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RECENT DEVELOPMENTS IN SEXUAL ORIENTATION AND GENDER IDENTITY LAW

IN THE HEADLINES

Hate Crimes Legislation Stalls in U.S. Senate. By a margin of 54-43, the Senate failed to achieve cloture June 11 on the Local Law Enforcement Enhancement Act, a bill that would make violent attacks based on the victim's gender, disability or sexual orientation federal hate crimes. A cloture motion is designed to limit debate and allow a vote on a bill while preventing opponents from offering unrelated amendments. Proponents of the legislation are committed to reintroducing LLEEA at the earliest opportunity.

Mychal Judge Act Provides Benefits to Survivors of Public Safety Workers. President Bush signed a law June 24 allowing public safety officers without spouses or children to designate their own beneficiaries for the purposes of distributing certain federal death benefits in the event the officer is killed in the line of duty. Named after the New York City firefighter chaplain who was gay and died in the Sept. 11 attacks, the law will allow public safety officers in non-traditional families more flexibility in providing for their loved ones. It marks the first instance of the federal government providing the possibility of a domestic partner benefit.

Arkansas Sodomy Law Held Unconstitutional. The Arkansas Supreme Court overturned the state's same-sex-only sodomy law on July 5. The court held that the Arkansas Constitution's fundamental right to privacy is violated by any ban on "private, consensual, non-commercial acts of sexual intimacy between adults," and further found no rational basis for criminalizing sexual activity by same-sex but not opposite-sex couples. The court reached the issue of the statute's constitutionality only after determining that the plaintiffs could bring their suit even though they did not face an imminent threat of prosecution under the law. According to the court, gay people encounter "a daily dilemma due to the existence of the statute" and should not be forced to "suffer the brand of criminal impressed upon them" without an opportunity to challenge the constitutionality of that status. *Jegley v. Picado*, 2002 Ark. LEXIS 401.

Washington Court: Sexual Orientation Discrimination in Public Employment Unconstitutional. The Court of Appeals of Washington ordered a trial on July 18 for a woman fired from her job at a state hospital because she is a lesbian. The court held that "a state actor violates a homosexual employee's right of equal protection when it treats that person differently than it treats heterosexual employees based

solely on the employee's sexual orientation." Applying the "rational relationship test," the court deemed this category of employment discrimination to be "wholly irrelevant to the achievement of legitimate state objectives." The American Civil Liberties Union Lesbian and Gay Rights Project represented the plaintiff in the case. *Miguel v. Guess*, 2002 Wash. App. LEXIS 1706.

Anti-Marriage Amendment Derailed in Massachusetts. A bipartisan coalition, led by Democratic Senate President Thomas F. Birmingham and Republican Senate Minority leader Brian Lees, succeeded in forestalling an anti-gay constitutional amendment that would have prohibited same-sex marriage and the extension of legal benefits to gay and lesbian families. On July 17, a constitutional convention comprised of both houses of the state Legislature voted 137-53 to adjourn without voting on the issue. If the measure had passed, it would have opened the door to a second legislative vote followed by a statewide ballot vote. Prior to the convention, the state's Supreme Judicial Court rejected a challenge to the initiative process, holding that the initiative petition instituting the amendment process was valid under state law. *Albano v. Attorney General*, 2002 Mass. LEXIS 388.

Internet Censorship Rulings Implicate GLBT and HIV-Related Websites. In a May 13 decision, the U.S. Supreme Court reversed a Court of Appeals ruling which invalidated the Child Online Protection Act (COPA) on the grounds that the community standards-based test for obscenity should not apply to the Internet. Remanding the case to the 3rd Circuit, the Supreme Court reserved the possibility that COPA could be declared unconstitutional on other bases and left in place a preliminary injunction against the implementation of the act until the lawsuit is resolved. The Philadelphia Gay News is one of the entities challenging COPA's constitutionality, in *Ashcroft v. ACLU*, 122 S.Ct. 1700. On May 31, a three-judge panel of the Eastern District of Pennsylvania struck down a federal law that required all libraries that receive federal technology funds to install software designed to filter out sexually explicit material on their Internet terminals. The decision was based largely on the imprecision of current web screening technology. *American Library Association v. United States*, 2002 U.S. Dist. LEXIS 9537.

EMPLOYMENT

Michigan Supreme Court Denies Anti-Gay Discrimination Claim. By a 4-3 vote, the Michigan Supreme Court ruled July 31 that a former Detroit police officer could not sue the city for employment discrimination based on sexual orientation. Finding that any private cause of action for sexual orientation discrimination would contravene state law providing for government immunity from tort claims, the court refused to recognize an express or implied cause of action within the city charter. The court further held that the city of Detroit could not abrogate its immunity in its charter or waive a government immunity defense in court. The fact that Michigan law does not explicitly prohibit sexual orientation discrimination was an important factor in the decision. The Gay, Lesbian, Bisexual and Transgender Project of the Michigan ACLU participated as an *amicus* in the case. *Mack v. City of Detroit*, 2002 Mich. LEXIS 1422.

Jury Verdict in Favor of Bible-Reading Employees. A federal jury awarded more than \$78,000 on Aug. 1 to Minnesota prison employees who were reprimanded for reading the Bible during mandatory staff training on gays and lesbians. After reading their Bibles in silent protest during the diversity training sessions, the employees were reprimanded for "inappropriate and unprofessional conduct" and subsequently passed over for promotion. A unanimous jury found that the state Department of Corrections had discriminated against plaintiffs based on their religion and violated their rights to free speech and equal protection.

Iowa Supreme Court Reinstates Harassment Claim. On May 8, the Iowa Supreme Court reinstated the claims of an employee who alleged that her supervisor harassed her because she is a lesbian and arranged a trumped-up misconduct charge to get her fired. The court held that the trial court was in error to

conclude as a matter of law that employee handbook policies strictly prohibiting sexual orientation discrimination did not constitute terms of the plaintiff's employment contract. The court further held that the supervisor's actions might be judged sufficiently extreme to fall within an exception to the rule that supervisory employees cannot be held liable for interfering with their workers' contractual relationships with a company. Finally, the court found that plaintiff's various claims were not pre-empted by federal or state law. *Grimm v. U.S. West Communications, Inc.*, 644 N.W.2d 8.

Gay and Lesbian Employees Charge Commerce Department with Bias. A group representing gay and lesbian employees at the U.S. Department of Commerce filed a complaint with the department's office of civil rights on June 4 claiming that the department is "systematically and pervasively" discriminating against its employees based on their sexual orientation. The complaint charges that the department has violated President Clinton's executive order prohibiting sexual orientation discrimination in federal employment by withdrawing sponsorship of gay pride events while recognizing similar diversity events for other minorities. A spokesperson has said that the department is merely following a practice set by President George W. Bush in refusing to proclaim lesbian and gay awareness month. The employees further allege that the agency has failed to provide adequate training on sexual orientation discrimination and to fully inform its employees of their rights to pursue grievances involving bias.

Liberty Belles Settle Complaint with Anti-Discrimination Policy. The Philadelphia Liberty Belles, a member team of the National Women's Football League, has adopted a sexual orientation non-discrimination policy in exchange for an agreement by former player Cyndi Butz not to pursue the harassment complaint she filed against the team with the Pennsylvania Human Relations Commission. The National Center for Lesbian Rights and the Center for Lesbian and Gay Civil Rights in Philadelphia represented Butz in the case.

Federal Domestic Partnership Benefits Legislation, Senate Anti-Discrimination Policy Introduced. Sen. Mark Dayton, D-Minn., announced his intent on June 27 to introduce companion legislation to a House bill extending health, retirement and life insurance benefits to the same-sex partners of federal employees. The bill would equalize the employment compensation of married employees and those in committed same-sex relationships who do not currently have the right to marry. The same day, Sen. Dianne Feinstein, D-Calif., introduced a resolution that would prohibit employment discrimination based on sexual orientation in Senate offices. The resolution, which would allow Senate employees who have been discriminated against to seek recourse with the Senate Ethics Committee, currently has 42 co-sponsors. Sixty-eight senators have written policies indicating that sexual orientation is not a factor in their employment decisions.

Important New ENDA Endorsements. BP, the largest oil and gas producer in America, announced its official support for the Employment Non-Discrimination Act on June 19. CEO John Browne commented that ENDA is good for business and that companies that oppose discrimination are more competitive because they attract the best workers. BP is now among 75 companies to publicly endorse the legislation. The Republican Main Street Partnership also publicly endorsed ENDA in its July newsletter.

ExxonMobil Shareholder Vote Gives Momentum to Non-Discrimination Efforts. Efforts to end discrimination at ExxonMobil gained enormous momentum after a record number of shareholders at the company's annual meeting in Dallas voted to add sexual orientation to its equal employment opportunity statement. The percentage of shares cast in favor of the measure nearly doubled from last year's vote on a similar resolution, from 13 percent to 23.5 percent. The value of stock represented rose from \$25.8 billion to \$63.75 billion.

Pennsylvania Supreme Court Approves Second-parent Adoptions. The Pennsylvania Supreme Court ruled Aug. 20 that second-parent adoption is legal under Pennsylvania law. The ruling put to rest the great uncertainty created by a 2000 Superior Court ruling that held that unmarried partners of legal parents who helped to raise children were ineligible to adopt those children. The Supreme Court's unanimous opinion stated, "there is no language in the Adoption Act precluding two unmarried same-sex partners ... from adopting a child who had no legal parents. It is therefore absurd to prohibit their adoption merely because their children were the biological or adopted children of one of the partners prior to the filing of the adoption petition." The Women's Law Project served as counsel for the 75 organizations supporting second-parent adoptions in Pennsylvania, and Christine Biancheria served as petitioners' counsel in the case.

Connecticut Passes Domestic Partnership Law, Considers Marriage or Civil Unions. The Connecticut Legislature passed a bill on May 7 that extends limited benefits to same-sex couples. The measure, approved in both legislative chambers with bipartisan support, also mandates that the Legislature's judiciary committee study the feasibility of same-sex marriage and civil unions and issue a report later this year. Republican Gov. John Rowland signed the bill into law on June 3.

New York City to Recognize Same-Sex Legal Relationships. By a 34-7 vote, the New York City Council passed legislation Aug. 15 to recognize domestic partnerships, civil unions and same-sex marriages from other jurisdictions. Mayor Michael Bloomberg, a Democrat, stated in June that he did not oppose the bill and his approval is awaited.

Marriage Lawsuit Filed in New Jersey. Seven same-sex couples have filed a lawsuit in New Jersey seeking marriage licenses. The couples are represented by Lambda Legal, which claims that the denial of legal and financial benefits associated with marriage violates the state constitution's equal protection guarantee. In response to the filing, the state's democratic governor has spoken out against same-sex marriage. A similar case is underway in Massachusetts.

Connecticut Court Refuses to Recognize Civil Union. In what is believed to be the first attempt to dissolve a civil union outside of Vermont, a Connecticut appellate court has rejected a same-sex couple's petition to terminate their legal relationship. The court ruled July 30 that same-sex unions do not fall under the state's definition of family relations matters and that legal disputes related to civil unions cannot be decided in Connecticut courts. Since neither partner resides in Vermont, the state of Vermont is also not permitted to grant the couple a "divorce." The case may be appealed to the Connecticut Supreme Court. *Rosengarten v. Downes*, 2002 Conn. App. LEXIS 407.

Montgomery County Domestic Partnership Ordinance Upheld by Maryland Supreme Court. The Maryland Supreme Court held June 17 that Montgomery County had the authority under state law to extend spousal employment benefits to the same-sex domestic partners of county employees. The court further held that the local law did not conflict with state or federal law, and that the county's decision to give benefits to its own employees did not interfere with Maryland's interest in defining and regulating marriage. *Amici curae* in the case included the ACLU of the National Capital Area, the ACLU of Maryland, Free State Justice and Lambda Legal. *Tyma v. Montgomery County*, 2002 Md. LEXIS 345.

Same-Sex Couple Married in Ohio. Dawn Kereluik and Kathryn Neudecker were married in a legal, state-sanctioned civil ceremony in Ohio on July 31. Kereluik, a transgender woman, is considered male under Ohio law, which does not allow the amendment of sex on birth certificates even after gender-reassignment surgery. While the marriage is not the first same-sex transgender marriage in Ohio, it is the

most visible one to date. Further rulings holding transgender individuals are bound by their sex at birth have opened the door to similar marriages in other states.

Washington, D.C., Domestic Partnership Ordinance Implemented. The domestic partnership ordinance enacted by the District of Columbia City Council 10 years ago has finally taken effect, with the first couples registering under the act in July. More than 50 couples have registered in the first month. Congress approved the implementation of the provision last year after prohibiting the use of federal funding for the program since 1992.

National Survey Shows Growing Support for Same-Sex Partnership Rights. A majority of adults taking part in a nationwide survey in June expressed their support for basic partnership rights for same-sex couples. In a poll conducted by Witek-Combs Communications, 71 percent of respondents supported hospital visitation rights, 66 percent supported emergency health care authority, 60 percent supported joint property rights and 59 percent supported the inclusion of same-sex partners in inheritance laws. Furthermore, 48 percent supported Social Security survivor benefits and the distribution of Sept. 11 funds to same-sex couples on the same basis as spouses. Pollsters concluded that, while “the term same-sex marriage remains politicized and controversial,” most Americans favor providing the rights and benefits of marriage to same-sex couples.

U.S. House Lawmakers Propose Anti-Gay Constitutional Marriage Amendment. On May 15, Rep. Ronnie Shows, D-Miss., unveiled H.J. 93, a proposal that would constitutionalize the federal prohibition on same-sex marriage and prohibit federal and state legislatures and courts from conferring “marital status or the legal incidents thereof” upon gay and lesbian relationships. As of July 31, the resolution had 13 co-sponsors in the House.

FAMILY LAW

Michigan Judge Orders Halt on Second-Parent Adoptions. On June 4, the chief judge of Washtenaw County ordered all Washtenaw County judges to stop granting second-parent adoptions to unmarried parents on the grounds that the practice violated state law. The chief judge then transferred all pending Washtenaw County second-parent adoption cases to himself to ensure that his directive would be enforced. The ACLU of Michigan filed a motion on June 14 challenging his authority to transfer the cases. The chief judge promptly rejected the motion, which is now being appealed. The Coalition for Adoption Rights Equality is also involved in the fight to preserve second-parent adoption in Michigan.

Ohio Supreme Court Approves Name Changes. The Ohio Supreme Court ruled July 31 by a 6-1 vote that a lesbian couple can legally adopt a last name they created. The court said that Belinda Lou Priddy and Jennifer Lane Bicknell followed all required procedures to change their names and their intent was not fraudulent. The court rejected the lower court’s decision that the name change would be fraudulent because it would give the public the misperception that same-sex marriages were lawful. Lambda Legal and the ACLU of Ohio filed *amicus* petitions in support of the name change. *In re Bicknell*, 2002 Ohio 3615. The Ohio high court also approved a name change for a transgender woman on Aug. 16 on authority of the *Bicknell* case. *In re Maloney*, 2002 Ohio LEXIS 1855.

Virginia Revises Anti-Gay Adoption Policy. In December 2001, an Episcopal priest filed a lawsuit against Virginia for blocking her application to adopt a foster child from Washington, D.C., because she is a lesbian. On May 3, a Virginia judge rejected the state’s attempt to dismiss the case. In August, Lambda Legal, representing the plaintiff, reached a settlement with the state whereby she will be able to adopt. The Virginia Department of Social Services will also send its local agencies a directive instructing

that out-of-state adoptions will be governed solely by the best interests of the children involved and that sexual orientation will no longer be an absolute bar to adoption.

Idaho Father Denied Custody, Visitation Rights. A county court in Idaho has taken joint custody from a gay father and determined that he must stop living with his same-sex partner or lose visitation rights as well. The state's highest court agreed on Aug. 6 to review the case. It will be the first time that the Idaho Supreme Court considers the rights of a gay parent in the state. NCLR is representing the father on appeal, with Idaho counsel Marc Wienpel.

California Supreme Court Ruling May Benefit Gay Parents. In a unanimous ruling, the California Supreme Court held June 6 that a man who acted as father to his female partner's child had standing to seek custody after the couple split up. It is believed to be the first case in which a state's highest court has said that a person who knew he or she was not the biological parent and was not married to the biological parent could be held to be the child's legal parent. *In re Nicholas H.*, 46 P.3d 932 (Cal. 2002).

Massachusetts Court Orders Lesbian Co-Parent to Pay Child Support. A Massachusetts family court has ordered a lesbian woman to pay child support to her former partner on behalf of a child she had not adopted. The judge ruled that the woman was the child's *de facto* parent and that if she was to receive visitation rights, then she must also be responsible for sharing the financial burdens of raising a child.

New York Appellate Court Denies Lesbian Co-Parent Visitation Rights. On May 20, the New York Supreme Court, Appellate Division, reversed what is believed to be the first New York decision granting visitation rights in a same-sex partnership. The court held that a lesbian co-parent did not have standing to seek visitation, concluding that "[a]ny extension of visitation rights to a same sex domestic partner who claims to be a . . . 'de facto parent' . . . must come from the New York State Legislature or Court of Appeals." *Matter of Janis C. v. Christine T.*, 742 N.Y.S.2d 381(N.Y. App. Div. 2002). Although New York allows second-parent adoptions, non-adoptive stepparents in heterosexual marriages have standing to seek visitation under the same legal doctrine invoked by the petitioner. *See Jean Maby H. v. Joseph H.*, 246 A.D.2d 282 (N.Y. App. Div. 1998). NCLR is directing petitioner's appeal to the New York Court of Appeals. The ACLU and Lambda Legal have filed *amicus* briefs in support of her claim.

Arizona Court Overturns Award of Joint Custody to Same-Sex Parents. The Court of Appeals of Arizona ruled June 27 that the trial court did not have the legal authority to find it within a child's best interests for her lesbian mothers to be awarded joint custody. The court found that Arizona statute prohibited custody by a non-legal parent unless the court found that the legal parent should not have custody. It noted that the trial court would have "considerable discretion in shaping the contours of its custody and visitation orders." The court was able to reach its determination only after concluding that non-legal parents may bring custody and visitation disputes before Arizona courts when the child does not have married legal parents. *In re Thomas*, 2002 Ariz. App. LEXIS 99.

Nebraska Supreme Court Revives Co-Parent Custody Suit. In a narrow ruling, the Nebraska Supreme Court unanimously reversed a trial court decision granting summary judgment against an adoptive lesbian mother seeking custody and visitation. Since the only evidence entered in the case was a Pennsylvania adoption order affirming the parties' compliance with all statutory requirements for a valid second-parent adoption in Pennsylvania, the Supreme Court was obliged to accept its legitimacy. The court placed the burden on the biological mother to produce evidence that demonstrates the requirements for a valid second-parent adoption under Pennsylvania law had not, in fact, been satisfied, and rejected arguments that the facially valid foreign judgment was entitled to full faith and credit. The plaintiff's *de facto* parent standing claim was also rejected. *Amici curae* in the case included the ACLU of Nebraska, NCLR and the Center for Lesbian and Gay Civil Rights in Philadelphia. *Bridgens v. Russell*, 264 Neb. 217.

American Psychoanalytic Association “Deplores” Legal Discrimination Against Gay Parents. The nation’s leading group of psychoanalysts issued a statement May 28 deploring sexual orientation discrimination in adoption and other parenting decisions and supporting equal parental rights for gays and lesbians. The statement concludes that “gay and lesbian individuals and couples are capable of meeting the best interests of the child and should be afforded the same rights and responsibilities as heterosexual parents.”

EDUCATION

New Jersey Legislature Passes Safe-Schools Bill. By a 38-0 margin in the Senate and 74-0 margin in the Assembly (with two abstentions), the New Jersey Legislature passed a safe schools bill that includes protections for public school students based on sexual orientation and gender identity or expression. The bill, sent June 24 to Democratic Gov. James McGreevey’s desk, would require every school district in the state to adopt and implement anti-harassment and anti-bullying policies. HRC, the National Gay and Lesbian Task Force and the Gay, Lesbian and Straight Education Network were instrumental in the advancement of the bill. Minnesota and California are the only other states explicitly protecting gender identity or expression in safe schools legislation.

University of Colorado Approves Same-Sex Partnership Benefits, Ohio State Declines. On June 27, the University of Colorado regents approved health care benefits for partners and dependents of gay employees, after 10 years of bitter debate. The 5-4 vote makes the university the first state entity in Colorado to offer domestic partnership benefits to employees. Despite widespread university backing, Ohio State University has refrained from affording similar employment benefits out of fear of retaliation by the state Legislature. The university receives about 49 percent of its budget from state tax dollars. In related news, Concord, N.H., will become the first school district in that state to allow teachers to include same-sex partners on their health insurance coverage.

Nevada and California School Districts Reach Settlements, Adopt New Policies in Anti-Gay Discrimination Cases. Washoe County, Nev., school trustees agreed 7-0 on Aug. 6 to pay a gay student \$451,000 for the school’s failure to address repeated incidents of on-campus ridicule, threats and assault. The school district will also expand three civil rights policies to include gay and gender non-conforming people. On Aug. 13, the Visalia Unified School District in California settled a lawsuit brought by the ACLU over the routine harassment of gay and lesbian students by agreeing to adopt a groundbreaking program to address and prevent anti-gay harassment.

Michigan Student Sues High School for Censoring Anti-Gay Speech; California Teacher Challenges Speech Restriction. A teen-ager is suing the Ann Arbor, Mich., Public School System for requiring her to remove comments condemning homosexuality from a speech before a school-wide assembly during diversity week. The student, who is Roman Catholic, objects to homosexuality based on her religious beliefs. In another potential landmark case, a California high school teacher is arguing that the San Leandro Unified School District’s policy against the discussion of controversial issues in the classroom violates his right to freedom of speech. The plaintiff had been punished for raising the issues of homophobia and racism in a school where the prevalence of such problems prompted several teachers to initiate similar discussions.

Big Brothers Big Sisters Requires Local Chapters Enroll Gay Mentors. Big Brothers Big Sisters of America has imposed a rule requiring all of its approximately 500 U.S. affiliates to open their enrollment to gay mentors or risk expulsion from the program. The rule enforces a 25-year-old national policy against discrimination based on sexual orientation. Conservative Christian groups are attacking the

Philadelphia-based organization for allowing gay and lesbian volunteers, and at least one local chapter intends to disaffiliate because of the new rule.

HIV/AIDS

Shakeup in White House AIDS Staff. The Bush administration announced July 19 that Scott Evertz is being transferred from his position as the director of the White House Office of National AIDS policy. He will be replaced by Dr. Joseph O'Neill, the acting director of the AIDS Policy Office in the Department of Health and Human Services. Amidst concerned speculation that Evertz may have been forced out by conservatives upset with his close association with gay groups and support of condom usage to prevent the transmission of HIV, HRC guardedly expressed hope that the administration's reshuffling of key personnel will lead to increased commitment and more comprehensive strategies in fighting the disease.

Supreme Court Disability Decision Has Implications for People with HIV. The U.S. Supreme Court issued a decision June 10 with important negative implications for people with HIV and other disabilities. The court ruled that, under the Americans with Disabilities Act, employers may deny an individual a position on the grounds that a particular disability makes the job harmful to his or her health. Any exclusion of potential employees "for their own good" must be based on "the best available medical evidence." *Chevron v. Echazabal*, 122 S. Ct. 2045.

Pennsylvania Commission Approves Name-Based HIV Reporting. Pennsylvania's Independent Regulatory Review Commission voted 4-1 on June 13 to require that the names of Pennsylvanians testing positive for HIV be listed in a state database. The new regulation will take effect later this year despite concerns that many high-risk individuals will forego HIV testing out of fear of publicity. AIDS activists in the state have fought the reporting requirement for more than a year.

Federal HIV/AIDS Funding Announced. The Bush administration announced June 19 plans to commit approximately \$500 million to fight the global AIDS epidemic over the next three years. HRC called the measure a small but positive step toward providing the resources necessary to fight AIDS globally, urging the administration to commit more funds at home and abroad. Two Senate appropriations subcommittees approved additional funding on July 16 for the domestic and foreign care and treatment of those living with HIV and AIDS. While HRC praised the increases, it expressed great concern over the continued lack of support for prevention programs.

South African Court Orders Government to Provide HIV Drugs. On July 5, South Africa's constitutional court affirmed a ruling ordering the government to provide nevirapine to HIV-positive pregnant women at public health facilities. The government had resisted offering the drugs, in part out of controversial policies that deny that HIV causes AIDS. The government has also refused to make anti-retroviral treatments available to the majority of infected individuals in South Africa. Nelson Mandela has rallied publicly against the Mbeki government's policies.

Disturbing Findings from International AIDS Conference. The results of several startling studies were reported at the 14th International AIDS Conference, held in Barcelona in July. One such study revealed that 70 percent of young gay and bisexual men that tested positive for HIV were unaware of their HIV status. Despite frequent high-risk activity, most of the infected men perceived themselves to be at low risk for contracting the virus. Another study suggested that the development of a vaccine would be complicated by the emergence of multiple strains of the virus, and a California researcher alerted that HIV/AIDS is developing immunity to the triple-drug therapies often known as the "cocktail." Further, American health officials reported that the spread of the virus in the United States continues to be disproportionately high among African Americans.

Cleveland Heights, Allentown Provisions Survive Threats. Efforts to repeal the extension of health benefits to same-sex partners of city workers in Cleveland Heights, Ohio, have stalled after conservatives failed to garner enough signatures on their petition to force a ballot referendum on the issue. Families First filed a lawsuit in the Ohio Supreme Court seeking an extension of the deadline for the submission of signatures. On July 29, the court rejected the city's motion to dismiss the case. Similarly, an Allentown, Pa., petition effort that sought to repeal an ordinance prohibiting sexual orientation discrimination in employment and housing has failed to produce enough signatures. The city clerk's office invalidated the signatures of hundreds of people submitting declarations that they were misled by proponents of the repeal to believe they were actually signing a petition supporting greater rights for gays and lesbians. Given an extension to collect more signatures, Citizens for Traditional Values was still unable to come up with the requisite number. The group plans to challenge the invalidation of the signatures.

Westbrook, Maine, Votes to Ban Sexual Orientation Discrimination, Other Local Measures Shelved. The Westbrook City Council gave final approval July 29 to a law that bans discrimination based on sexual orientation in employment, housing, credit and public accommodations. Westbrook becomes the 12th city or town in Maine with ordinances protecting the rights of gays and lesbians. The Christian Coalition of Maine is planning an aggressive effort to repeal the measure. Indianapolis and Jackson, Mich., have recently shelved plans for domestic partnership and anti-discrimination ordinances.

Efforts to Save Miami-Dade Anti-Discrimination Ordinance. Democratic party officials in Florida have warned that if a provision in Miami-Dade County, Fla., against sexual orientation discrimination is rescinded in a September ballot initiative, the party may remove Miami from its short list of four cities to host the 2004 national convention. "It would be really odd to meet in a county or a city that has just said to a very important constituency group of the party that you are second-class citizens and you don't have equal rights," commented Andrew Tobias, the treasurer of the Democratic National Committee. The convention site will be announced in November. Fearing a gay boycott of the county, some of Miami-Dade's largest businesses have launched a major fund-raising effort against the repeal. The No to Discrimination/SAVE Dade campaign was instrumental in organizing the drive.

Federal Judge Upholds Connecticut Ban on Boy Scouts as Charity. A federal trial court ruled July 22 that Connecticut did not violate the rights of the Boy Scouts of America when it removed the group from a list of charities that state employees may contribute to through a payroll deduction plan. Due to the Boy Scouts' ban on gay scouts and troop leaders, the state human rights commission determined that including the organization would violate Connecticut anti-discrimination laws. Gay & Lesbian Advocates & Defenders appeared as an *amicus* in the case, which the Boy Scouts plan to appeal. *BSA v. Wyman*, 2002 U.S. Dist. LEXIS 14123. In a parallel development, San Francisco Superior Court judges and commissioners have severed personal ties to the Boy Scouts, adopting a policy against participation in any organization that "discriminates on the basis of sexual orientation." Other local courts in California are considering similar measures.

Salvation Army Loses Vote on Exception. The City Council of Portland, Maine, voted June 3 to repeal religious exceptions in an ordinance requiring service organizations contracting with the city to provide domestic partnership health insurance coverage. The Salvation Army will forego \$60,000 in public funds rather than offer the benefits.

Fourth Circuit Rejects Equal Protection Challenge to Virginia Prison's Housing Policy. On June 18, the U.S. Court of Appeals for the 4th Circuit upheld the dismissal of an equal protection challenge to a

Virginia prison's policy of confining gay male inmates to single-occupancy cells. The court found plaintiff's exclusion from double-occupancy cells on based on his sexual orientation to be justified by the objectives of limiting sexual activity in prison, preventing the spread of HIV and curtailing homophobic violence. The court also upheld the disparate treatment of gay male and lesbian inmates on the ground that male prisoners are more likely to be violent and homophobic than females. *Veney v. Wyche*, 2002 U.S. App. LEXIS 11898. Predating the decision, a gay inmate in a super-max state prison in Virginia was found strangled in his cell on May 19. Prison officials had placed the victim with a cellmate who warned guards that he would kill any gays placed in his cell. Prosecutors have charged the accused cellmate with capital murder and intend to seek the death penalty in the case.

Ninth Circuit Reinstates Inmate Visitation Lawsuit. On Aug. 12, the U.S. Court of Appeals for the 9th Circuit reversed the district court's dismissal of a gay inmate's equal protection challenge to an Arizona prison policy against same-sex kissing and embracing during prison visits. The court held that the prison's justification for the rule, the protection of gay inmates, could not rationally be applied to prisoners who were already open about their sexual orientation in the prison environment. NCLR and the ACLU of Southern California represented the plaintiff before the 9th Circuit. *Whitmire v. Arizona*, 2002 U.S. App. LEXIS 16156.

New Trial Ordered in Outing Suicide Case. A federal magistrate judge has ordered a new trial in a Pennsylvania case in which a teen-ager committed suicide after a police officer threatened to tell his grandfather that the teen was gay. The judge found the jury's verdict in favor of the defendants in *Sterling v. Willinsky* to be against the weight of the evidence, such that no reasonable jury could have held in their favor.

Medi-Share Barred from Doing Business in Kentucky. A judge in Kentucky issued an order against Medi-Share, a "Biblical" alternative health insurance company, forbidding it from doing business in the state. Medi-Share is a "cost-sharing program" open only to Christians and explicitly excluding all individuals with "unbiblical lifestyles," including gays and lesbians. Seeking the order barring the company from Kentucky, the state insurance department maintained that Medi-Share was an unlicensed insurance company in violation of fair practice policies.

INTERNATIONAL

Ontario Court Holds Ban on Gay Marriage Unconstitutional. The Ontario Superior Court ruled July 12 that Canada's policy of refusing legal recognition of same-sex marriages is unconstitutional, holding that both the benefits and status of marriage must be afforded to same-sex unions. The court suspended its judgment for two years to allow the Canadian Parliament time to redefine the term "marriage." Although the province of Ontario has declined to appeal, the federal government is taking the case through Ontario's provincial court system and eventually to the nation's Supreme Court. In the wake of the decision, the Alberta Legislature passed a law banning same-sex marriage, and the provincial government announced plans to invoke a rarely used provision of the Canadian Constitution to disregard federal law, should same-sex unions become legal at the federal level.

Same-Sex Partners in South Africa Obtain Same Legal Financial Status as Married Heterosexual Couples. A full bench of South Africa's highest court ruled July 25 that a lesbian partnership should receive the same financial benefits attached to heterosexual marriage. The constitutional court ratified a lower court decision holding the denial of equal state benefits to "unfairly and unjustifiably discriminate on the basis of sexual orientation" is in violation the South African Constitution. In order to qualify for these entitlements, a same-sex couple must clearly demonstrate that they have established a duty of

reciprocal support similar to the legal obligations imposed on married partners. A lawsuit seeking the recognition of same-sex marriages is forthcoming.

Quebec Unanimously Enacts Civil Union Legislation. The Quebec provincial Legislature unanimously passed a Vermont-style civil union law on June 7, granting same-sex couples the same rights and duties as married opposite-sex couples. Two Montreal men who have lived together for 29 years became the first same-sex couple to be joined in a civil union in Canada on July 18.

Sweden OKs Gay Adoption Plan. Swedish legislators voted June 5 to allow same-sex couples to adopt children – a decision that gay activists hailed as a step toward gaining the full benefits of marriage. Under the bill, gays registered in a legal partnership can adopt children jointly or adopt the children of their partners. The law, proposed after a parliamentary research committee found that same-sex couples are as capable of caring for children as heterosexual couples, is scheduled to take effect early next year.

European Court of Human Rights Rules Male-to-Female Transsexuals Legal Females. The European Court of Human Rights ruled July 11 that two British post-operative transsexuals had the right, under the European Convention on Human Rights, to be legally recognized as women and to marry men. *Goodwin v. United Kingdom*, No. 28957-95; *I. v. the United Kingdom*, No. 25680/94. Following the landmark decisions, the British government restarted a working party looking at ways to amend the law to give transsexuals greater rights. Notwithstanding this decision, the British High Court ruled July 20 that “sex is determined at birth” and that another post-operative male-to-female transsexual could not change the gender on her birth certificate. The court asserted that its decision is binding on all British courts until the House of Lords determines otherwise.

Germany’s Highest Court Dismisses Legal Challenge to Same-Sex Partnerships. Germany’s Federal Constitutional Court ruled July 17 that the country’s partnership union law is valid. The law gives limited rights to same-sex couples, including adoption of the spouse’s family name, patient visiting and information rights, and the rights to make bequests and to have joint health insurance coverage. Couples are required to seal their partnerships at registry offices and to obtain divorces by court order. Three conservative German states had appealed the implementation of the law.

Italy Refuses to Recognize Same-Sex Marriage. The Italian government has disavowed the first same-sex Italian couple to be married in the Netherlands, the only country to currently permit same-sex marriages. Shortly before their wedding, the couple was handed an official note that condemned their union and stated that it would “find no recognition in Italy.” The newly married couple plans to appeal to the European Court of Human Rights.

Liverpool Registry Office Begins Recording Same-Sex Unions. Liverpool’s gay registry office began taking orders June 17 for same-sex commitment ceremonies scheduled to begin in July. The ceremony is similar to the one in existence in London but will welcome couples from anywhere in the country. Couples will receive a certificate of commitment and their names will be recorded in the registry office.

Anti-Gay Witch Hunt in Zimbabwe Government. Zimbabwe President Robert Mugabe has initiated a crackdown against gays and lesbians in his government by ordering his Secret Service to search for, spy on and compile a list of possible gay Cabinet members and government officials. Anyone discovered to be gay will be removed from office. In a related development, a three-judge panel has ordered British immigration officials to reconsider the asylum petitions of two gay men who claim they will be persecuted if forced to return to Zimbabwe.

Hawaii Civil Rights Commission Accepts Transgender Complaints. The Hawaii Civil Rights Commission has determined that it can hear sex discrimination complaints filed by transgender individuals, concluding that employment discrimination against a person due to his or her transgender status is discrimination on the basis of sex. The commission will hear transgender cases while the decision is under appeal in Hawaii's state courts.

No Claim in Title VII Gender Non-Conformity Case. A federal district court in Wisconsin ruled that an employee harassed because his co-workers incorrectly perceived him to be gay did not state a claim for discrimination based on gender non-conformity. The court held that the plaintiff's only claim was for sexual orientation discrimination, for which there is no federal protection. *Hamm v. Weyauwega Milk Products*, 2002 WL 984816.

Eighth Circuit Rejects Lawsuit Seeking to Keep Transgender Employee from Bathrooms. The U.S. Court of Appeals for the 8th Circuit ruled June 20 that a Minneapolis public school met its legal obligation by affording convenient alternative restroom options to a teacher who did not want to use the same facilities as a male-to-female co-worker. The plaintiff had complained that allowing a transgender individual to use the women's bathroom violated her religious freedom and created a hostile environment based on sex. NCLR, the ACLU and GLSEN filed *amicus* briefs. The ACLU called the court's decision a "watershed victory that tells employers and businesses nationwide that they can't deny a transgendered person basic rights based on someone's dislike for the person." *Cruzan v. Special School District*, 294 F.3d 981.

Positive Result in Transgender Discrimination Lawsuit. A federal jury in Brooklyn, N.Y., found on June 27 that a Toys "R" Us store violated city civil rights laws by allowing harassment and discrimination against three transgender customers who claimed they were menaced by store employees and threatened with baseball bats. Nevertheless, while the plaintiffs sought \$300,000 each in damages, the jury awarded nominal damages of \$1.

Lesbian Teen-Ager Sues High School Over Gendered Yearbook Dress Code Policy. A Tampa teenager, whose rejection of a dress code kept her portrait out of her high school yearbook, sued the school district in federal court on June 18. School administrators barred the teenager from wearing clothing of her choice, refusing to publish any photo in which she did not appear in the "frilly drape" required for all female students. Next year, the school plans to have graduating seniors pose for photographs in caps and gowns. The plaintiff is being represented by the National Center for Lesbian Rights. In a similar story, administrators at another Florida high school backed down, after receiving a demand letter from NCLR and the ACLU of Florida, from a requirement that girls wear skirts or dresses under their gowns at graduation. Two girls who objected to the policy will be permitted to wear slacks.

HATE CRIMES

Kansas Amends Hate Crimes Legislation. The Kansas Legislature amended the state's hate crimes act on June 6 to include crimes motivated by defendant's belief or perception of the victim's sexual orientation – among other enumerated categories – even if that belief or perception was erroneous. The law previously only covered crimes motivated by the actual status of the victim.

Judge Imposes 40-Year Sentence for Second-Degree Murder of Transgender Youth. A New Mexican man was sentenced to 40 years in prison on June 4 after pleading guilty to killing Fred Martinez, a transgender Navajo teen-ager. The Colorado Anti-Violence Program commended the stringent sentence.

Gay-Friendly Churches Targeted. A man was arrested May 21 after threatening to bomb the Metropolitan Community Church in Vancouver, Wash., and to murder its pastor. The man called the church seven times over the previous year expressing open hostility toward gays and lesbians in the congregation and threatening acts of violence. A gay-welcoming Episcopal Church in Santa Fe, N.M., has been vandalized for the seventh time in the past two years. Twelve-foot windows lining the sanctuary were smashed and hate messages written on the walls.

AIDS Activist Stabbed to Death in California. Jeffrey Owens, an AIDS activist, died in the hospital on the morning of June 6 after being attacked by gang members in the parking lot of a Riverside gay bar the previous night. A second victim, Michael Bussee, survived the attack. Five suspects, at least one of whom is reported to have yelled anti-gay slurs, were charged with hate crimes. If convicted, they face life imprisonment without the possibility of parole. In another case involving the murder of a gay rights activist, a Virginia Beach man surrendered to police on July 19 for the April 21 strangling of Joseph Camber at the University of Tennessee.

Teens Held for Trial in Sibling Murder. Prosecutors in Pennsylvania have charged that a 14-year-old boy beat his older brother to death with a claw hammer because he believed him to be gay. A second teen-ager has been ordered to stand trial as an accomplice. While Pennsylvania does not currently have a sexual orientation inclusive hate crimes statute, the anti-gay motive is being presented as evidence of premeditation.

Transgender Teens Killed in Washington, D.C. Two transgender teenagers were found murdered in their car Aug. 12 on a Washington, D.C., street. Police said that each body had at least 10 bullet wounds and speculated that the killings had the brutal markings of a hate crime.

Florida Beating May Be Charged as Hate Crime. The Florida state attorney's office is reviewing whether a case of gay bashing against two heterosexual brothers should be prosecuted as a hate crime. The victims, who were severely beaten on Fort Myers Beach, claim that their attackers repeatedly used homophobic epithets during the assault and that police deputies forced them to remove any references to gay bashing from their statements.

Portland, Maine, Man Attacked on Day-Lit Street. Jerry Boivin and his roommate were assaulted June 13 while walking on a day-lit street in Portland. Two men who had yelled anti-gay slurs from a pick-up truck chased Boivin down and repeatedly smashed his head against the sidewalk. Following the incident, the gay community held a parade and rally in Boivin's support while police stepped up their presence at Southern Maine Pride weekend.

Police Beating Case Settled in Chicago; Transgender Man Sues in San Francisco. A gay man who alleged that Cook County deputies beat him because of his sexual orientation will receive a \$65,000 settlement from the county. In one of the largest transgender discrimination cases in U.S. history, a transgender female-to-male has brought a \$25 million dollar suit against the San Francisco Police Department for incidents that included a severe beating.

International Hate Crimes News. In international hate crimes news, three men who viciously attacked and taunted a gay Welsh couple have been sent to jail. English police are investigating a homophobic assault in which a gay television personality's head was smashed into a computer at an Internet café. An

Australian man who went on a rampage against gays with a machete pleaded guilty on July 31, claiming to have been motivated by the Bible. The man was sentenced to 5 1/2 years in prison and could be free in 1 1/2 years. Two U.S. sailors have been charged with assault and weapons offenses after a gay bashing in Vancouver. The sailors allegedly approached the victim for directions, sprayed him in the face with a noxious substance and repeatedly kicked him – yelling anti-gay epithets – while he lay on the ground. Further, a gay rabbi in training was found murdered and dismembered in London in early July. Three suspects have been arrested and at least one has been charged. Police believe that the victim, Rabbi Andreas Hinz, was killed because of his sexual orientation.

MILITARY

Servicemembers Legal Defense Network Calls on Air Force Reserves to Revise Forms.

Servicemembers Legal Defense Network admonished the Air Force Reserves on July 25 for violating the 1993 policy against inquiring about soldiers' sexual orientation. The Air Force Reserves' application continues to ask recruits whether they are homosexual or bisexual and whether they ever intend to engage in homosexual acts. "The application's questions regarding sexual orientation are a blatant violation of federal law," said SLDN Legal Director Sharra Greer.

Predominantly Gay Church to Provide Chaplains for Military Veterans. Metropolitan Community Churches, a predominantly gay Christian church with 300 congregations in 22 countries, received recognition from the federal government to provide chaplains to the Department of Veterans Affairs. While independent from the military, the Department of Veterans Affairs provides support and outreach programs to both active duty service members and veterans. The Rev. Troy Perry, the head of the church and a U.S. Army veteran, heralded the move as a "positive step toward full equality for America's gay and lesbian citizens."

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