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919 18<sup>th</sup> Street N.W., Suite 800  
Washington, D.C. 20006-5509  
phone 202 628 4160  
fax 202 347 5323  
web site [www.hrc.org](http://www.hrc.org)

# LAW *briefs*

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## RECENT DEVELOPMENTS IN SEXUAL ORIENTATION AND GENDER IDENTITY LAW

### IN THE HEADLINES

**Supreme Court Forces Arbitration in Sexual Orientation Employment Discrimination Case.** In a case turning largely on statutory construction, the Supreme Court ruled in March that arbitration agreements contained in employment contracts are enforceable under the Federal Arbitration Act, or FAA. This ruling on the enforceability of arbitration agreements in employment contracts will likely make it harder to take employers to task for discrimination based on sexual orientation, as remedies and discovery are substantially limited in the arbitration process. At issue in *Circuit City v. Adams*, 121 S.Ct. 1302 (2001) was whether the arbitration clause in an employment contract between Circuit City and employee Adams was enforceable under the FAA, or whether, as Adams asserted, the agreement was subject to the FAA's § 1 exemption for "contracts of employment for seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." The employment contract provided that all employment-related disputes, including disputes arising under federal and state civil rights laws, would be subject to binding arbitration. The 9th Circuit Court of Appeals found the arbitration agreement unenforceable as applied to prevent Adams from asserting his sexual orientation discrimination claim in court under California law, following its holding in *Craft v. Campbell Court Co.*, 177 F.3d 1083 (1999) that arbitration clauses contained in employment contracts fall under the § 1 exemption. The Supreme Court reversed 5-4, holding that the § 1 exemption must be read only to exempt the employment contracts of transportation workers from the FAA. In response to the ruling, Rep. Barney Frank, D-Mass., has introduced a bill to limit the use of mandatory arbitration agreements in employment contracts.

**Charitable Choice Bill Passes House.** The President's plan to allow religious organizations to provide government-funded services and programs passed the House of Representatives with a 233-198 vote, and included language exempting religious charities that receive federal money from state and local civil rights laws. The exemption language is expected to face significant opposition in the Senate, and HRC is currently working with Sen. Joe Lieberman, D-Conn., and other members of the Senate to ensure that these concerns are adequately addressed.

**Maryland Employment Law On Hold.** A group known as TakeBackMaryland.org has succeeded in at least temporarily blocking enactment of Maryland's new sexual-orientation inclusive non-discrimination law by petitioning to place the measure on the November 2002 ballot. The ACLU of Maryland and the law firm of Covington and Burling have filed an action before the Circuit Court of Anne Arundel County on behalf of Maryland's Free State Justice, the Gay and Lesbian Community Center of Baltimore, and several individuals from around the state named as plaintiffs in the case. The action challenges thousands of signatures on the petitions, with the goal of enjoining the Secretary of State from certifying the ballot question. If successful, the suit would permit the law to go into effect on Oct. 1, 2001, as originally intended by the Maryland Legislature.

**Paris, Berlin Select Openly Gay Mayors.** Two of Europe's largest cities have elected openly gay mayors. Bertrand Delanoë, a Socialist, was elected mayor of Paris in March, and the governing coalition in Berlin chose

Klaus Wowereit, a Social Democrat, to lead the city in June. While both candidates are gay-supportive, neither candidate's sexual orientation was a source of controversy during their campaigns.

## **EMPLOYMENT**

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**Lesbian Fired From Publicly Funded Religious Charity Loses Part of Her Discrimination Suit.** In a case illustrating the problems that may result from expanded charitable choice legislation, a social worker fired from the Kentucky Baptist Home for Children for being a lesbian had part of her religious discrimination suit dismissed in federal court. In *Pedreira v. Kentucky Baptist Home for Children*, the Federal District Court for the District of Kentucky dismissed Pedreira's employment discrimination claim, holding that she had been terminated on the basis of her behavior, rather than her religion. The court allowed her to proceed with a claim challenging the constitutionality of the discrimination given that the Home receives more than half of its funding from federal and state sources. Attorneys on the case include Ken Choe of the ACLU Lesbian and Gay Rights Project, Michael Adams of Lambda Legal Defense and Education Fund, Ayesha Khan of Americans United for Separation of Church and State, David Friedman of the ACLU of Kentucky and Vicki Buba of Stone, Pregliasco, Haynes & Buba.

**Fifth Circuit Rules Employer Need Not Accommodate Homophobic Employee.** A counselor discharged for refusing to work with gays or lesbians has lost her religious discrimination suit. Sandra Bruff was fired when she refused to counsel a lesbian woman on the grounds that it conflicted with her faith to counsel gays, lesbians or unmarried couples. She won a multi-million religious discrimination case at the trial court, but the 5th Circuit Court of Appeals reversed in *Bruff v. North Mississippi Health Services, Inc.* 244 F.3d 495 (5th Cir. 2001). The court held that Title VII does not require an employer to accommodate an employee's "inflexible position" regarding important aspects of her job simply because her objections are religious in nature.

**Courts Remain Split as to Whether Title VII Protects Employees from Homophobic Discrimination and Harassment.** In *Ianetta v. Putnam Investments*, 142 F. Supp.2d 131 (D. Mass. 2001), a federal District Court in Massachusetts, while acknowledging that simple anti-gay discrimination is not actionable under Title VII, allowed a gay man's discrimination claim to proceed on the increasingly familiar theory that discrimination based on sexual orientation may accurately be described as sex discrimination, actionable under Title VII. In *Rene v. MGM Grand Hotel, Inc.* 243 F.3d 1206 (9th Cir 2001), however, a panel of the 9th Circuit Court of Appeals rejected a similar claim by a gay man asserting a same-sex sexual harassment claim, holding that same-sex harassment is only actionable if its victims are targeted based on sex, because of sexual desire or out of hostility to the presence of their gender in the workforce. This outcome accords with a recent 3rd Circuit Court of Appeals ruling in *Bibby v. Phila. Coca Cola Bottling Co.* 2001 WL 867067, holding that Title VII prohibits employment discrimination based on sex, but not sexual orientation.

**State Department Revises Policies on Security Clearances and HIV-Positive Employment.** The State Department issued a statement in May confirming that sexual orientation should not prevent employees from receiving security clearances. Until President Clinton ended the practice in 1995, gays and lesbians were deemed security risks and subjected to more rigorous background checks. The old policy was based on the assumption that gays and lesbians were more susceptible to blackmail, a rationale that has become virtually obsolete now that more gay employees are open about their sexual orientation. The directive is a promising sign that the Bush administration may not attempt to roll back the broader executive order issued during former President Clinton's tenure prohibiting discrimination on the basis of sexual orientation throughout the executive branch of the federal government. In a separate announcement, the State Department indicated its intent to end its policy of excluding HIV-positive foreign nationals from employment at American posts abroad. The department will nonetheless maintain its present exclusion of HIV-positive Americans from the Foreign Service.

**Seventh Circuit Upholds Exclusion of Heterosexuals from Domestic Partner Plan.** In a remarkable ruling from Judge Richard Posner, the 7th Circuit Court of Appeals upheld a domestic partnership program challenged by an unmarried heterosexual couple and also opposed by the Lambda Legal Defense and Education Fund in *Izjarry v. Bd. Of Educ. Of City of Chicago*, 251 F. 3d 604 (7th Cir. 2001). The Chicago Board of Education, in order to attract gay teachers to serve as role models for gay, lesbian and bisexual youth, provides health care benefits to same-sex unmarried couples, but not to cohabiting heterosexual couples that meet the same criteria. Many argue that permitting this form of sex and marital status discrimination could set a bad precedent that

might be used to justify discrimination against same-sex couples in the future. The 7th Circuit, however, while questioning the wisdom of the policy, upheld the city's policy under a rational basis analysis.

## ***MARRIAGE / DOMESTIC PARTNERSHIP/ CIVIL UNIONS***

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**GLAD Files Marriage Suit in Massachusetts.** Following on the heels of its successful challenge to the exclusion of same-sex couples from marriage in Vermont, Gay & Lesbian Advocates & Defenders, or GLAD, filed a similar lawsuit in Massachusetts. The complaint, brought on behalf of seven gay and lesbian couples, alleges that the exclusion of same-sex couples from the right to marry violates the Massachusetts Constitution's equal protection, free expression and due process guarantees, as well as its prohibition on special privileges. GLAD attorneys Mary Bonauto and Jennifer Levi are handling the case, *Goodridge v. Dept. of Public Health*.

**San Francisco Equal Benefits Ordinance Upheld.** A challenge to San Francisco's equal benefits ordinance has failed. The landmark 1997 measure awards bidding preferences to businesses that provide domestic partners with the same benefits they provide married couples. S.D. Myers, represented by the conservative American Center for Law and Justice, sued after losing a contract for refusing to provide such benefits. The corporation's complaint was dismissed by a federal district court, and in June, a panel of the Court of Appeals for the 9th Circuit Court unanimously affirmed in *S.D. Myers v. San Francisco*, 2001 WL 664233 (9<sup>th</sup> Cir. 2001). The court rejected the argument that the city had exceeded its authority, holding that the city's decision as to how it awards its own contracts falls within the city's contracting power.

**New York High Court Allows Lesbian Couple's Housing Claim to Proceed.** The New York Court of Appeals held unanimously in July that a lesbian couple denied access to subsidized university housing at Yeshiva University in New York City may sue under the city's anti-discrimination law. The University's policy of offering couples housing only to married couples may have a disparate impact on gays and lesbians, the court ruled in *Levin v. Yeshiva University*, 2001 WL 735762 (N.Y. 2001), as they currently lack access to marriage. While Yeshiva's rabbinical school is a religious institution exempt from New York City's anti-discrimination law, the Albert Einstein School of Medicine, where the plaintiffs are students, is a secular institution that does not qualify for the exemption. The plaintiffs are represented by the ACLU Lesbian and Gay Rights Project.

## ***FAMILY LAW***

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**Domestic Partner Can File Wrongful Death Suit.** The surviving partner of dog-attack victim Diane Whipple has filed a wrongful death suit in California court against the owners of the dogs that killed Diane this January. California law, like that of many states, permits only relatives to recover damages when a loved one is killed. A California state judge allowed Smith's complaint in *Smith v. Knoller et al.* to proceed, however, holding that it would be unconstitutional under the California Constitution's prohibition on sex discrimination not to permit her to sue. Smith's story has lent momentum to a California domestic partnership bill proposing to expand benefits to same-sex couples. Smith is represented by the National Center for Lesbian Rights.

**Mixed Results for Gay Plaintiffs in Mississippi.** The Mississippi Supreme Court affirmed a lower court ruling that sexual orientation may be considered in determining a parent's "moral fitness" for custody of children following a divorce. *Morris v. Morris*, 783 So.2d 681 (Miss. 2001). However in *Hollon v. Hollon*, 784 So.2d 943 (Miss. 2001), the same court held that a lower court judge abused his discretion by focusing too heavily on allegations regarding the mother's same-sex relationship in adjudicating a child custody case.

**Massachusetts Court Limits Mutual Restraining Orders.** In a move advancing the causes of victims of heterosexual and same-sex domestic violence alike, the Massachusetts Appeals Court ruled in March in *Sommi v. Ayer*, 744 N.E.2d 679 (Mass. App. Ct. 2001), that judges must justify mutual restraining orders in writing. The decision is considered a victory for victims of same-sex domestic violence, who often find themselves penalized by restraining orders because of myths that same-sex domestic violence is always a conflict among equals, or that men cannot be victims of domestic violence. Gay & Lesbian Advocates & Defenders of Boston, along with a coalition of domestic violence prevention and lesbian, gay, bisexual and transgender groups, filed an *amicus* brief in the case.

**New Jersey Court Approves Lesbian's Name Change Application.** A New Jersey appeals court reversed a trial court ruling denying a lesbian woman the right to change her name to include her partner's last name in *In re An Application for a Change of Name By: Jill Iris Bacharach*, 2001 N.J. Super. LEXIS 333.

## **EDUCATION**

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**Boy Scouts Win Injunction Against Broward County.** Both sides won a partial victory in the Broward County School Board's high-profile attempt to distance itself from the Boy Scouts of America. In accordance with its non-discrimination policy, the board recently terminated the Scouts' special rent-free access to school buildings and prohibited them from meeting on school grounds. The Scouts challenged the action in *Boy Scouts of America v. Till*, 136 F. Supp.2d 1295 (S.D.Fla. 2001), in which the District Court for the Southern District of Florida, drawing an analogy to an earlier case requiring a school to allow the Ku Klux Klan to meet, agreed that the First Amendment prohibits the board from denying Scouts the same access enjoyed by other organizations. The court went on to rule that the board had no obligation to afford the Scouts rent-free access to facilities, but that they were required to treat the Scouts like any other community group seeking to use school facilities.

**Washington, D.C., Human Rights Commission Rules in Favor of Expelled Gay Scouts.** The District of Columbia Human Rights Commission ordered the Boy Scouts to reinstate and pay damages to each of two adult Eagle Scouts expelled for being gay in 1992. While the Scouts argued that the Supreme Court's decision in *Dale v. Boy Scouts of America* should have dictated the outcome of the case, the commission found the case distinguishable, finding that while James Dale was a vocal gay activist, there was nothing in the record in the D.C. case to suggest either plaintiff would have used their positions to express a viewpoint on homosexuality. The Boy Scouts are expected to appeal.

**Court Allows "Straight Pride" T-Shirt.** A high school student asked by his principal to stop wearing a "straight pride" T-shirt to school has successfully sued for the right to continue wearing it. Gay students at Woodbury High School, a school which has been the site of several recent anti-gay incidents, complained about the shirt, produced by an organization that advertises itself as "opposed to the 'homosexual agenda.'" The student was represented by the American Family Association's Center for Law and Policy. Federal District Judge Donovan Frank, in *Chambers v. Babbitt*, 2001 WL 530550 (D. Minn. May 17, 2001) praised the school's efforts to create a welcoming environment for gay youth, which included a "safe spaces" program, but wrote that the school cannot limit student speech absent evidence that the speech is disruptive.

**Gay Students at BYU Suspended.** Two gay students were suspended from Brigham Young University for being gay. While the University's code prohibits "homosexual conduct," both students had believed that they could abide by this rule by simply abstaining from sex. One student was cited for holding hands with, and kissing, another man, the other for visiting gay-oriented chat rooms from his home computer (the logs of which the University checked) and for disclosing his sexual orientation to a roommate.

## **CRIMINAL LAW**

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**Texas Appeals Court Upholds Sodomy Law.** On March 15, a lower Court in Texas, overturning the decision of its three-judge panel issued last year, held that the state's sodomy law violates neither the state nor federal constitutions. While 14 states still ban consensual sodomy, Texas, along with Oklahoma and Kansas, makes sodomy a crime only between same-sex couples. Two men convicted for having consensual sex in their own home challenged their convictions with the help of Ruth Harlow and Susan Sommer from the Lambda Legal Defense and Education Fund. The majority in the case, *Lawrence v. State of Texas*, 41 S.W.3d 349 (Tex. App. 2001), reasoned that the sodomy statute neither discriminates against homosexuals (because heterosexuals and homosexuals alike are both "forbidden from engaging in homosexual conduct"), nor on the basis of gender (because men and women alike are forbidden from engaging in sodomy). The two judges who had formed the majority of the previous 2-1 decision invalidating the law issued a sharp dissent, arguing that the law violated equal protection principles.

**Minnesota Sodomy Law Struck Down.** On May 18, a Minnesota district court invalidated the state's sodomy law as a violation of the state's constitutional guarantee of privacy in *Doe v. Ventura*, 2001 WL 543734 (Minn.

Co. May 15, 2001). The Minnesota statute applied equally to same- and opposite-sex couples but had been enforced disproportionately against gays and lesbians. A motion for class certification was granted by Judge Delila Pierce on July 2, making the ruling effective statewide. The Ventura administration concurred in the court's judgement, and no appeal has been filed in the case. The plaintiffs were represented by Leslie Cooper of the ACLU Lesbian & Gay Civil Rights project, Teresa Nelson of the Minnesota Civil Liberties Union, and Timothy Branson of Dorsey and Whitney.

**Anti-Gay "Importuning" Law Challenged in Ohio.** An Ohio appeals court, a coalition of gay rights groups, the State of Ohio, and a man sentenced to six months in prison for making a sexual advance to another man have asked the Ohio Supreme Court to rule on the constitutionality of Ohio's "importuning" law. This law makes it a first-degree misdemeanor, punishable by a \$1000 fine and six months in jail, to proposition someone of the same sex, if the proposition is "offensive." An appellate court in *State v. Thompson*, 2000 WL 1876610 (Ohio Ct. App. Dec. 22, 2000), reluctantly upheld a recent conviction under the law, writing that while the law violated the equal protection clause, it was bound by previous Ohio Supreme Court rulings upholding the law. The Ohio Supreme Court has not announced if it will hear an appeal.

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## ***HIV/AIDS***

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**Drug Companies Withdraw HIV-related Patent Lawsuit.** A coalition of 39 pharmaceutical companies has withdrawn its patent infringement lawsuit challenging the South African government's decision to import cheap AIDS medications made in countries with less stringent patent laws than those common in Europe and the United States. Many in the pharmaceutical industry claim that high drug prices are necessary to encourage new research, while human rights activists challenge that the public health emergency in many parts of the developing world is so dire that emergency measures like South Africa's are needed. The coalition's withdrawal of its suit is considered a significant victory in the effort to supply medication to sub-Saharan Africa, where over 25 million persons are infected with AIDS.

**Supreme Court Rejects Medical Marijuana Use for AIDS Patients.** In May, the United States Supreme Court ruled unanimously in *U.S. v. Oakland Cannabis Buyers Cooperative*, 121 S.Ct.1711 (2001) that there is no medical necessity exception to the federal Controlled Substances Act. The 8-0 decision overrules a finding by the 9th Circuit that a California cannabis club could continue to provide marijuana to a limited group of patients whose doctors prescribe the drug when "medically necessary" to alleviate nausea caused by AIDS. Medical marijuana has been legalized in nine states, including California, but is still proscribed by federal law. Justice Breyer refrained from participation in the case because his brother was the judge in the case at the district court level.

**Fifth Circuit Protects HIV Positive From Harassment.** A federal appeals court has ruled for the first time that the Americans with Disabilities Act, or ADA, protects employees from disability-based harassment, including harassment based on HIV status. The case, *Flowers v. Southern Regional Physicians Services, Inc.*, 247 F.3d 229 (5th Cir. 2001), involved a medical assistant who had been harassed by supervisors after her HIV status was disclosed. Her employer appealed, claiming that such harassment was not actionable, but the 5th Circuit Court disagreed. Drawing an analogy to "hostile work environment" suits that can be filed under Title VII, the unanimous panel held that the ADA allows similar actions, even though they are not explicitly provided for in the statute.

**Massachusetts Offers Full Insurance to HIV Positive Persons.** Massachusetts has become the first state to guarantee health coverage for indigent persons with HIV. Most states require the onset of full-blown AIDS for eligibility for health care. While the measure is expected to cost the state around \$10 million in the short run, the program is expected to save money over the long term by reducing hospitalization costs and lowering transmission rates.

**FDA Forces Change in AIDS Medication Advertising.** The FDA has required several pharmaceutical companies to withdraw their advertisements for AIDS medications and replace them with images more representative of the lives of people living with HIV. Companies faced criticism for featuring images of men engaged in athletic situations, images the FDA charged were misleading, as many AIDS patients suffer

complications making very high levels of activity unrealistic. The warning comes at a time of great concern in the gay community about the growing complacency regarding HIV/AIDS safety.

## ***IN THE STATES***

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**Arizona Repeals Sodomy Law.** Arizona Gov. Jane Hull signed a bill repealing the state's sodomy and cohabitation statutes in May. Conservative groups lobbied against the repeal and urged the Republican governor to veto it, but Hull countered that the government "does not belong in our private lives" as she signed the bill into law. Openly gay state Rep. Steve May, R., was the bill's lead sponsor.

**Anti-Civil Union Bill Fails in New Hampshire.** In March, the New Hampshire House overwhelmingly rejected a measure that would have categorically barred the recognition in New Hampshire of civil unions performed in Vermont or any other state.

**Texas Supreme Court Dismisses Challenge to Houston Anti-Discrimination Policy.** The Texas Supreme Court dismissed a lawsuit challenging Houston Mayor Lee Brown's policy of not discriminating against gays and lesbians in city employment. The lawsuit dismissed in *Brown v. Todd*, 2001 WL 690373 (Tex. 2001), filed by a city council member and a voter, alleged that the mayor was usurping the power of the city council and violating a 1985 referendum repealing the city's anti-discrimination ordinance. The court dismissed the case on the grounds that the plaintiffs lacked standing. The city council has since codified the mayor's policy by passing a gay-inclusive non-discrimination measure on July 25, making another challenge on the same grounds unlikely.

**Court Upholds Kentucky City's Civil Rights Ordinance.** An attempt to overturn Louisville, Kentucky's gay-inclusive anti-discrimination ordinance was defeated in federal court. J. Barrett Hyman, a doctor who claims his religious beliefs require him to discriminate against homosexuals in employment, sued the city with the help of the American Center for Law and Justice on First Amendment-based free exercise, speech and association theories. The district court in *Hyman v. Louisville*, 132 F. Supp.2d 528 (W.D. Ky. 2001), rejected his arguments, ruling that mere objections to compliance on religious grounds were insufficient to substantiate a free exercise claim, and citing to the principle that commercial actors cannot invoke a freedom of association-based right to discriminate. Hyman has appealed, and the case is pending before the 6th Circuit Court of Appeals. The ACLU Lesbian and Gay Rights Project represents the intervenor-defendants, and the Justice Department filed an *amicus* brief in the case.

**California Assembly Extends Domestic Partnership.** The California Assembly passed a bill that significantly expands the protections offered to registered domestic partners in the state. The bill, AB 25, would increase health and insurance benefits, and provide rights in probate and medical decision-making contexts.

**Iowa Governor Re-Issues Anti-Discrimination Order.** Iowa Gov. Thomas Vilsack, who became a target of conservative criticism for his stances against discrimination, issued an executive order regarding equal opportunity for all persons in employment by the state of Iowa. The governor issued a similar order prohibiting the state from discriminating against gay, lesbian or transgender individuals in 1999, but Republican legislators successfully sued to get the 1999 order overturned, citing executive intrusion into legislative matters. While the new order, issued on March 28, does not mention gender identity or sexual orientation specifically, it signals that his administration still intends to treat all individuals fairly.

## ***INTERNATIONAL***

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**United Nations Adopts AIDS Anti-Discrimination Code.** The United Nations Labor Agency on June 22 unanimously adopted a code barring discrimination on the basis of real or perceived HIV/AIDS status. In addition to calling for access to affordable health care and the protection of employee privacy, the code calls attention to the gender dimension of AIDS. While formally non-binding, the code will serve as a guideline for governments and employers internationally.

**Portugal Recognizes Same-Sex Couples.** On March 16, Portugal joined a growing group of European states recognizing same-sex partnerships. The National Parliament extended limited rights and benefits to same-sex

couples who have lived together for more than two years. The new law puts same-sex couples on identical footing with heterosexual couples in common law marriages in Portugal.

**Taiwan Considers Domestic Partnership and Family Protections.** The Taiwanese cabinet is considering a bill that would allow gays and lesbians to form families and adopt children. The provisions are part of a broader human rights bill currently being considered in the parliament.

**Sodomy Decriminalized in U.K. Caribbean Territories.** Following a directive from the European Court of Human Rights, the United Kingdom ordered the repeal of sodomy laws in its Caribbean territories. While Bermuda repealed its law voluntarily, several other islands had previously refused to take their anti-gay laws off the books, and even employed them in some instances to turn away gay cruise ships.

**Chinese Government: Homosexuality Not an Illness.** In a promising sign, the Chinese government has removed homosexuality from its official register of psychiatric disorders following a vote by the Chinese Psychiatric Association. The American Psychiatric Association officially decertified homosexuality as an illness in 1973. It is yet unclear if this change will improve the status of gays and lesbians in China, who still frequently face social stigma and mistreatment by government officials.

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## ***GENDER IDENTITY AND EXPRESSION***

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**Rhode Island Enacts Anti-Discrimination Statute Encompassing Discrimination Based on Actual or Perceived Gender.** Rhode Island has become the second state, after Minnesota, to extend statutory anti-discrimination laws to cover discrimination based on gender identity. The law applies to employment, credit and public accommodations.

**Nebraska Supreme Court Rules Against Sheriff in Brandon Teena Case.** The case upon which the award-winning film “Boys Don’t Cry” was based came to a close this summer when the Nebraska Supreme Court unanimously ruled against the sheriff who harassed Brandon instead of protecting him from the two men who raped and eventually murdered him. In a lawsuit by Brandon’s mother, the trial court found the sheriff negligent but awarded only nominal damages, and further found Brandon partially responsible for his own murder. On appeal, however, Nebraska’s high court handed Brandon’s mother a solid victory in *Brandon v. County of Richardson*, 261 Neb. 636 (Neb. 2001), calling the Sheriff’s actions “outrageous,” reinstating full damages against him and clearing Brandon from any responsibility for his own death. Brandon’s mother was represented by David Buckel of Lambda Legal Defense and Education Fund, and GenderPAC filed an *amicus* brief.

**Kansas Court Allows Transgender Widow’s Claim to Inheritance to Proceed.** In a major victory for gender equality, the Kansas Court of Appeals allowed a transgender widow to argue that her marriage should not be invalidated. Even though J’Noel and Marshall Gardiner had been married for almost a year at the time of Mr. Marshall’s death, a trial court refused to allow Ms. Gardiner to inherit her husband’s estate, holding that their marriage was “same-sex” and hence void. Rejecting this reasoning as “rigid and simplistic,” the Court of Appeals in *Matter of the Estate of Marshall G. Gardiner*, 22 P.3d 1086 (Kan. Ct. App. 2001) reversed and remanded, allowing Ms. Gardiner to introduce evidence showing that she should legally be considered a woman. GenderPAC filed an *amicus* brief, and the ACLU and Lambda Legal Defense and Education Fund also took part in the case on J’Noel Gardiner’s behalf.

**New Jersey Appeals Court Extends Gender Protections.** A New Jersey Appellate Court held in July that the state’s anti-discrimination law protects against discrimination based on gender stereotypes. The plaintiff in *Enriquez v. West Jersey Health Systems*, 2001 WL 741271 (N.J. Super. Ct. App. Div. July 3, 2001), was a doctor fired when her supervisors became uncomfortable with her transition from male to female. The court noted that while federal anti-discrimination law is usually not read to cover transgender persons, New Jersey’s prohibition against sex discrimination should be read more broadly. The court found the state’s disability protection law also to be applicable, ruling that gender dysphoria is a disability under New Jersey law.

**San Francisco Covers Sex Reassignment for City Workers.** On April 30, the San Francisco Board of Supervisors voted 9-2 to extend the health coverage offered to city employees to cover up to \$50,000 of the cost of sex-reassignment procedures. Employees must work for the city for a year to be eligible for the benefit.

## **RELIGION**

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**Presbyterian Assembly and Churches Vote.** By a vote of 317-208, the General Assembly of the Presbyterian Church approved a measure to end the current ban on gay and lesbian clergy members. Current regulations require unmarried clergy to remain celibate, resulting in the practical exclusion from the clergy of gays and lesbians, who may not marry in the United States. The repeal will not require the ordination of gay clergy, but will allow local governing bodies to provide for such ordination at their discretion. A vote on the measure is expected among the church's 173 presbyteries next year. In other news, an attempt by Presbyterian conservatives to bar ministers from performing same-sex unions was rejected in a 73-100 vote of the presbyteries.

**Episcopal Church Nearing Split.** Conservative parishes and traditionalist Anglicans have found themselves increasingly at odds with the more liberal denomination over a range of social issues, particularly the position of gays and lesbians within the church. These tensions came to a head when conservative archbishops from Africa and Southeast Asia consecrated four conservative American priests as bishops on June 24. The new bishops will minister to the "Anglican Mission in America," a group of conservative parishes that have left the church and are inviting other disaffected conservative Episcopalians to join them. The Archbishop of Canterbury denounced the move.

## **HATE CRIMES**

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**Texas and Hawaii Enact LGB-Inclusive Hate Crimes Statute.** Activists led by the Lesbian and Gay Rights Lobby in Texas won passage of a hate crimes statute encompassing crimes motivated by bias against the victim's "sexual preference." Republican Gov. Rick Perry, expressing reservations about the enumeration of categories in the statute, nonetheless signed it into law in May. Hawaii also enacted a lesbian, gay and bisexual-inclusive hate crimes statute after an 11-year effort by state activists.

**Anti-Gay Hate-Crime Perpetrators Plead Guilty.** The perpetrators in two high-profile anti-gay hate crimes in Roanoke, Va., and Grant Town, W.V., have both entered into plea bargains with the prosecutors in their cases. Defendant Ronald Gay was accused of opening fire on a gay bar in Roanoke, Va., killing one and wounding six. Gay pled guilty to one count of first-degree murder, three counts of aggravated malicious wounding and three counts of malicious wounding for the May 10 shooting. He was sentenced to four life sentences. David Allen Parker, one of three teenagers accused in last year's brutal murder of mentally disabled, African-American gay man, Arthur Warren Jr., pled guilty and was sentenced to "life with mercy," a sentence which entails a minimum of 15 years imprisonment. While both Virginia and West Virginia have hate crimes statutes, neither include sexual orientation.

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**Writers/Editors.** Anthony E. Varona, General Counsel/Legal Director; Kevin Layton, Deputy Legal Director; Sharon Debbage Alexander, Staff Counsel; Luke Platzer, Law Fellow/Author & Editor; and Cheryl Henson, Paralegal.

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