



HUMAN  
RIGHTS  
CAMPAIGN  
FOUNDATION™

1640 Rhode Island Ave., N.W.  
Washington, D.C. 20036  
web: [www.hrc.org](http://www.hrc.org)  
phone: 202/628-4160  
fax: 202/347-5323

## LAW**briefs**

---

October 2005  
Vol. 7, No. 3

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

#### MARRIAGE AND RELATIONSHIP RECOGNITION

**Federal Employees' Domestic Partnership Benefits Bill Introduced.** On July 14, 2005, the Domestic Partnership Benefits and Obligations Act, which would grant federal employees who are in committed same- and opposite-sex relationships access to employee benefits, was reintroduced in the U.S. House of Representatives by Rep. Barney Frank, D-Mass., and 57 co-sponsors. Despite introduction each session since the 105th Congress, no action has been taken on this legislation. *H.R. 3267, 109th Cong. (2005)*.

**Appeals Court Upholds Cleveland Heights Domestic Partner Registry.** On July 14, 2005, an Ohio appellate court affirmed a lower court's refusal to enjoin operation of the city of Cleveland Heights' domestic partner registry. Two residents of Cleveland Heights had alleged that the law was an abuse of the city's corporate powers under the Ohio Constitution. The Court of Appeals upheld the registry, which was enacted in November 2003 as the first domestic partner registry established by popular vote, concluding that the ordinance affected only the municipality itself and thus was properly within the sphere of local self-government under the Ohio Constitution. *City of Cleveland Heights ex rel. Jimmie Hicks Jr. v. City of Cleveland Heights*, 832 N.E.2d 1275 (Ohio Ct. App. 2005).

**Discriminatory Marriage Amendment Petition Approved in California.** In late July 2005, California Attorney General Bill Lockyer approved for circulation three proposed amendments to the California Constitution that purport to ban marriage for same-sex couples and remove existing domestic partnership protections in that state. To qualify any of the measures for the June 2006 ballot, supporters will need to gather nearly 1 million signatures.

Vote Yes Marriage, the conservative group behind the first proposed amendment, filed suit against Lockyer over the measure on Aug. 3, 2005. The group opposed the title and wording Lockyer's office used in the summary of the initiative: "Marriage. Elimination of Domestic

Partnership Rights.” Vote Yes Marriage had called for the question to be titled: “The Voters’ Right to Protect Marriage Initiative.” On Sept. 1, 2005, a trial court judge held that the attorney general’s slightly revised title and summary were accurate and not misleading; a writ seeking review of the trial court’s decision was summarily denied on Sept. 21, 2005. *Bowler vs. Lockyer*, No. 05-CS-01123 (Sacramento County Sup. Ct. 2005) (unpublished opinion).

**Oregon Civil Unions Bill Dies After Making History.** On Aug. 5, 2005, the Oregon Legislature adjourned without a final vote on a combined civil union and anti-discrimination bill. The bill would have granted critical rights and protections to same-sex couples and their children and would have barred discrimination based on sexual orientation and gender identity in employment, housing and public accommodations. This bipartisan legislation made history in July when it passed the state Senate by a vote of 19-10. However, Speaker of the House Karen Minnis tabled the bill, ensuring that it would not come to a vote in that chamber. Oregon voters adopted a constitutional amendment in November 2004 excluding same-sex couples from marriage, but the language of that amendment did not expressly address the issue of civil unions.

**California Legislature Passes Marriage Equality Bill; Governor Vetoes.** On Sept. 6, 2005, the California Legislature made history when it passed the Civil Marriage and Religious Freedom Protection Act. The California Assembly passed the act, the first of its kind to pass a state legislature, by a 41-35 vote after the measure was approved by the Senate on Sept. 1. Unfortunately, Republican Gov. Arnold Schwarzenegger vetoed the bill on Sept. 29, citing the adoption of Proposition 22, a measure purporting to bar recognition of out-of-state marriages between same-sex couples, by California voters in 2000.

**Massachusetts Legislature Defeats Discriminatory Amendment; Battle Continues.** On Sept. 14, the Massachusetts Legislature, sitting jointly in a constitutional convention, overwhelmingly defeated the Travaglini-Lees amendment, which proposed to amend the state constitution to limit marriage to opposite-sex couples and create civil unions for same-sex couples, by a vote of 157 to 39. The legislature approved the amendment in March 2004 by a vote of 105 to 92, but the Massachusetts Constitution mandates approval in two consecutive legislative sittings.

Earlier, on Sept. 7, Massachusetts Attorney General Tom Reilly certified the petition for a citizen-initiated constitutional amendment ballot measure that would define marriage as only between a man and a woman. It would only apply prospectively, allowing all previously entered marriages of same-sex couples to continue to be valid. If proponents obtain sufficient signatures, as well as the approval of 25 percent of the state legislature in two consecutive sessions, the measure could be presented to Massachusetts voters in November 2008.

**Connecticut Recognizes Out-of-State Civil Unions.** On Sept. 20, Attorney General Richard Blumenthal issued an opinion stating that Connecticut must recognize out-of-state civil unions when its own law went into effect on Oct. 1. In an opinion requested by the Connecticut Department of Public Health, Blumenthal concluded that civil unions performed in other states are entitled to recognition under the Full Faith and Credit Clause of the U.S. Constitution, but out-of-state marriages between same-sex couples will not be recognized. According to the opinion, both Vermont civil unions and California domestic partnerships will now be recognized under Connecticut law and parties in such legal

relationships will not be able to enter into a Connecticut civil union. Conversely, parties with a legal marriage, e.g., from Massachusetts, will be allowed to obtain a Connecticut civil union.

**Salt Lake City Enacts Same-Sex Partner Benefits for City Employees.** On Sept. 21, Mayor Rocky Anderson signed an executive order, the first of its kind in Utah, extending domestic partner health benefits to city employees with same-sex partners. Anderson has also expressed a desire to provide paid bereavement and dependent-care leave, but is unable to execute these through an executive order without first presenting the issue to the City Council. Republican state Rep. LaVar Christensen has stated that he intends to derail the plan by introducing legislation in 2006 to make offering domestic partner benefits illegal. On Sept. 25, several city councilors, objecting to the limitation of the mayor's order to same-sex couples only, announced that they will introduce a measure that would allow city workers to name any person as a dependent for benefits purposes.

**Michigan Judge Upholds Provision of Domestic Partner Benefits.** On Sept. 27, a state trial court judge ruled that Michigan's discriminatory marriage amendment, adopted by voters in November 2004, does not preclude state and local governments from offering domestic partner health insurance benefits to their employees. Twenty-two same-sex couples filed suit against Democratic Gov. Jennifer Granholm after she terminated domestic partner benefits in the union contracts with state employees, based on the legal opinion of Michigan Attorney General Mike Cox that the constitutional amendment barred the state from providing them. *National Pride at Work Inc. et al v. Granholm*, No. 05-268-CZ (Ingham County Cir. Ct. 2005) (unpublished opinion).

**California Strengthens Domestic Partner Protections.** On Sept. 29, Republican Gov. Arnold Schwarzenegger signed two bills that extend the protections afforded registered domestic partners under California law. The first measure allows domestic partners of public employees who retired prior to Jan. 1, 2005, when the state's comprehensive domestic partnership law went into effect, to receive death benefits if the retiree dies before their partner. The second ensures legally recognized domestic partners are treated the same as spouses under state property tax laws by preventing the reassessment of a home when ownership passes from one registered domestic partner to another, such as when one partner dies.

## ANTI-DISCRIMINATION

**California Supreme Court Bars Discrimination Against Domestic Partners.** On Aug. 1, 2005, the California Supreme Court ruled that public accommodations in California that fail to provide benefits to registered domestic partners on par with those given to married couples violate California anti-discrimination law. The majority concluded that, "While creating a family-friendly environment may be a legitimate business interest, that policy is not served when a business discriminates against the domestic partner of one of its members. Rather, by so doing, the business violates the policy favoring domestic partnerships which, like the policy favoring marriage, seeks to promote families as well as reduce discrimination based on gender and sexual orientation." Plaintiff B. Birgit Koebke filed suit when the Bernardo Heights Country Club refused to allow her partner to be included on her

membership in the same way that a spouse would be. *Koebke v. Bernardo Heights Country Club*, 36 Cal. 4th 824 (2005).

**Maine Voters Again to Decide Fate of Anti-Discrimination Law.** On Aug. 16, 2005, the secretary of state's office announced that a conservative Christian group opposed to the statewide law prohibiting discrimination based on sexual orientation and gender identity, which was adopted by the legislature earlier this year, had gathered enough signatures to place a referendum on the November ballot. This marks the third time an anti-discrimination bill has been passed by the Maine Legislature. The Christian Civic League brought the issue to the ballot in 1998 and 2000, and both times the law was rejected. Every other New England state has a statewide law prohibiting discrimination based on sexual orientation. Statewide polling indicates that three in five Mainers would vote to uphold the law.

**House Committee Votes to Restore Protections for Federal Workers.** On Sept. 15, 2005, the U.S. House Government Reform Committee reported out the Clarification of Federal Employment Protections Act by a unanimous voice vote. The bill was introduced by Reps. Henry Waxman, D-Calif., and Christopher Shays, R-Conn., in response to the ongoing failure of Special Counsel Scott Bloch to fully enforce protections for federal employees that have been in place since the Carter administration. Despite over two decades of consistent interpretation of the Civil Service Reform Act of 1978 to prohibit discrimination based on sexual orientation, Bloch claimed at a Senate hearing in May that he lacked the authority to investigate at least some claims of anti-gay bias. The bill now awaits consideration on the floor of the U.S. House of Representatives. *H.R. 3128, 109th Cong. (2005)*.

**California Expands Protections in Public Accommodations, Health Care.** On Sept. 29, Republican Gov. Arnold Schwarzenegger signed two measures that expand California's anti-discrimination laws to better protect gay, lesbian, bisexual and transgender people. The first bill builds upon the Unruh Civil Rights Act and related provisions of state law to clarify and reinforce that all businesses that provide services, goods or accommodations to the public cannot discriminate based on sexual orientation, gender identity or marital status. The second bill prohibits insurers and health plans from discriminating on the basis of gender identity in contracts and policies or in the provision of benefits or coverage, making California the first state to protect its transgender citizens from unfair treatment with regard to insurance.

## HATE CRIMES

**Two Convicted in Gwen Araujo Murder Trial.** On Sept. 12, after an extended legal battle, two men were convicted of second-degree murder for the slaying of Gwen Araujo, a 17-year-old transgender woman. In October 2002, four assailants, upon discovering that Gwen had male genitalia, beat and strangled her and then buried her body in a shallow grave in a remote mountain area. One of the assailants subsequently admitted his involvement in the crime and the prosecution of the three others commenced. In June 2004, jurors were unable to reach a verdict and a mistrial was declared. Prosecutors successfully brought a new trial, but jurors rejected hate crime charges and were unable to reach a verdict on the third defendant.

**House of Representatives Passes Hate Crimes Bill.** On Sept. 14, 2005, the U.S. House of Representatives passed the Local Law Enforcement Hate Crimes Prevention Act by a 223 to 199 vote as an amendment to a larger bill, the Children's Safety Act. Rep. John Conyers Jr., D-Mich., led the effort to add the hate crimes provision and he, along with Reps. Barney Frank, D-Mass.; Ileana Ros-Lehtinen, R-Fla.; Christopher Shays, R-Conn.; and Tammy Baldwin, D-Wis.; was a lead sponsor of the original bill. The bill, which adds disability, gender, gender identity and sexual orientation to existing federal hate crimes statutes, will now be sent to the Senate for its consideration.

## CHILDREN AND PARENTING

**California Supreme Court Upholds Rights of Same-Sex Parents.** On Aug. 22, 2005, the California Supreme Court ruled in three cases that children born to same-sex couples must have the same legally protected relationships to both partners that children of opposite-sex couples enjoy. In *K.M. v. E.G.*, the court held that "when partners in a lesbian relationship decide to produce children in this manner [i.e. through ovum sharing], both the woman who provides her ova and her partner who bears the children are the children's parents." In *Elisa B. v. Superior Court*, the court ruled that "a woman who agreed to raise children with her lesbian partner, supported her partner's artificial insemination using an anonymous donor, and received the resulting twin children into her home and held them out as her own, is the children's parent under the Uniform Parentage Act." In *Kristine H. v. Lisa R.*, the court held that a biological mother was estopped from challenging a judgment she previously asked a court to issue declaring that both she and her former same-sex partner were the legal parents of a child born to them through assisted reproduction. *K.M. v. E.G.*, 37 Cal. 4th 130, 33 Cal. Rptr. 3d 61, 117 P.3d 673, (Cal. 2005); *Elisa B. v. Superior Court*, 37 Cal. 4th 108, 33 Cal. Rptr. 3d 46 (Cal. 2005); *Kristine H. v. Lisa R.*, 37 Cal. 4th 156, 33 Cal. Rptr. 3d 81, 117 P.3d 690 (Cal. 2005).

**Pennsylvania Appeals Court Focuses on Children's Best Interests.** On Sept. 27, the state Superior Court upheld a lower court decision that awarded custody of twins to the former partner of their biological mother. The unanimous opinion of the Superior Court panel agreed with the lower court's finding that the best interest of the couple's children were served by granting primary physical custody to the twins' non-biological mother. Both courts rejected the biological mother's argument that biology alone should determine custody. *Jones v. Boring*, No. 271 EDA 2005 (Pa. Super. Ct. 2005).

## EDUCATION AND SCHOOLS

**Federal Court Awards Bullied Kansas Teen \$250,000.** Dylan Theno filed suit against his school district, claiming that officials knew about the rampant homophobic teasing he suffered from junior high through high school, yet did nothing to stop it. On June 24, 2005, a federal district court denied defendant's motion for summary judgment and allowed the case to proceed to trial, where a jury awarded him \$250,000. The court found the school district's action to be deliberate indifference to severe harassment in violation of Title IX of

the Education Amendments Act of 1972. *Theno v. Tonganoxie Unified Sch. Dist. No. 464*, 377 F. Supp. 2d 952 (D. Kan. 2005).

**Florida School District Settles Yearbook Picture Case.** On Sept. 21, Clay County School District officials announced that they had settled a lawsuit brought by Kelli Davis, a lesbian student whose photograph was excluded from her yearbook because she wore a tuxedo rather than a scoop-necked collar. The decision to exclude her led to a heated school board meeting in February, at which the board voted to support the school officials' choice. In the settlement agreement, the school district agreed to change its senior portrait policy, add sexual orientation to its non-discrimination policy and provide diversity training.

## HIV/AIDS

**Mississippi Judge Reverses Order Barring Children from Visiting HIV-Positive Aunt.** On July 25, 2005, a Jackson County court reversed a temporary custody restriction placed by a judge in the Chancery Court barring a Mississippi mother from allowing her children to be in the presence of their HIV-positive aunt. Keri Rowell had been told that an extension of the temporary custody of her three children was contingent upon the children being denied physical contact with their aunt, Tanya Wilkins, because she has HIV. Rowell wanted to live with her sister but was unable to do so as a result of the restriction. *Rowell v. Rowell* (Jackson County Ch. Ct. 2005) (unpublished opinion).

## INTERNATIONAL

**Judge Strikes Down Hong Kong Sodomy Laws.** On Aug. 24, Hong Kong's High Court struck down the former British colony's sodomy laws, finding that they "discriminate on the basis of sexual orientation and are demeaning of gay men who are, through the legislation, stereotyped as deviant." The laws prohibited consensual sodomy between men if either was under 21, punishing violations with as much as life imprisonment. On the contrary, opposite-sex and lesbian couples who were 16 or older could legally have such relations.

**Marriage Ban Moves Forward in Latvia.** In mid-September, Latvia's proposed constitutional ban on marriage for same-sex couples, pushed by the Christian First party, was passed by Parliament. It still needs to survive three additional votes and be approved by a constitutional panel before it could be enacted. The amendment gained momentum after a judge overruled a ban on gay pride festivals in July, which he said was a blatant violation of Latvia's human rights obligations under the European Convention on Human Rights as a member of the European Union.

**Czech Republic's Same-Sex Partner Bill Progressing.** In mid-September, after four previous attempts to pass legislation granting same-sex couples domestic partner benefits, a bill passed a key committee of the Czech Parliament after gaining the support of the opposition Communist Party. The only party to oppose the measure now is the minority Christian Democrats and supporters expect it will finally pass this year.

**Equal Marriage Rights Attacked in Spain.** On Sept. 19, Spain's Popular Party asked the Constitutional Court to invalidate the law, adopted in June, which made Spain the fourth country to grant equal marriage rights to same-sex couples. The Popular Party led the attack on marriage equality in Parliament before the law was passed, producing as a witness Prof. Aquilino Polaino, who referred to homosexuality as a "disease" caused by fathers who are "violent, hostile, distant or alcoholic" and "cold, over-protective" mothers. A conservative advocacy group and two regional judges have also joined the challenge.

**Italy Accepts Gay Blood Donors.** On Sept. 22, Italy's health minister ordered a Milan hospital to discontinue its practice of turning away potential blood donors because of their sexual orientation. In the United States, federal regulations bar all blood donations from men who have had sexual contact with other men since 1977.

---

**Acknowledgments/Sources.** In addition to primary court and legislative materials, sources for the above summaries include Prof. Arthur S. Leonard's invaluable *Lesbian/Gay Law Notes* and materials from the American Civil Liberties Union, Gay & Lesbian Advocates & Defenders, Lambda Legal and the National Center for Lesbian Rights. We thank these valued allies for their helpful review of, and contributions to, *LAWBriefs*.

**Writers/Editors.** Amy Bivins and David Kim, McLeary Law Fellows/Writers; Brian Moulton, Staff Counsel/Editor; Carrie Evans, State Legislative Director; Robin Reed, Editorial Manager; Lara Schwartz, Chief Legislative Counsel; Liz Seaton, General Counsel/Legal Program Director.

---

**©2005 by the Human Rights Campaign.** All rights reserved. HRC grants permission for the reproduction and redistribution of this publication only when reproduced in its entirety and distributed free of charge. The Human Rights Campaign name and the Equality logo are trademarks of the Human Rights Campaign.