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# LAW *briefs*

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## RECENT DEVELOPMENTS IN SEXUAL ORIENTATION AND GENDER IDENTITY LAW

### *In the Headlines*

**Supreme Court's *Boy Scouts of America v. Dale* Decision Backfires on BSA.** Two additional corporate sponsors recently have pulled financial contributions to the Boy Scouts of America in the wake of the Supreme Court decision upholding the BSA's discriminatory policy banning gay Scout leaders. Textron Inc. and Knight-Ridder have decided against continuing their contributions. In 1992, Levi Strauss & Co. became the first major company to end contributions to BSA because of its discriminatory policy toward gays. Banking giant Wells Fargo Co. also ended their support of BSA before the Supreme Court decision. Also, at least ten United Ways have adopted or are considering policies to prevent funds from going to groups that discriminate on the basis of sexual orientation. These include groups in Portland, Maine; Providence, R.I.; New Haven, Conn.; Santa Fe, N.M.; San Francisco; Somerset County, N.J.; Heart of Florida United Way; the United Way of Massachusetts; and United Way in Minneapolis and St. Paul, Minn.

On June 28, in a 5-4 decision, the Supreme Court held that BSA had a First Amendment right to expel a highly decorated gay scoutmaster, finding that his mere presence would interfere with BSA's ability to express its anti-gay message. After being removed from his scoutmaster position because he was gay, James Dale sued under a state law prohibiting sexual orientation discrimination in public accommodations, with the New Jersey Supreme Court entering a unanimous decision in his favor in 1999. The Supreme Court overruled New Jersey's decision in an opinion written by Chief Justice Rehnquist. The Court accepted that BSA was a public accommodation under New Jersey law, but deferred to BSA's assertions that it engaged in constitutionally protected expression and that homosexuality is incompatible with its organizational goals. The Court therefore found that BSA's ability to express its anti-gay message would be significantly burdened by the forced inclusion of a gay scoutmaster. The Court concluded that New Jersey's public accommodations law as applied to the BSA violated the First Amendment, but noted that its decision was not "guided by [its] views of whether the Boy Scouts' teachings with respect to homosexuality are right or wrong."

In a lengthy dissent, Justice Stevens criticized the majority's conclusion that prohibiting BSA from discriminating against gays would burden its ability to express the organization's shared goals. Joined by Justices Souter, Ginsburg and Breyer, Stevens cited the BSA's lack of a publicly articulated policy on homosexuality and charged that BSA had failed to demonstrate that disapproval of homosexuality was, in fact, a "shared goal" of the organization. Even assuming the BSA's associational goals included opposition to homosexuality, Stevens argued that Dale's continued presence in BSA would not itself alter the organization's message. Evan Wolfson and Lambda Legal Defense and Education Fund represented James Dale. HRC helped coordinate an *amicus* brief filed on behalf of numerous civil rights organizations. *Boy Scouts of America v. James Dale* (June 28, 2000).

**Other Legal Developments Regarding the Boy Scouts:** On May 11, the Connecticut Commission on Human Rights and Opportunities ruled that BSA would not be included in the State Employee Campaign for charitable giving because of BSA's exclusionary policy toward gays. The BSA filed suit against the SEC in federal district court, where it won the short-term right to be included in SEC's materials while funds designated for BSA are held in escrow until a determination on BSA's eligibility for the SEC could be made. City councils, mayors and school districts in Tucson, Ariz.; Detroit, Mich.; Fort Lauderdale, Fla.; Huntington, W.Va.; New York and other cities are currently considering proposals to revoke funds from groups that discriminate against gays. **In Congress:** Ten members of Congress have signed a letter asking President Clinton to resign as honorary head of BSA while Rep. Lynn Woolsey, D-Calif., introduced legislation in the House to

revoke BSA's federal charter. **Legal action:** The Portland Public School District's administrative appeals system has received a complaint from the American Civil Liberties Union of Oregon alleging violation of state anti-discrimination and separation of church and state in the school district's sponsorship of the BSA.

**Department of Justice Opens Preliminary Investigation into West Virginia Murder.** Arthur Warren Jr., a 26-year-old African American gay man was allegedly beaten and kicked to death by two 17-year-old boys in early July. After beating him, the killers reportedly threw Warren's body into the road and drove over it several times to make the crime look like a hit and run. After meeting with representatives from HRC, NAACP, the Leadership Conference on Civil Rights and the victim's parents, the Justice Department decided to begin a preliminary investigation into the murder to determine whether federal prosecutors should become involved. While both West Virginia and the federal government have hate crime laws regarding race, neither have laws covering hate crimes based on the victim's sexual orientation.

**Supreme Court Protects Rights of Biological Parents.** In a 6-3 decision, the Supreme Court invalidated a Washington statute allowing any person to petition for child visitation, holding that the statute as applied violated the substantive due process rights of the biological mother. Two grandparents brought the case seeking more visitation time with their granddaughters than the biological mother was willing to allow. The Court affirmed the Washington Supreme Court's dismissal of the grandparents' petition, generating six separate opinions. In the plurality opinion, Justice O'Connor (joined by Justices Rehnquist, Ginsburg and Breyer) noted that the statute was "breathtakingly broad" and criticized the trial court (which had granted increased visitation to the grandparents) for failing to give "material weight" to the mother's judgement. The Court, however, limited its holding to the facts and declined to state the constitutional standard of review a visitation statute would have to meet.

In one of three dissenting opinions, Justice Stevens said he would have remanded the case to the trial court to determine if the child's interests had been properly "balanced in the equation." Stevens argued that because there is "almost an infinite variety of family relationships," the Court must be careful not to create "a constitutional rule that treats a biological parent's liberty interest in the care and supervision of her child as an isolated right that may be exercised arbitrarily." Gay and Lesbian Advocates and Defenders (GLAD), Lambda, and the ACLU all filed *amicus* briefs in the case. *Troxel v. Granville* (June 5, 2000).

**Ninth Circuit Grants Asylum for Gay Man.** On August 24, a unanimous panel of the Ninth Circuit granted asylum for a gay Mexican man who was persecuted because of his sexual orientation, concluding as a matter of law that gay men with female sexual identities constitute a "particular social group" under the U.S. asylum statute. Geovanni Hernandez-Montiel sought asylum in the United States at age 15 after experiencing years of harassment and abuse because of his sexual orientation, including being subjected to "conversion" therapy and being sexually assaulted by law enforcement officers on two separate occasions. The Immigration Judge and the Board of Immigration Appeals ("BIA") rejected Hernandez-Montiel's request for asylum. The Ninth Circuit, however, sided with Hernandez-Montiel and rejected the BIA's contention that he was merely being "mistreated because of the way he dressed (as a male prostitute)." In determining that sexual orientation and sexual identity can be the basis for establishing a "particular social group" under U.S. asylum law, the 9<sup>th</sup> Circuit panel noted that "sexual orientation and sexual identity are immutable; they are so fundamental to one's identity that a person should not be required to abandon them." *Hernandez-Montiel v. INS*, 2000 U.S. App. LEXIS 21403 (9<sup>th</sup> Cir. 2000)

**Senate Passes Local Law Enforcement Enhancement Act by Vote of 57 to 42.** On June 20, the U.S. Senate made history by passing hate crimes legislation covering sexual orientation, gender and disability. Formerly referred to as the Hate Crimes Prevention Act, the renamed Local Law Enforcement Enhancement Act of 2000 was approved in a bipartisan effort as an amendment to the DOD authorization bill. The House of Representatives passed its version of the defense authorization bill in May. A House and Senate conference committee is set to begin work on the bills.

**Vermont Civil Unions Law Takes Effect.** On July 1, a law went into effect in Vermont allowing same-sex couples to enter into "civil unions." Passed by the Vermont state legislature in April (*see* LAWbriefs Spring 2000), the new civil unions law extends some 300 legal benefits, protections and duties of marriage to same-sex unions. These include protections in inheritance, property, child custody and visitation, family leave and state tax contexts. Although civil unions are available in Vermont to in-state and out-of-state residents, the legal status of civil unions outside of Vermont has yet to be determined and can be expected to evolve over time.

## ***Hate Crimes***

*See Senate Passes Local Law Enforcement Enhancement Act, page 2.*

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*See Department of Justice Opens Preliminary Investigation, page 2.*

**New York and Tennessee Enact Hate Crimes Legislation.** Within three weeks of each other, both New York and Tennessee governors signed into law hate crimes bills covering sexual orientation. The new laws will create sentence enhancements for crimes motivated by anti-gay prejudice. Forty-three states now have hate crimes legislation, twenty-three of which include sexual orientation.

**Supreme Court Rules Bias Motivation is Jury Question.** On June 26, the Supreme Court found a New Jersey hate crimes sentencing scheme unconstitutional because it allowed a trial court judge, using a “preponderance of the evidence” standard, to determine whether a criminal defendant’s motivation came within the provisions of the hate crimes law. The defendant was charged with firing a gun into the home of African-Americans. After the defendant entered a guilty plea to firearms charges, the trial judge determined by a preponderance of the evidence that the crime was motivated by racial animus and accordingly added two years to the defendant’s sentence. In a 5-4 decision written by Justice Stevens, the Court held that under the Sixth Amendment, any fact that increases the penalty of a crime beyond the statutory maximum must be submitted to a jury and proven beyond a reasonable doubt. *Apprendi v. New Jersey* (June 26, 2000).

## ***Sodomy Laws***

**Texas Court of Appeals Strikes Down Same-Sex Sodomy Law.** A Texas Appeals Court ruled on June 8 that a statute prohibiting “deviate sexual intercourse with another individual of the same sex” violated the Texas Equal Rights Amendment. The Texas ERA states that “[e]quality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.” The court reasoned that the statute discriminated on the basis of sex because the same behavior was made criminal “based solely on the sex of the individuals who engage in the behavior.” The court rejected the state’s argument that the statute was not discriminatory because it applied to both men and women equally, and noted that the Supreme Court had rejected a similar argument made in defense of prohibitions on mixed race marriages in *Loving v. Virginia*. The district attorney will seek to have the decision reviewed by the court *en banc*. Ruth Harlow and Suzanne Goldberg from Lambda were both involved in the case. *Lawrence v. State* (June 8, 2000).

**Louisiana’s Sodomy Law Upheld by the State Supreme Court.** Reversing a unanimous Court of Appeals decision, the Louisiana Supreme Court ruled that the state constitutional right to privacy was not violated by a 195-year-old state law prohibiting “unnatural carnal copulation.” The law applies to both consensual and nonconsensual, heterosexual and homosexual, marital and non-marital sexual activity. The court relied heavily on *Bowers v. Hardwick* in its 5-2 decision, stating that the constitution does not protect behavior the state legislature considers immoral, even when that behavior is consensual and private. The court also rejected challenges to the statute based on overbreadth, vagueness, equal protection and cruel and unusual punishment theories. In dissent, Chief Justice Calogero acknowledged the power of the legislature to make public policy, but found “the legislature cannot validly enact a law that impermissibly infringes upon a constitutional guarantee.” The ACLU and Lambda filed *amicus* briefs in this case. *State v. Smith* (July 6, 2000).

**New York Legislature Repeals Its Sodomy Law.** On June 22, twenty years after an appellate court struck down a New York law prohibiting oral and anal sex, the New York state legislature passed a sexual offenses reform bill, repealing the state sodomy law. Although the law was judicially invalidated in 1980, the statute remained on the books and was occasionally invoked by prosecutors. The repeal eliminates any lingering doubt regarding the old law’s validity. The new law, proposed by Republican Governor George Pataki, goes into effect on February 1, 2001.

**Massachusetts Sodomy Law Challenged.** GLAD is representing Massachusetts gay and non-gay couples in a suit seeking to invalidate two Massachusetts criminal statutes authorizing sentences as long as 20 years for anal sex, and 5 years for oral sex. The two provisions are the only remaining sodomy laws in New England.

## ***Family Law – Parenting***

*See Supreme Court Protects Rights of Biological Parents, page 2.*

**House and Senate Pass Intercountry Adoption Legislation.** In July, the House of Representatives and the Senate unanimously passed the Intercountry Adoption Act, implementing a treaty signed by the United States in 1994 and

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awaiting ratification. The bill's major purposes are to minimize corruption in foreign adoptions and streamline the adoption process for American families. Representative Chris Smith (R-N.J.) attempted to add language restricting adoptions by gays and others he deemed "promiscuous." This provision was not included in the final version of the bill, although it did include compromise language that requires U.S. adoption agencies to provide information relevant to any requirements specified by the child's country of origin with respect to eligibility to adopt. The bill has passed both the House and Senate in slightly different forms and is expected to be cleared for the President once the remaining differences have been resolved.

**Non-Biological Lesbian Mother Has Standing to Contest Custody in Maryland.** The Maryland Specials Appeals Court ruled on July 3 that a lesbian woman who lived with her partner's child for five years as a co-parent, may have standing to sue for joint legal custody or visitation with the child. Under Maryland law, although there is a presumption that the child's best interest is served by custody with the biological parent, a third party can prevail on a custody or visitation claim under "exceptional circumstances." The appellate court in this case reasoned that the co-parent could demonstrate "exceptional circumstances" if she could show she had been "acting as a parent" for at least six months. Importantly, the court noted that its decision did not conflict with the Supreme Court's holding in *Troxel v. Granville* because, unlike Washington, Maryland affords a presumption in favor of the biological parent having custody. The case was remanded for a determination on whether "exceptional circumstances" existed. *Gestl v. Frederick* (July 3, 2000).

**Other Custody Decisions Involving Non-Biological Co-Parents** In *T.B. v. L.R.M.* (June 5, 2000), the *en banc* Superior Court of Pennsylvania ruled unanimously that a non-biological lesbian co-parent who had participated in planning the insemination and birth of a child and subsequently lived with and helped raise that child for three years, had standing to seek visitation with the child. . . . In *Matter of J.C. v. C.T.* (July 11, 2000), a New York family court judge granted temporary visitation to a lesbian co-parent. The petitioner lived with and helped raise the two and four-year-old children her former partner had by artificial insemination before the couple separated. The judge granted the petitioner four hours of visitation every other week, stating that "[t]hese children have the right of any other children to continue a loving relationship with their parents." . . . In *Brandt v. Becht* (June 2000), a trial judge in Georgia dismissed a custody and visitation petition of a lesbian co-parent. Citing *Troxel v. Granville*, the court stated that absent threat or harm to the child, the wishes of the biological parent are paramount.

**Florida Court of Appeals: Potential for Anti-Gay Prejudice Not Relevant in Child Custody Decision.** The Florida 2<sup>nd</sup> District Court of Appeal found a trial court's use of "societal homophobia" in denying custody to a lesbian mother improper. In a custody dispute between a heterosexual father and lesbian mother, the trial court awarded custody to the father based on concerns that the mother's sexual orientation would cause the children to be harassed in school. The appeals court reversed and remanded the case, stating "the law cannot give effect to private biases." The court also pointed to a lack of factual support for the trial court's conclusion. Lambda filed an *amicus* brief for the mother. *Jacoby v. Jacoby* (May 26, 2000).

**Connecticut Passes Pro-Gay Adoption Policy.** In June, Connecticut enacted a law providing for gay second parent adoption. The same bill emphasizes Connecticut's public policy against the recognition of same-sex marriages, although nothing in the bill suggests that Connecticut's public policy prevents the recognition of non-marital same-sex relationships.

## ***Family Law – Marriage and Domestic Partnership***

**See Vermont Civil Unions Law Takes Effect, page 2.**

**Coca-Cola and "Big Three" Automakers Extend Benefits to Same-Sex Domestic Partners.** General Motors Corp., Ford Motor Co., Daimler Chrysler Corp. and Coca-Cola each announced in June plans to extend healthcare coverage to domestic partners of their gay U.S. employees. The automakers' policies took effect on August 1, while Coca-Cola's will begin in January. At least ninety-nine Fortune 500 companies now provide partnership health benefits to their employees.

**Court Approves Two Mothers On Birth Certificate.** A Massachusetts court ruled that two women may be listed as "mother" on a birth certificate, when one of the women donated the egg for the child and the other carried the child. The court found such a listing consistent with Massachusetts public policy and in the child's best interest.

**Washington State Employees Granted DP Coverage.** On May 23, the Washington State Public Employees Benefits Board voted to extend health care benefits to same-sex domestic partners. The new coverage is available to state workers, public school employees and local government employees whose employers provide benefits through the state system.

## ***Employment***

**Seventh Circuit: Title VII Does Not Prohibit Employment Discrimination Based on Sexual Orientation.** On August 24, a unanimous panel of the Seventh Circuit upheld a summary judgment ruling in favor an employer accused of employment discrimination on the basis of sexual orientation. The panel concluded that sexual orientation is not a protected class under Title VII and employees who are discriminated against in the workplace because of their sexual orientation have no remedies under the statute. *Hamner v. St. Vincent Hospital and Health Care Center, Inc.* (Aug. 24, 2000).

**Federal Court Recognizes Anti-Gay Harassment as Actionable Under Title VII, Dismisses Suits on Other Grounds.** In two decisions issued in April and May, the Southern District of New York held that two separate cases of anti-gay harassment, one against a gay man and one against a man perceived to be gay, could be characterized as discrimination "because of sex" under Title VII. In the first case, co-workers addressed a heterosexual male in a manner insinuating that he was gay. The court stated that since the comments "focused on the sexual conduct of plaintiff as a man," they may have been made "because of sex." However, the court ruled the harassment was not sufficiently severe to be actionable under Title VII. In the second case, a gay man was called derogatory names and touched by co-workers in "a sexual and humiliating manner on a daily basis." The court concluded the plaintiff made a *prima facie* case for a hostile environment sex discrimination under Title VII, but granted the defendant's motion for summary judgment because the plaintiff failed to utilize the company's internal grievance procedures for addressing sexual harassment. *Carasco v. Lenox Hill Hospital* (April 28, 2000); *Patterson v. CBS, Inc.* (May 22, 2000).

**Department of Justice Files *Amicus* in Kentucky Case.** The Clinton administration is supporting a local civil rights law that prohibits discrimination on the basis of sexual orientation. Justice Department lawyers are urging a federal district court in Louisville, Kentucky, to reject a challenge to its anti-bias ordinance that claims the law interferes with the free exercise of religion. The American Center for Law and Justice has challenged the Louisville ordinance on behalf of Dr. J. Barrett Hyman, a local physician, who claims that the ordinance "requires [him] to violate his religious beliefs" by forcing him to hire a gay employee. The Justice Department's friend-of-the-court brief argues that if Hyman were to win his case, "other employers could claim that being required to employ individuals of a particular race, sex, national origin or religion violates their First Amendment rights to free exercise of religion." The ACLU, which is representing a broad coalition of lesbian, gay, bisexual and transgendered persons, has asked the court to dismiss Hyman's lawsuit.

**Ohio Supreme Court Affirms Jury Verdict in Same-Sex Harassment Case, But Rejects Reasoning.** On June 21, the Ohio Supreme Court affirmed a jury award of more than \$1.5 million in damages to a male employee harassed by a male co-worker, but overturned its finding that the harassment was "because of sex." Plaintiff Laszlo Hampel was verbally abused in a sexually explicit manner by his supervisor, and at trial a jury found for Hampel on sexual harassment and intentional infliction of emotional distress claims. The Ohio Supreme Court affirmed the emotional distress verdict under state law, but held that the claim of sex discrimination should not have gone to the jury because the harassment was "simply abusive" and not directed at the plaintiff because of his sex. *Hampel v. Food Ingredients Specialties, Inc.* (June 21, 2000).

**Fairfax County, Virginia, Provides Protection.** In May, the Board of Supervisors in Fairfax County, Virginia voted 7-3 to add sexual orientation to its nondiscrimination policy.

## ***Education/Youth***

**President Clinton Issues Executive Order Banning Anti-Gay Discrimination in Federal Education Programs.** On June 23, President Clinton issued Executive Order 13160 banning discrimination on the basis of race, sex, color, national origin, disability, religion, age, status as a parent, or sexual orientation in federal education and training programs and activities. The executive order does not apply to the armed forces.

**University Discriminates Against Gay Students in Housing.** A New York appellate court upheld Yeshiva University's refusal to allow same-sex partners to live together in campus family housing. Although New York City prohibits housing discrimination based on sexual orientation and New York law prohibits marital status discrimination, the court held that the university's policy was not discriminatory because Yeshiva prohibits both opposite-sex and same-sex non-married couples from living in student housing. The court did not address the policy's disparate impact on same-sex couples resulting from the fact that gays cannot legally marry their partners. The ACLU plans to appeal. *Levin v. Yeshiva University* (May 11, 2000).

**Reno Files Motion to Join Lawsuit Against Anti-Gay Harassment at School.** In what may be the first action of its kind, Attorney General Reno is seeking to intervene in a federal lawsuit to support a student alleging harassment on the basis of perceptions that he is gay. The plaintiff is a Kansas City high school student alleging that he was taunted and beaten because classmates thought he was gay, and that school officials did nothing to stop it. Reno noted school officials exhibited a “deliberate indifference” to the harassment the student suffered, and asked the court to order the school to develop a plan to create a “harassment-free” educational environment.

**School District Ordered to Stop Transferring Students from Gay Teacher's Classroom.** Affirming the decision of the labor commissioner, the California Department of Industrial Relations (CDIR) held that the Helmut Unified School District violated state law when it transferred a high school student out of a lesbian teacher's classroom. In 1998, a parent demanded her daughter be taken out of a teacher's classroom after she mentioned her same-sex partner in class. The case went before the state labor commissioner who ordered officials to stop removing students from the teacher's class. CDIR affirmed the decision. Lambda supported the plaintiff in this case with an *amicus* brief. *Kavanaugh v. Hemet Unified School District* (June 20, 2000).

**Class Action Brought by Gay Kids in Children's Services Barred by Earlier Suit.** The Second Circuit Court of Appeals found a proposed class action brought by gay children in the custody of New York Children's Services was barred by the settlement of another class action. The plaintiffs sought to sue the city, alleging anti-gay bias by child welfare officials and heterosexual peers in the foster care system. The class action was barred because another suit alleging abuse in the child welfare system, brought on behalf of all New York City children in the custody of Children's Services, had already settled. The court held that gay children's claims were included in this settlement, although the earlier suit did not specifically address anti-gay discrimination. *Joel A. v. Giuliani* (July 10, 2000).

**School Districts Adopt Policies Protecting Gay Students.** School boards in Cleveland, OH, Clark Pleasant, IN, and Bellevue, NE have amended school policies to prohibit harassment of students based on sexual orientation. The policy for the Bellevue school district applies to both students and teachers while the Cleveland and Clark Pleasant policies are specifically focused on student harassment. Naperville School District in Illinois is also considering implementing a policy to bar anti-gay slurs and other anti-gay harassment.

## ***Military***

**Defense Department Releases Plan to Eliminate Anti-Gay Harassment But Finds No Climate of Homophobia at Fort Campbell.** In a July 21 report, the DOD set forth a 13-point “action plan” requiring commanders to take disciplinary action against anti-gay harassers. Commanders who fail to take action to stop harassment are now subject personally to disciplinary action. The new policy was developed after an investigation sparked by the 1999 murder of gay soldier Barry Winchell. (see *LAWbriefs*, Winter 2000). In a second report released the same day, the DOD exonerated commanders at Fort Campbell for any responsibility in Winchell's death, and found no evidence of homophobia at Fort Campbell. The military's report flies in the face of clear evidence of an anti-gay climate at Fort Campbell documented by the Servicemembers Legal Defense Network, a legal aid and watchdog organization established to assist personnel hurt by the military's “Don't Ask, Don't Tell, Don't Pursue, Don't Harass” policy.

## ***Criminal Law***

**Jury Rejects Gay Panic Defense.** On May 10, a Louisiana state appeals court affirmed a jury's rejection of a self defense claim in the 1997 killing of Cedric Williams. Defendant Timothy Ray Hudson shot and killed Williams then set his body on fire. He claimed his actions were taken in self defense, in response to Williams' attempt to sexually assault him. The jury convicted Hudson of manslaughter, finding his defense full of inconsistencies and unsupported by the facts. *State v. Hudson* (May 10, 2000).

## ***International***

**Canada Passes Law Guaranteeing Equality for Same-Sex Couples.** In June, Canada enacted Bill C-23, which extends to same-sex couples and unmarried heterosexual couples who have lived together for at least a year all the benefits and obligations of married couples. The new bill guarantees equal treatment for gay couples in areas such as income-tax, alimony, pensions and veteran's benefits. Also included in the bill is a new definition of marriage as “the lawful union of one man and one woman.”

**High Court of Israel Acknowledges Rights of Lesbian Co-Parents.** Israel's High Court of Justice ruled that a non-biological lesbian co-parent must be recognized as her child's legal mother in a May 29 decision. Although plaintiff Nicole Berner-Kadish had been legally recognized as the mother of her partner's child in California through a second parent adoption, when the family moved to Israel, the Israeli government would recognize only the biological mother as the child's legal parent. The Court held the government must register citizens as they define themselves, as long as they have supporting documentation. Since California law recognized Nicole as a parent, the Court reasoned, Israeli law must as well. *In re Adoption of M.B.-K.* (May 29, 2000).

**Gay Couples in Brazil Legally Recognized.** In June, Brazil extended to same-sex couples the right to inherit each other's pension and social security benefits. The law extends to any couple who can prove a "stable union" and has been described as the first time a Latin American state has legally recognized gay relationships.

**Romania Decriminalizes Homosexuality.** The Romanian Chamber of Deputies decriminalized homosexuality in response to a pressure from the Council of Europe.

**Scotland Eliminates Anti-Gay "Promotion" Law.** Voting 99-17, the parliament of Scotland repealed Section 28, a controversial law that had banned the "promotion" of homosexuality in schools. A similar proposal in England was defeated in the House of Lords.

**Canada Court Maintains Spouse Definition Unconstitutional.** The Supreme Court of Canada rejected a request by the Ontario government to review its 1999 decision that the province's definition of "spouse" is unconstitutional because it discriminates on the basis of sexual orientation (*see* LAW *briefs* Summer 1999).

## ***HIV/AIDS***

**California Supreme Court Rules Insurance Company Cannot Deny Benefits to Policyholder with AIDS.** Mark Galanty was diagnosed with HIV in 1987, and obtained a disability insurance policy from Paul Revere Life Insurance Company in 1989. The company never asked Galanty if he had AIDS or HIV and the policy did not exclude people with either of those conditions. In 1994, after Galanty was diagnosed with AIDS, he presented a disability claim which Paul Revere refused to pay, arguing that Galanty's AIDS diagnosis was "manifest" before the policy took effect. In a unanimous opinion, the California Supreme Court held the insurance company had to pay the claim, basing its decision on a California law prohibiting the insurance company from denying disability claims after a policy has been in effect for at least two years. Lambda represented the plaintiff in this case. *Galanty v. The Paul Revere Life Insurance Co.* (June 19, 2000).

**Ryan White CARE Act Passes House and Senate.** On July 26, the House of Representatives followed the Senate's lead and voted unanimously to reauthorize the Ryan White Comprehensive AIDS Resources Emergency Act for five more years. The House-passed bill updates the funding formula by using HIV data rather than AIDS data for distributing funds, and attempts to direct funds to areas that need it the most. Currently, members from the House and Senate are reconciling the differences between the House-passed and the Senate-passed measures.

**New York Court Recognizes Privacy Rights of HIV-Positive Institutionalized Persons.** The Southern District of New York granted a preliminary injunction to a class of arrested persons who claim their privacy rights were violated when information about their HIV status and sexual orientation were made public. The defendant, the New York Commission of Mental Health, filed psychological fitness reports on the arrested persons with New York courts. The reports included information regarding sexual orientation and HIV status. After certifying the class, the district judge issued a preliminary injunction ordering the defendants to cease filing the fitness reports. *Hirschfeld v. Stone* (May 9, 2000).

## ***Transgender/Gender Issues***

**Transgendered Plaintiff Denied Bank Loan Can Sue Under Federal Law.** On June 9, the First Circuit Court of Appeals held that a bank who refused to provide a loan application to a biological male dressed in traditionally feminine attire may have violated the Equal Credit Opportunity Act, which prohibits discrimination on the basis of sex. Referring to Title VII case law, the court found it reasonable to infer the applicant had been denied an application because his "attire did not accord with his male gender." If so, Rosa was a victim of sex stereotyping, a form of sex discrimination. The court of appeals remanded the case. GLAD staff attorney Jennifer Levi argued this case on behalf of the plaintiff. *Rosa v. Park West Bank* (June 9, 2000).

**Court Denies Kansas Transgendered Woman Right to Inherit Husband's Estate.** A district court in Kansas ruled that a transgendered woman is legally a man under Kansas law, and that she therefore has no right to her husband's estate when he died intestate. Although the widow had legally changed her birth certificate in Wisconsin from male to female prior to the marriage, the court held Kansas law applied and under Kansas' law she was still a man. The court therefore reasoned that the marriage was invalid. The plaintiff will appeal, arguing that under the Full Faith and Credit Clause Kansas must recognize Wisconsin's judgment that the plaintiff is a woman. *In the Matter of the Estate of Marshall G. Gardiner* (Case No. PE 00119, Dist. Ct. Leavenworth Co. Probate Division).

**Medicaid to Provide Medically Necessary Breast Reconstruction for Massachusetts Transgendered Woman** . A Medicaid recipient who completed sex-reassignment surgery over 25 years ago was denied a medically necessary breast reconstruction surgery after having her breast implants removed. A Massachusetts court ordered Medicaid to pay for the surgery, despite the Division of Medical Assistance's initial refusal to pay for the surgery because of its relationship to sex-reassignment procedures. GLAD staff attorney Jennifer Levi argued this case on behalf of the plaintiff. *Beger v. Division of Medical Assistance*.

**Two Women to Marry in Texas.** Two women (Jessica and Robin Wicks) traveled from their home in Houston to San Antonio on Wednesday, September 6, 2000, to receive a marriage license from the Bexar County Clerk for their wedding on September 16. The Bexar County Clerk granted the couple a marriage license, citing a recent San Antonio appeals court decision, 9 S.W.3d 223, that held that chromosomes determine gender (<http://christielee.net>) and because Jessica Wicks is a transgendered woman, the Clerk's office considered the couple male and female for the purposes of issuing the marriage license. The couple's attorney, Phyllis Randolph Frye, says the appeals court decision has cleared way for same-sex marriages where one partner is transgendered.

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