigate all claims of discrimination against gay and lesbian federal employees. Bloch's position conflicts with longstanding interpretation of the Civil Service Reform Act of 1978

and federal policy against sexual orientation discrimination in the federal workforce. In response to similar statements by Bloch in 2004, President Bush stated that he expects federal agencies to enforce the longstanding policy of non-discrimination toward gay and lesbian federal workers. *H.R. 3128, 109th Cong. (2005)*.

HATE CRIMES

Maryland Governor Signs Hate Crimes Bill. Republican Gov. Robert L. Ehrlich Jr. signed a bill on May 26 expanding Maryland's hate crimes statute to include crimes motivated by bias against the victim's sexual orientation or gender identity. Maryland now joins the majority of states with hate crime laws that include sexual orientation. Laws in eight states and the District of Columbia also address crimes based on gender identity. Ehrlich also signed a bill that will require reporting of incidents of harassment and intimidation in public schools, including those motivated by sexual orientation and gender identity.

Colorado Hate Crimes Measure to Become Law. A measure providing enhanced penalties for crimes motivated by the victim's sexual orientation or gender identity will become law in Colorado. The hate crimes legislation passed the Legislature as part of a larger crime bill and Gov. Bill Owens decided to allow the bill to become law without his signature.

Federal Hate Crimes Bill Protecting Gay and Transgender Americans Introduced. Rep. John Conyers, D-Mich., introduced the Local Law Enforcement Hate Crimes Prevention Act of 2005 in the U.S. House of Representatives on May 26 with nearly 100 original bipartisan co-sponsors. The bill would make certain crimes motivated by the victim's sexual orientation or gender identity a federal offense, authorize grants and other assistance to local law enforcement agencies to combat hate crimes and expand federal authority to prosecute hate crimes. *H.R. 2662, 109th Cong. (2005)*.

CHILDREN AND PARENTING

Lesbian Mother Given Custody of Child She Raised with Deceased Partner. The West Virginia Supreme Court awarded a lesbian custody of the child she and her deceased partner raised together. Tina B. and Christine S., a lesbian couple, lived together for many years and had two children together. When Christine died, Christine's parents tried to obtain custody of one of the children, over Tina's strong objection. The trial court rejected the grandparents' attempt, but an appellate court reversed, holding that Tina had no right to custody even though she has parented the child his entire life. A divided West Virginia Supreme Court awarded Tina B. custody of the child, ruling that a "psychological parent" can intervene in custody battles. *In Re Clifford K. 2005 WL 1431514 (W.Va. 2005)*.

Transgender Father Retains Parental Rights in Settlement. Michael Kantaras, a transgender father, entered into a settlement agreement June 10 with his former wife that upholds his rights as a parent. The agreement ended a nearly seven-year high-profile legal contest in which Mr. Kantaras defended his legal relationship with his two children against his former wife. Mrs. Kantaras contended their marriage was invalid and that her husband therefore had no parental rights. In 2003, a Florida circuit court judge ruled that Mr. Kantaras was legally male, the marriage was valid and Mr. Kantaras should receive custody of the two children. A Florida appeals court reversed the circuit court's decision and invalidated the marriage, and the Florida Supreme Court refused to review that decision. After an appearance on "Dr. Phil" talk show, Mrs. Kantaras agreed to mediation, which led to the settlement, under which both parents share legal custody of their children.

Court Says Lesbian Mother May Keep Custody of Son. A Tennessee appeals court ruled May 31 that a lesbian mother's "homosexual lifestyle" did not justify a change of custody from the mother to

the child's father. Christy Berry had primary custody of her young son after her divorce from the child's father. Ms. Berry had live-in female partners while she was caring for her son. The boy's father sought a change of custody, claiming that Ms. Berry's sexual orientation would harm their child. The trial court granted the father's request for custody, concluding that Ms. Berry's sexual orientation might cause problems for her son in the future. The appeals court reversed, noting that the boy was doing well with his mother and there was no evidence her sexual orientation had any adverse impact on him. *Berry v. Berry*, 2005 Tenn. App. Lexis 320 (Tenn. Ct. App. 2005).

Lesbian Co-Parent Denied Standing to Seek Custody of Child by Kentucky Court. A Kentucky appellate court ruled April 15 that a lesbian parent had no right to seek custody of a child she and her former partner jointly co-parented for the first six years of the child's life. B.F. and T.D., a lesbian couple, were in a committed relationship for 10 years and during that time decided to adopt a child. Because the availability of second-parent adoptions is unclear in Kentucky, only T.D. adopted the child. The couple jointly parented the child, sharing all child-rearing responsibilities, until 2003, when they separated and T.D. cut off all contact between B.F. and the child. Eventually, B.F. filed for visitation rights and joint custody in family court. The court held that because B.F. was neither the "primary caregiver" for the child nor the child's "de facto custodian" under Kentucky law, she lacked standing to pursue custody of the child. The court found that it could not provide B.F. any relief, although it expressed sympathy for her "predicament" and similar problems faced by other same-sex couples. An application for further review by the Kentucky Supreme Court is pending. *B.F. v. T.D.*, 2005 Ky. App. Lexis 95 (Ky. Ct. App. 2005).

Virginia Required to List Same-Sex Parents on Adopted Children's Birth Certificates. The Virginia Supreme Court ruled April 22 that the state must issue new birth certificates to children born in Virginia who are adopted by same-sex couples in other jurisdictions. Because Virginia does not permit unmarried couples to jointly petition to adopt, the state had argued that it could not issue birth certificates listing same-sex adoptive parents under any circumstances. The court found that the applicable statute requires the state to issue amended birth certificates listing a child's adoptive parents regardless of sexual orientation, concluding that the state's own policy against adoption by same-sex couples was irrelevant. *Davenport v. Little-Bowser*, 611 S.E.2d 366 (Va. 2005).

California Appeals Court Holds Lesbian Partner Is Entitled to Seek Visitation. On June 22, a California appeals court ruled that a lesbian partner who jointly participated in the use of reproductive technology, but was not herself a biological parent of the child, could seek visitation. Angela G. and D.W., a lesbian couple, had a child through alternative insemination together in 1998. After the couple separated in 2000, Angela G. continued to have regular visitation and to provide child support. In 2003, D.W. cut off all contact between Angela G. and their child and Angela subsequently filed for custody. The trial court denied Angela G.'s petition, holding that a lesbian co-parent does not have standing to request custody or visitation with a child that she jointly brought into the world and co-parented. The Court of Appeal reversed the trial court and held that Angela is entitled to seek visitation. The court explained that, "Under the intended parent doctrine, parents who intend to procreate a child through artificial means are held to be the legal parents to the child." The legal issues in this case are the same as three others, *Elisa B. v. Superior Court*, *Kristine H. v. Lisa R.* and *K.M. v. E.G.*, currently pending before the California Supreme Court. *A.G. v. D.W.*, 2005 Cal. App. Unpub. LEXIS 5344 (Ca. Ct. App. 2005)(unpublished).

FIRST AMENDMENT

Supreme Court to Rule on Law Restricting Schools' Speech Against Discrimination. The Supreme Court announced on May 2 that it will decide whether law schools may curb military recruiters' access to their students in protest of the U.S. Armed Forces' ban on openly gay members. Thirty-one law schools, grouped under the banner of the Forum for Academic and Institutional Rights,

challenged the Solomon Amendment, a federal law that permits federal funds to be withheld from schools that do not provide military recruiters the same access to their students as other employers. The U.S. Court of Appeals for the Third Circuit granted FAIR's request for an injunction against implementation of the Solomon Amendment, holding that the law likely infringes the schools' First Amendment right of expressive association and unconstitutionally coerces the schools to send a message of support for the military's discrimination. *Forum for Academic and Institutional Rights v. Rumsfeld*, 390 F.3d 219 (3rd Cir. 2004), cert. granted, 125 S. Ct. 1977 (U.S. May 2, 2005) (No. 04-1152).

Inmate May Not Subscribe to Gay Magazines, Court Says. An Indiana prison may constitutionally prohibit an inmate from subscribing to *Out* and *The Advocate*, a federal district judge ruled March 31. The judge ruled that the prison's ban on "blatantly homosexual materials" did not violate the inmate's First Amendment rights. The judge concluded that the rule was justified as a prison safety regulation because inmates known to be homosexual may be targeted for violence or extortion by other inmates. *Willson v. Buss*, 2005 U.S. Dist. Lexis 10619 (N.D. Ind. 2005).

Court Holds That City Must Allow Pride Flags to Fly. On June 8, a federal trial court granted a temporary injunction requiring the city of St. Augustine to fly pride flags from the Bridge of Lions. The St. Augustine Pride Committee filed an initial application to fly its flags in conjunction with June pride events in 2003. At that time, SAPC was denied a permit even though it had met all of the written requirements. City commissioners later argued that there was an unwritten requirement that applicants must have a historical connection to the city, and subsequently created and approved a new stricter policy without public input or notice. SAPC's application was denied again in 2004 and 2005, and the group then filed suit. *Jensen v. City of St. Augustine*, No. 05 Civ. 00504 (M.D. Fl. 2005)(unpublished).

JUDICIAL NOMINATIONS

Opponent of Equal Rights Confirmed to Federal Appeals Court. The U.S. Senate voted 53 to 45 on June 9 to confirm Judge William Pryor to a lifetime seat on the U.S. Court of Appeals for the 11th Circuit. Pryor's nomination had been filibustered in the Senate, leading President Bush to give him a recess appointment on Feb. 20, 2004. The vote on Pryor's nomination was part of a bipartisan compromise that preserved the minority's right to filibuster judicial nominees while allowing votes on several controversial candidates for judgeships.

Pryor is an outspoken opponent of equality for lesbian, gay, bisexual and transgender Americans. As attorney general of Alabama, Pryor submitted an amicus brief in *Lawrence v. Texas* urging the court to uphold Texas' discriminatory anti-sodomy law. In the brief, Pryor argued that states should be permitted to single out same-sex relations for punishment and likened homosexual relationships to pedophilia. As a judge on the 11th Circuit, Pryor cast the deciding vote to uphold Florida's law prohibiting adoption by gay parents in *Lofion v. Secretary of the Department of Children and Family Services*, 377 F.3d 1275 (11th Cir. 2004).

EDUCATION AND SCHOOLS

Federal Court Blocks Sex Education Curriculum Discussing Homosexuality. A federal district judge issued a temporary restraining order May 5 preventing the Montgomery County, Md., public schools from implementing a new sex education curriculum that would provide information about homosexuality to eighth and 10th graders. Judge Alexander Williams held that the curriculum likely infringed the First Amendment's Establishment Clause by favoring the views of religious groups tolerant of homosexuality over the views of less tolerant faiths. He also found that the curriculum

presented homosexuality as normal and acceptable, to the exclusion of other views, and in doing so possibly constituted viewpoint discrimination in violation of the First Amendment. A Montgomery County parents and students group, along with Parents and Friends of Ex-Gays and Gays, based in Virginia, brought the suit against the school system. The county school board settled the lawsuit June 27, agreeing to exclude any references to specific religious beliefs from the curriculum. However, the agreement does not prevent discussion of sexual orientation as part of the curriculum, nor does it contain any assurance that the ex-gay perspective will be reflected in the curriculum, as the plaintiffs had sought. *Citizens for a Responsible Curriculum v. Montgomery County*, 2005 U.S. Dist. Lexis 8130 (D. Md. 2005).

Georgia Board Rejects Restriction on Student Participation in High School Clubs. The Georgia Board of Education voted 10 to 3 on June 14 against a proposed rule that would have required high school students to obtain their parents' permission before joining extracurricular clubs. The measure was widely viewed as designed to discourage students from joining support groups for LGBT youth. A controversy erupted recently when a student in rural White County tried to start such a student group at a high school. Board members apparently opposed the rule out of concern that it would impose administrative burdens. The board also rejected a proposal to require schools to notify parents of all clubs they offer.

Christian Student Group Denied Exemption from Anti-Discrimination Policy. A federal district judge in California held April 12 that the University of California Hastings College of Law did not run afoul of the U.S. Constitution when it refused to officially recognize a chapter of the Christian Legal Society because it excludes gays and lesbians. The Hastings Christian Fellowship excludes gays and lesbians as members because it deems homosexuality incompatible with Christian beliefs. The law school refused to officially recognize the group, denying it funding and access to meeting space, because its membership exclusion violates the school's anti-discrimination policy. The judge dismissed the Christian Fellowship's claims that this refusal violates the Establishment Clause, the Due Process Clause and the Equal Protection Clause of the Constitution. The group's claims based on freedom of speech and freedom of association will be considered later in the litigation. *Christian Legal Society Chapter of University of California v. Kane*, 2005 WL 850864 (N.D. Cal. 2005).

Several similar lawsuits are pending as chapters of the Christian Legal Society at schools throughout the country seek official recognition. The University of Toledo entered a settlement June 16 in which it agreed to recognize a chapter of the Christian Legal Society. Under the settlement, the group may exclude people based on their religion and sexual orientation, despite a school policy prohibiting such discrimination.

School May Discriminate Against Gay and Lesbian Student Group, Court Rules. A New Jersey appellate court ruled on June 22 that Seton Hall University, a Catholic institution, may refuse to recognize a gay and lesbian student group. Anthony Romeo, an openly gay student, organized a gay and lesbian student organization at Seton Hall, but the school refused to recognize the group on the grounds that doing so would violate Catholic teaching. The court rejected Romeo's claim that the university violated state anti-discrimination law, which includes sexual orientation as a protected category. The court noted that religious educational institutions are expressly exempted from the law and concluded that the school did not waive its exemption by adopting its own policy of non-discrimination against gays and lesbians. In addition, the court dismissed Romeo's claim that the school's non-discrimination policy created a contract that the school breached by refusing to recognize the gay and lesbian group. *Romeo v. Seton Hall University*, 2005 N.J. Super. Lexis 197 (N.J. Super. Ct. App. Div. 2005).

TRANSGENDER ISSUES

Transgender Woman's Discrimination Claim Dismissed. A federal district judge on June 24 dismissed a transgender woman's claim that she was terminated because of her sex in violation of federal law. Krystal Etsitty, a transsexual woman, was fired from her job as a bus operator by the Utah Transit Authority. Etsitty argued that she was dismissed because of her employer's belief that she did not conform to gender stereotypes. The trial judge held that transgender people are not protected under Title VII of the Civil Rights Act of 1964. *Etsitty v. Utah Transit Authority*, 2005 U.S. Dist. Lexis 12634 (D. Utah 2005).

Immigration Board Recognizes Transgender Woman's Marriage. The Board of Immigration Appeals on May 18 recognized a transgender woman's marriage to a Salvadoran man, granting her request for a visa for her spouse. The board overturned the Department of Homeland Security's decision to deny the visa, which was predicated on the conclusion that the federal Defense of Marriage Act precludes federal recognition of a marriage in which one spouse is transgender. The board concluded that DOMA only prevents recognition of marriages between persons of the same sex and had no relevance to the marriage in question, noting that the marriage was valid under North Carolina law. *In re Jose Lovo-Lara*, 23 I&N Dec. 746 (BIA 2005).

IMMIGRATION

Members of Congress Introduce Bill to Make Immigration Law Fair for Same-Sex Couples. The Uniting American Families Act, introduced June 21, would permit lesbian and gay citizens or permanent residents to sponsor their partners for residence in the United States. The bill would give gays and lesbians the same right married people already have to petition for their partner to immigrate. Under current law, many binational same-sex couples are separated when one partner is forced to leave the United States. Formerly called the Permanent Partners Immigration Act, the bill is sponsored by Rep. Jerrold Nadler, D-N.Y., and Sen. Patrick Leahy, D-Vt. According to the 2000 Census, there are 36,000 binational gay couples in the United States. At least 16 countries — from Brazil to Israel to the United Kingdom — have provisions for same-sex couples under their immigration laws. *H.R. 3006, 109th Cong. (2005), S. 1278, 109th Cong. (2005)*.

Court Says Gay Man May Qualify for Asylum Due to Persecution in Mexico. The U.S. Court of Appeals for the Ninth Circuit ruled April 22 that the Board of Immigration Appeals should not have rejected the asylum petition of Aurelio Pena-Torres, a gay Mexican national. The court noted that "alien homosexuals" are a "particular social group" eligible for asylum under federal law if the asylum seeker can prove he or she is unable or unwilling to return home because of a reasonable fear of persecution. Pena-Torres contended that he once was accosted by several police officers in Mexico after leaving a gay bar, questioned about his sexuality and severely beaten. The court said this incident was plainly anti-gay persecution, contrary to the immigration judge's finding, and referred the case to the attorney general to exercise his discretion to determine if Pena-Torres should be granted asylum. *Pena-Torres v. Gonzales*, 2005 U.S. App. Lexis 7153 (9th Cir. 2005) (*unpublished*).

HIV/AIDS

State Department May Reject HIV-Positive Foreign Service Applicants. A federal district court ruled April 20 that the State Department could reject an otherwise fully qualified candidate for the Foreign Service because he was HIV-positive. The department argued that the applicant did not meet the requirement for "worldwide availability" because he could not serve in areas with inadequate health facilities. The court concluded that forcing the department to accommodate the applicant by assigning him to locales with adequate health care would impose an "undue burden" on that agency. *Taylor v. Rice*, 2005 U.S. Dist. Lexis 7080 (D. D.C. 2005).

HIV-Positive Status Protected from Disclosure in Rape Trials, Arkansas Court Rules. The Arkansas Supreme Court held April 21 that a rape victim's HIV-positive status may not be divulged at trial unless special procedures in the state "rape shield" law are followed. This "rape shield" statute allows information about an alleged rape victim's prior sexual behavior to be admitted into evidence only under certain narrow circumstances. The court found that disclosure of HIV status would potentially embarrass the victim in the case and be perceived as evidence of past sexual activities. Therefore, HIV status was covered by the "rape shield" law. *Fells v. State*, 2005 Ark. Lexis 246 (Ark. 2005).

House Restores Funding for Housing Program for Persons with HIV/AIDS. On June 30, the U.S. House of Representatives adopted an amendment to an appropriations bill to increase funding of the Housing Opportunities for Persons with AIDS program by \$5 million. The increase, spearheaded by Reps. Jerrold Nadler, D-N.Y.; Christopher Shays, R-Conn.; and Joseph Crowley, D-N.Y.; restores the program to its 2003 funding level. *H.R. 3058, 109th Cong. (2005)*.

INTERNATIONAL

Canadian Marriage Bill Advances; Final Passage Expected Soon. The Canadian House of Commons gave final approval to a bill providing marriage equality for same-sex couples and final passage is expected soon. The bill passed by a 158 to 133 vote on June 28 and is expected to pass the Senate within a few weeks. Same-sex couples may already marry in eight of the 10 Canadian provinces and one territory due to judicial rulings. The pending legislation would extend marriage rights nationwide. The measure has an explicit provision stating that religious leaders would not be required to preside over marriages between same-sex couples.

Spain Approves Marriage Equality Measure. The Spanish parliament enacted a law June 30 providing equal marriage rights for same-sex couples. The Congress of Deputies approved the measure by a 187 to 147 vote; the bill had the full support of Prime Minister Jose Luis Rodriguez Zapatero's ruling Socialist Party. The Spanish law grants married same-sex couples full legal equality in all respects, including the right to adopt children and inherit property. The law took effect July 3.

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