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RECENT DEVELOPMENTS IN SEXUAL ORIENTATION AND GENDER IDENTITY LAW

IN THE HEADLINES

U.S. Supreme Court Agrees To Hear Texas Sodomy Law Challenge. On Monday, Dec. 2, the U.S. Supreme Court announced its decision to hear the *Lawrence v. Texas* case, challenging Texas's ban on same-sex intercourse. The case will be argued on equal protection and privacy grounds, and its outcome could determine the validity of sodomy laws in 13 states across the country.

Lesbian and Gay Candidates Fare Well in November Elections. San Diego voters elected Bonnie Dumanis, the country's first openly gay district attorney. Three openly gay members of Congress – Reps. Tammy Baldwin, D-Wis., Barney Frank, D-Mass., and Jim Kolbe, R-Ariz. – won re-election by landslide margins. Providence, R.I., became the largest American city with an openly gay mayor, when voters elected David Cicilline to the post. The Gay and Lesbian Victory Fund reports that nearly 80 percent of the lesbian, gay, bisexual and transgender candidates it endorsed were elected. Included among those re-elected was Maryland's House Majority Leader Maggie McIntosh, who played an instrumental role in the passage of Maryland's Anti-Discrimination Act of 2001.

HRC Assists State and Local Groups with High-Stakes Ballot Measures. The Human Rights Campaign joined forces with state and local groups across the nation this fall to defeat divisive anti-gay ballot measures, and to pass one pro-LGBT measure. In Miami-Dade County, Fla., anti-gay groups lost their bid to remove sexual orientation from the county's anti-discrimination ordinance passed in 1998. In Sarasota, Fla., 73 percent of voters approved an amendment to the city charter to make it illegal to discriminate based on sexual orientation. In Tacoma, Wash., voters rejected a ballot measure that would have repealed a law banning discrimination based on sexual orientation and gender identity. In Westbrook, Maine, and Ypsilanti, Mich., voters rejected proposals to strip gay rights provisions from anti-discrimination ordinances. The only setback came in Nevada where, as expected, voters gave final approval to a constitutional amendment that bans same-sex marriage. HRC supported these campaigns with various combinations of staff, volunteers, mailings, publicity and cash contributions.

California Law Grants Inheritance Rights to Domestic Partners. A state law born out of the Sept. 11 tragedy will grant inheritance rights to gays and lesbians whose registered domestic partners die

without a will. The legislation was signed into law in September. The new measure, effective July 1, 2003, will affect more than 15,000 partnerships on file with the secretary of state's office, as well as partners who register in the future.

Federal Court Dismisses Cross-Dresser's Title VII Claim. A federal district court ruled that Peter Oiler, a truck driver who was terminated because he wore women's clothing during off-duty hours, did not have a claim under Title VII. The court rejected the plaintiff's claim that he was terminated because he failed to conform to stereotypical notions of how men should behave, thereby constituting sex-stereotyping discrimination under *Price-Waterhouse v. Hopkins*, 490 U.S. 228 (1989). Conceding that many would disapprove of Oiler's termination, who was a reliable employee of Winn-Dixie for 21 years when he was fired in January 2000, the court said it found nothing in the legislative history of Title VII or relevant case law that extended protection to the plaintiff on the facts presented. The American Civil Liberties Union Lesbian and Gay Rights Project represented the plaintiff. *Oiler v. Winn-Dixie Louisiana, Inc.*, 2002 U.S. Dist. LEXIS 17417 (E.D. La. Sept. 16, 2002).

EMPLOYMENT

Courts Continue to Struggle with Same-Sex Harassment Cases Under Title VII. The 9th U.S. Circuit Court of Appeals ruled that a gay butler who worked in the MGM Grand Hotel in Las Vegas can sue his employer in federal court for sex discrimination. Medina Rene claimed in a federal lawsuit that from 1994 to 1996, his male co-workers and his supervisor subjected him to a hostile work environment that included crude and demeaning sexual pranks and verbal harassment. The seven-judge majority cited the unanimous 1998 U.S. Supreme Court ruling in *Oncale v. Sundowner Offshore Servs., Inc.*, which stated that sexual harassment can be illegal when the offender and victim are the same sex. The dissent stressed that the harassment appeared to be based on sexual orientation, rather than sex, and therefore was not actionable under Title VII. *Rene v. MGM Grand Hotel, Inc.*, 2002 U.S. App. LEXIS 20098. In another case, a U.S. magistrate for the U.S. District Court for the Northern District of New York ruled that a gay man could not sustain a federal sexual harassment claim because Title VII does not prohibit harassment based on sexual orientation. While recognizing that the plaintiff's torment was "reprehensible," the magistrate nevertheless ruled that sexual orientation discrimination was not actionable under Title VII. *Martin v. New York State Department of Correctional Services*, 2002 U.S. Dist. LEXIS 18094.

Gay Officers Call For Investigation. The Gay Officers Action League of New England asked the Connecticut attorney general to investigate past and present internal affairs complaints filed by gay and lesbian state troopers. Detective Michael Carney, a Springfield, Mass., police officer and vice president of the gay officers' league, said his group is aware of several troopers who have filed internal affairs complaints that "have been swept under the rug and ignored by officials in the department." Attorney General Richard Blumenthal said he would review the request, which came after news of an internal investigation of two high-ranking supervisors accused of making inappropriate remarks. Over the past decade, according to Carney, at least three troopers have been forced out of the department because of their sexual orientation, including one who was physically threatened by a supervisor.

Massachusetts Court Affirms Transgender Plaintiff Protected by Sex and Disability Discrimination Laws. Allie Lie, a transsexual woman, won the right to press her state law claims of sex and disability discrimination against her employer when a Massachusetts court denied summary judgment to her employer. The employer, Sky Publishing Corp., had pressed Lie to wear traditionally male clothing on the job, threatening disciplinary action or termination if she refused to comply. The court's ruling follows a 2001 Massachusetts Commission Against Discrimination

decision that ruled that transgender people can bring cases under the sex and disability provisions of the state's non-discrimination law. *Lie v. Sky Publishing Corp.*, No. 01-3117-J, 2002 Mass. Super. LEXIS 402 (Oct. 4, 2002).

Utah Supreme Court Hears Arguments in Case Involving Lesbian Teacher. The Utah Supreme Court heard arguments in a case involving a lesbian teacher's right to teach in Utah schools. A group of students and parents at Spanish Fork High School claim that Wendy Weaver's employment violates a law that requires teachers to be good role models. The lawyer for the group is seeking a court declaration that Weaver has violated the state mandate to uphold moral standards in the classroom. Weaver prevailed in an earlier federal lawsuit regarding her right to teach after Nebo School District officials told her she could not coach the girls' volleyball team or discuss her sexual orientation with students. In that case, the judge forced the district to offer Weaver her coaching job again, lifted the district's gag order and ordered the district to pay nearly \$62,000 in legal fees. Weaver continues to teach while the state Supreme Court's ruling is pending. The ACLU of Utah represents Weaver.

FREE SPEECH, RELIGION AND EXPRESSION

Federal Judge Invalidates Banner Ordinance. A federal judge struck down an Oklahoma City ordinance that kept a gay pride group's banners off city light poles. U.S. District Judge Robin Cauthron, in an unpublished opinion, ruled that the ordinance was an unconstitutional infringement on speech. The City Council passed the ordinance in August 2001 to prohibit banners promoting "social advocacy." According to Cauthron, this prohibition was unconstitutionally vague and created an unconstitutional viewpoint-based restriction. Recently, the Oklahoma City Council accepted a settlement allowing gay pride banners to fly over city streets. The ACLU of Oklahoma represented the gay pride group. The decision is unpublished. Case No. CIV-01-1827-C.

D.C. Appeals Court Reverses Ruling for Ousted Boy Scouts Leaders. The D.C. Court of Appeals reversed the decision of the D.C. Commission on Human Rights awarding two ousted Boy Scouts leaders damages for their exclusion from the organization. Citing the *Dale v. Boy Scouts of America* decision, the court found that the Boy Scouts did not break the law by barring the two gay men. *B.S.A. v. D.C. Comm'n on Human Rights*, 2002 D.C. App. LEXIS 607.

Suit Charges Discrimination at Georgia Foster Center. A complaint filed against the United Methodist Children's Home in Decatur, Ga., alleges that the home uses state dollars to discriminate in employment and to indoctrinate foster youth in religion. The suit, brought by Lambda Legal, claims a lesbian counselor was fired when the home discovered her sexual orientation. The suit also alleges that a Jewish therapist was denied a job based on his religion. Lambda claims the home "is engaging in blatant religious discrimination in its employment," and that it also "requires its staff to provide services to lesbian and gay youth, and other youth, based on its religious beliefs rather than sound professional practices." *Bellmore v. United Methodist Children's Home and Department of Human Resources of Georgia*.

MARRIAGE/DOMESTIC PARTNERSHIP/CIVIL UNIONS

Ohio Transgender Man's Bid To Marry Denied. A Trumbull County probate judge denied an Ohio female-to-male transsexual's application for a marriage license because he falsely swore on his application that he had not previously been married. The court found that the omission of the applicant's prior marriage from his marriage license application was intentional and made with the purpose of misleading the court. Ohio law allows a licensing officer to refuse to issue a license if the officer has reason to believe that information on the marriage license application is false. The

judge earlier sought a second opinion from the county prosecutor before making a final ruling on his interpretation of Ohio law that chromosomes, not a sex change, determine one's sex. The couple's attorney argued that Ohio law does not require chromosome testing, and that the court should look to the man's amended birth certificate from Massachusetts, where he was born, to find that the applicant was legally male and therefore eligible to marry a woman. *In The Matter Of The Application For A Marriage License Of Jacob B. Nash and Erin A. Barr*, Case No. 2002 MLA 0834.

Number of Cities Providing Domestic Partner Benefits Continues to Grow. A number of municipalities across the country have begun offering domestic partner benefits to their employees this quarter. Same-sex domestic partners of city employees in Glendale, Colo., became eligible for health coverage Nov. 1, under a measure unanimously passed in September by the City Council. Sacramento County, Calif., supervisors also voted to provide domestic partner benefits for county employees, after hearing testimony from county employees who recounted struggles associated with their inability to carry partners on their health insurance policies. Sacramento County joins 14 other counties and 19 cities in California that offer domestic partner benefits. In October, Durham became the third city in North Carolina to offer health benefits to domestic partners. Under the new program, unmarried and same-sex partners who live with and share expenses with city employees would be eligible for city health and dental coverage. The Westchester County Legislature in New York voted to establish a domestic partner registry that will make it easier for unmarried couples, same sex or opposite sex, to get benefits usually reserved for husbands and wives. The registry could help an unmarried couple collect life insurance or visit a partner in the hospital. In New York City, which already has a domestic partner law, the City Council is slated to consider a bill that would require the city's contractors to provide benefits to their employees' domestic partners. The bill would apply only to those employees who are registered with their employers as domestic partners and recognized as such under city law.

FAMILY LAW

Ohio Supreme Court Rules on Same-Sex Shared Parenting. The Ohio Supreme Court rejected a lesbian couple's claim that both women were the parents of each other's children, whom they raised together. However, the court stated that the juvenile court could grant the women shared custody of the children if it found that doing so would be in the best interests of the children. While the decision fell short of a full legal recognition of same-sex parents, the couple's attorney nonetheless praised the decision for recognizing that non-adoptive and non-biological parents may still have standing to seek custody of the children they help raise. *In re Bonfield* (2002), 96 Ohio St.3d 218 (Ohio 2002).

Judge Orders Boy in Custody Battle Returned to Nebraska. Joan Bridgens adopted a baby boy in 1996. Serenna Russell, Bridge's partner at the time, adopted the boy in 1997 in a second-parent adoption in Pennsylvania. The two raised the child until their separation in 2001. After moving to Nebraska, Russell asked a Nebraska court to award her custody. The trial court refused to recognize the adoption. On appeal, the Nebraska Supreme Court unanimously reversed, holding that even though second-parent adoptions are not granted in Nebraska, Nebraska must recognize valid second-parent adoptions from other states. Upon remand to the trial court, a district judge ruled that the boy must return to Nebraska where the parents will have joint custody. The boy had been living in Michigan with Bridgens. *Amici curiae* in the case on behalf of the plaintiff included the ACLU of Nebraska, the National Center for Lesbian Rights and the Center for Lesbian and Gay Civil Rights in Philadelphia. *Russell v. Bridgens*, 647 N.W.2d 56 (Neb. 2002).

Idaho Falls Residents Support Gay Father's Custody Battle. Residents of eastern Idaho rallied behind a man who lost custody of his children because he is gay. Chanting "Idaho's too great to hate," supporters gathered on the courthouse steps where his case was heard in Idaho Falls to support Theron McGriff, whose case is now headed to the Idaho Supreme Court. The National Center for Lesbian Rights is representing McGriff.

Washington Court Treats Same-Sex Breakup Similar to Divorce. A Yakima County, Wash., Superior Court judge ruled that two women ending a 10-year relationship must divide their assets fairly, choosing not to be constrained by the fact that Washington does not recognize same-sex marriage. Judge Heather Van Nuys said the relationship between a Yakima physician and a Seattle nurse was "sufficiently marriage-like" for equitable relief to be appropriate. In May, the Washington Supreme Court in the case of *Vasquez v. Hawthorne*, 33 P.3d 735 (Wash 2001) ruled that a Seattle man's 30-year same-sex relationship may be enough like a marriage that he should be entitled to an equitable share of his deceased partner's estate.

Utah Appeals Court Recognizes Same-Sex Cohabitation in Terminating Alimony. The Utah Court of Appeals granted an ex-husband's request for termination of alimony based on his ex-wife's cohabitation with a woman. The decision reversed a lower court decision holding that two people of the same sex could not form a "conjugal" relationship for the purposes of satisfying the definition of cohabitation. The Court of Appeals found that the definition of cohabitation did not require opposite-sex sexual relations, and that Utah's definition of marriage as a heterosexual relationship did not bar recognition of the same-sex relationship as a cohabiting relationship for the purposes of terminating alimony.

Mississippi Court of Appeals Reverses Denial of Custody to Lesbian Mother. A Mississippi trial court awarded custody of Rhonda Fulk's 4-month-old son to Fulk's ex-husband, despite the fact that the husband had been convicted of domestic violence and resisting arrest and had padlocked his wife in the house while she was pregnant. The trial court gave Rhonda Fulk only one hour of supervised visitation per week, which had to take place at 8 a.m. on Sundays in the parking lot of a local McDonald's and under the "supervision" of her ex-husband. The trial court made this decision because Fulk had been in a relationship with another woman, stating, "it is unacceptable for any child to be around this type of behavior." The Mississippi Court of Appeals reversed on all counts, holding that the trial court improperly placed too much weight on the mother's same-sex relationship and had no basis for restricting her visitation. The Court of Appeals remanded the case for a new custody determination and held that, at a minimum, Fulk must be granted unrestricted, overnight visitation. The National Center for Lesbian Rights represented Rhonda Fulk on appeal. *Fulk v. Fulk*, 827 So.2d 736 (Miss. App. 2002).

CRIMINAL LAW

California Court Finds No Anti-Gay Bias in Jury Selection. A California appeals court denied a gay defendant's claim that the prosecutor in his murder trial improperly excused a gay prospective juror. The defendant, whose sexual orientation was an issue at the time of jury selection, argued on appeal that the prosecutor's exercise of a peremptory challenge to exclude the gay juror was motivated by an anti-gay bias. The court found that although the juror was a member of a cognizable group, the prosecutor's challenge was still proper since it was based not on the juror's group association but rather on the juror's specific biases as demonstrated during *voir dire*. *People v. Zuniga*, 2002 Cal. App. Unpub. LEXIS 8654.

ACLU Asks Supreme Court To Strike Down Anti-Gay Kansas Law. The ACLU has filed a petition for writ of certiorari with the U.S. Supreme Court asking it to declare part of Kansas' "Romeo and

Juliet Law” unconstitutional because it gives gay teen-agers much higher prison sentences than heterosexual teen-agers who engage in identical sexual activities. The case under possible review involves an 18-year-old male who received a 17-year prison sentence for engaging in consensual sexual activity with a boy who was almost 15 years old. Had his partner been a member of the opposite sex, the teen-ager would have received a sentence of only 15 months under an exception created by the “Romeo and Juliet Law.” In its brief, the ACLU argues that singling out gay teen-agers for harsher punishment than heterosexuals receive for the same acts violates the Equal Protection Clause of the U.S. Constitution. The case is *Kansas v. Limon*, 2002 Kan. LEXIS 367.

New Trial Ordered for Minersville Police. A federal judge stood by his order for a new trial in a lawsuit accusing Minersville, Pa., police of driving an 18-year-old to suicide by threatening to tell his family he was gay. In June, U.S. District Judge Arnold C. Rapoport of Allentown, Pa., threw out a jury’s verdict that cleared the borough of Minersville and three police officers of violating the teen’s privacy rights, finding that the evidence did not support the verdict. The case involves Marcus Wayman, a high school football player who killed himself in 1997 after officers who arrested him for underage drinking allegedly threatened to tell his grandfather he was gay. The case has been to the 3rd Circuit once before, when the court ruled that a person’s constitutional right to privacy includes protection of the person’s sexual orientation. The ACLU represents the teen’s mother in the case. *Sterling v. Borough of Minersville*, 232 F.3d 190 (3rd Cir. 2000).

Court Reverses ‘Jenny Jones’ Ruling. The Michigan Court of Appeals threw out a jury’s \$29.3 million award against the “Jenny Jones Show,” ruling the talk show host had no legal duty to protect a guest who was murdered after revealing a gay crush. The appeals court, in a 2-1 decision released in October, reversed the 1999 decision of the Oakland County jury that found the show’s owner, Warner Bros., and its distributor, Telepictures, liable for the death of Scott Amedure. Amedure was shot and killed by Jonathan Schmitz in 1995, three days after he revealed an attraction to Schmitz during a taping of the show. The segment never aired, and Schmitz is serving a 25- to-50-year prison sentence. Attorney Geoffrey Fieger, who represents Amedure’s family, said he would appeal. *Graves v. Warner Bros.*, 2002 Mich. App. LEXIS 1461.

EDUCATION

University of Washington Students Pass Transgender Rights Resolution. The University of Washington’s undergraduate students passed a resolution to urge school officials to add gender expression, gender and gender identity to the school’s non-discrimination policy. After review by the school’s administration, the issue will go before the university’s board of regents.

Wisconsin High School Allows Gay-Straight Alliance Club. Neenah High School officials initially denied students’ request for formal recognition of a gay-straight alliance as a noncurricular club. Superintendent James Wiswall said that although the GSA would be allowed to use the school for meetings, it would not be awarded official club status. Wiswall stated that the GSA would duplicate the mission and goals of an existing club, STAND (Students, Teachers and Staff Advocating Neenah’s Diversity), which was organized to foster respect and understanding of cultural differences, including sexual orientation. After an appeal by the students to the school board and a letter from the ACLU, the district decided to grant official recognition to the GSA, which brings with it a paid faculty advisor, funding for club activities and a picture in the school yearbook.

Purdue to Offer Benefits to Same-Sex Partners. The Purdue University board of trustees approved a plan to offer full benefits to the same-sex partners of university employees. Effective Jan. 1, 2003, same-sex partners will receive the same benefits as all other Purdue University employees’

spouses and dependents, including medical insurance, tuition-free remissions, dependent life insurance, personal accident insurance and access to university programs. Children of such partnerships are also eligible for benefits. Seven of the Big 10 universities now offer same-sex benefits.

Kent State University Accepts Gay Fraternity. Kent State University recently accepted gay fraternity Delta Lambda Phi onto its Inter-Fraternity Council. After twice rejecting the fraternity's application for membership, the council, at the urging of the Office of Campus Life, granted membership to the fraternity.

Nevada Student Awarded Settlement. In a landmark case recognizing the constitutional right of students to be openly gay at school, former Reno, Nev., high school student Derek Henkle won a pre-trial award of \$451,000 and the school district agreed to institute student education and staff training to curb harassment based on sexual orientation. Henkle claimed he was forced to transfer to an alternative school for students with behavioral problems. There and at two additional schools, he claimed, bullying and harassment continued until he was forced to dropout and seek a GED on his own. Lambda Legal and the national law firm O'Melveny & Myers filed the federal lawsuit on Henkle's behalf. *Henkle v. Gregory*, 150 F.Supp. 2d 1067 (D. Nev. 2001).

HIV/AIDS

FDA Approves Rapid HIV Test. Department of Health and Human Services Secretary Tommy Thompson announced in November the approval of a new "rapid" HIV test. The new test provides preliminary results within 30 minutes, yet controversy persists regarding who will be allowed to administer the test. Currently, the test must be administered and analyzed in one of 90,000 laboratories certified in accordance with the Clinical Laboratory Improvement Amendments (CLIA). It is expected that a waiver from CLIA requirements will be requested to facilitate testing in communities lacking easy access to CLIA-certified laboratories, particularly communities of color.

IN THE STATES

Philadelphia Court Invalidates Domestic Partnership Benefits. In a unanimous decision, the Commonwealth Court of Pennsylvania invalidated two 1998 city ordinances designed to provide benefits to the same-sex partners of city employees. The first ordinance created a category of "life partners" as a "marital status" and prohibited discrimination on the basis of this new status. The city also extended health and other benefits to city employees' partners. The second ordinance eliminated the real estate transfer tax between life partners. The decision reversed the rulings of two Philadelphia Common Pleas Court judges who had upheld the ordinances. The court held that the city had exceeded its powers in altering the definition of marriage from that provided by state law. With regard to the realty transfer tax, the court ruled that treating some "unmarried, unrelated people" differently than others -- that is, advantaging same-sex partners over unmarried opposite-sex couples -- would create an unfair tax. *Devlin v. City of Philadelphia*, 2002 Pa. Commw. LEXIS 683. The case is on appeal to the Pennsylvania Supreme Court.

Ohio Court Refuses To Order Anti-Gay Referendum. The Ohio Supreme Court rejected a request to order a referendum challenging Ohio's first local ordinance that extends health benefits to same-sex partners of city workers. In its unanimous decision, the court found that Cleveland Heights' election board correctly ruled that 15 percent of registered voters, not 15 percent of those who voted in the most recent general election, were required to put the question on the ballot. As a result, the petition fell eight short of the minimum number of signatures necessary to force a

referendum to deny benefits. The Cleveland Heights City Council approved the ordinance last April, which extends city insurance benefits to the domestic partners of gay and lesbian city employees. *State ex. rel. Moore v. Malone*, 2002 Ohio LEXIS 2170.

Calif. Gov. Vetoes Foster Care Non-Discrimination Bill. Democratic Gov. Gray Davis vetoed a bill that would have protected LGBT youth in California's foster care system. Assembly Bill 2651, which passed both houses of the Legislature, would have prohibited discrimination and harassment based on sexual orientation, gender identity and HIV/AIDS status against foster youth, foster parents, and other foster household members and staff. A report published last year by Lambda Legal detailed the vast unmet needs of LGBT youth in California's foster care system and across the nation. The California Alliance for Pride and Equality led efforts to pass the bill.

Topeka City Council Rejects Anti-Discrimination Ordinance. The Topeka, Kan., City Council voted Sept. 10 against prohibiting discrimination based on sexual orientation. Members on both sides of the issue reported receiving particularly hateful communications from those urging a "no" vote.

Massachusetts Supreme Court Rejects Lawsuit by Anti-Gay Activists. A Massachusetts Supreme Court justice dismissed a lawsuit by anti-gay activists who sought to pressure lawmakers into reviving a proposed constitutional amendment that would define marriage in Massachusetts as a union between one man and one woman. The suit was dismissed because the group, Massachusetts Citizens for Marriage, sued the Senate president as a private citizen rather than in his official capacity. Further, the ruling indicated that the Senate president, acting in his official capacity, also is shielded from the lawsuit.

GENDER IDENTITY AND EXPRESSION

Baltimore City Council Passes Transgender Non-Discrimination Measure. Baltimore's 19-member City Council unanimously passed a measure on Nov. 25 that prohibits discrimination based on gender identity or expression in employment, housing, public accommodations and credit practices. Because Mayor Martin O'Malley asked the City Council to consider the measure, Council Bill 02-0857, it is expected that he will sign it. Baltimore joins 58 other jurisdictions that prohibit employment discrimination based on gender identity, characteristics or expression, according to HRC WorkNet. Free State Justice's MATTER (Marylanders Advocating Towards Transgender Equal Rights) led the efforts and received support from HRC, including testimony and two HRC Equality Fund grants totaling \$10,000.

Cook County, Chicago City Council Pass Gender Identity Laws. The Chicago City Council approved a new ordinance in November prohibiting discrimination based on gender identity or expression in employment, housing, public accommodations and credit. Illinois Gender Advocates (formerly It's Time, Illinois), recipients of a \$5,000 HRC Equality Fund grant, was among the state groups advocating for gender identity inclusion in the city's non-discrimination ordinance. Shortly after the Chicago development, the Cook County board passed its own gender identity law, providing protection for its 5.4 million residents from discrimination based on gender identity.

Boston Passes Gender Identity Ordinance. In October, Boston joined a growing number of cities in prohibiting discrimination based on gender identity. The ordinance addresses discrimination in housing, employment, public accommodations, education, credit, lending and insurance.

U.S. Supreme Court Refuses to Hear *Gardiner* Case. The U.S. Supreme Court denied certiorari in the case of J'Noel Gardiner, a transgender woman who had claimed a share of her deceased

husband's estate. Her husband's son contested her claim, arguing that the marriage under Kansas law was void. Earlier this year, the Supreme Court of Kansas upheld the district court's ruling in favor of the son, finding that Gardiner was not a woman under Kansas law and that the marriage was invalid as a result. *In re Estate of Gardiner*, 2002 Kan. LEXIS 117.

Court Orders Treatment for Inmate with Gender Identity Disorder. An incarcerated transgender woman brought an Eighth Amendment claim against the Massachusetts Department of Corrections for failure to provide adequate treatment for her gender identity disorder. The inmate sought an injunction requiring the Department of Corrections to allow a doctor specializing in gender identity disorders to evaluate her and provide any treatment the doctor might prescribe, including hormone treatment or sex-reassignment surgery. Although the court concluded that the plaintiff had failed to prove that the Department of Corrections had been deliberately indifferent to her needs, the court noted that its decision puts the department "on notice that the plaintiff has a serious medical need which is not being properly treated," leaving open the possibility that, if sex-reassignment surgery were found to be medically necessary, the department would have to provide it. *Kosilek v. Maloney*, 21 F. Supp. 2d 156 (D. Mass 2002).

\$25 Million Lawsuit Filed Against San Francisco Police Department. Jeremy Burke, a transgender man, has sued the city and county of San Francisco's Police Department and others for discrimination and excessive use of force. One of the largest discrimination cases by a transgender person in U.S. history, the lawsuit alleges that two police officers and a deputy sheriff severely beat and humiliated Burke while he was visiting his partner in San Francisco in August 2001. Burke is seeking \$25 million in damages for discrimination, assault, battery, intentional infliction of emotional distress, and negligent hiring, training and supervision.

Ohio Judge Sued For Jailing Transgender Man Over Marriage Licenses. A transsexual man filed a federal civil rights suit against a judge who had him arrested for allegedly falsifying the gender on his marriage license applications. Sean Brookings filed the lawsuit against Stark County Probate Judge R.R. Denny Clunk for wrongful arrest, detention, invasion of privacy and malicious prosecution without cause. The suit stems from Brookings' arrest in February 2001, after Clunk accused him of misstating his gender on three marriage license applications in 1988, 1990 and 1994. Another judge later dismissed all the charges. Three sheriff's employees and an attorney who urged that charges be brought against Brookings also are named in the lawsuit. Clunk wrote the landmark 1987 opinion *In re Ladrach* denying a marriage license to a post-operative male-to-female transsexual and a male, ruling that Ohio law only recognizes a person's gender at birth. The case, filed in the U.S. District Court for the Northern District of Ohio at Akron, is case 5:02CV 2115.

HATE CRIMES

Pennsylvania Legislature Passes Hate Crimes Law Covering Sexual Orientation, Gender Identity, Other Categories. By a vote of 118 to 79, the Pennsylvania House passed a measure Nov. 26 that would extend the state's hate crime to include actual or perceived sexual orientation, gender, gender identity, mental and physical disability and ancestry. Statewide Pennsylvania Rights Coalition, Center for Lesbian and Gay Civil Rights, Pennsylvania Gender Rights Coalition and Pennsylvania Gay and Lesbian Alliance lead the coalition to pass the measure, House Bill 1439. HRC supported their efforts along with OUTFRONT, PFLAG, the Log Cabin Republicans of Pennsylvania and a wide variety of community groups across the state. HRC's support included Equality Fund grants totaling \$10,000. The measure, which passed the Senate in June 2001, now heads to Republican Gov. Mark Schweiker, who has stated he will sign the bill, making Pennsylvania the 28th state with a hate crimes law including sexual orientation. It will also become

the fifth state, in addition to the District of Columbia, to include gender identity in its hate crimes statutes.

Bay Area Transgender Teen Murdered. Newark, Calif., police are investigating the murder of a transgender teen as a hate crime after one of the four suspects led police to a shallow grave containing the 17-year-old's body. Gwen Araujo was assaulted and killed at an Oct. 3 house party by three men who beat Araujo, strangled her with a rope and buried her body 150 miles away where it wasn't discovered until two weeks later. None of the dozens of partygoers, who may have witnessed the attack, reported it to authorities.

Morehouse College Student Attacked. In November, a Morehouse College student was brutally attacked with a baseball bat because he was believed to be gay. The victim is recovering from his injuries, and has said he is not gay, but that he was attacked because he was mistaken for another student who is gay. HRC has urged the college to denounce the attack and the anti-gay bias that motivated it.

California Appeals Court Upholds Finding of Sexual Orientation Hatred in Beating of Transgender Teen. A jury convicted Michael Doktozevich of committing five crimes when he and a friend called a 17-year-old transsexual youth named Dominique a "faggot," as they beat her up, stripped her and forced her to perform oral sex on them in Doktozevich's motel room. The jury also found that the defendant had committed four of five crimes because of the sexual orientation of the victim under the meaning of the state's hate crimes law. A California appeals court rejected the contention that the evidence was insufficient to support the finding and upheld the conviction. *People v. Doktozevich*, No. B153737, 2002 Cal. App. Unpub. LEXIS 8458 (Cal. Ct. App. Sept. 9, 2002).

Transient Charged in California Hate-Crime. A transient has been charged with the murder Narciso P. Leggs Jr., a gay Santa Ana, Calif., resident. If convicted, Gregory Michael Pisarcik, 25, could be sentenced to death under the state's hate crime law. Investigators said Pisarcik had a history of theft and allegedly sought out victims he believed to be gay.

Maine Gay Man Terrorized. A civil action brought by the attorney general's office under Maine's Civil Rights Act seeks a court order to have a father and his son, accused in an attack on a gay man, prevented from getting closer than 200 feet from the victim. The order also asks that they be barred from harassing anyone else based on sexual orientation. Assistant Attorney General Christina Moylan said that the victim, whose name was not released, was walking down a Biddeford, Maine, street last spring when Reginald Gilbert Sr., 48, and Reginald Gilbert Jr., 28, allegedly beat and harassed the victim.

Anti-Gay Attacks Alleged in West Hollywood. Three assaults on gay men in West Hollywood, Calif., occurred in September, one of which left a young man in critical condition and on life support. Three suspects have been arrested in the first two assaults but were not charged with a hate crime because no anti-gay epithets were used. In the latest attack, on Sept. 22, a 55-year-old gay man was beaten by two men who jumped out of a car and attacked him while his back was turned. In that attack, the assailants did utter anti-gay epithets, but the victim has not been able to identify the attackers and no charges have been filed.

Connecticut Police Investigate Beating as Hate Crime. Police in Shelton, Conn., are investigating as a hate crime the severe beating of a 42-year-old gay man who was attacked as he walked home from a Labor Day picnic.

Two Arrested in Virginia College Assaults. Police arrested two former Virginia Union University students in connection with assaults on two Virginia Commonwealth University students outside a meeting of a gay student organization. VCU police labeled the assaults “hate crimes.” The victims were struck in the face and head, one suffered a broken nose.

San Francisco Book Slasher Apprehended. A man who slashed and defaced more than 600 books on gay and lesbian subjects in San Francisco public libraries pleaded no contest in San Francisco Superior Court to felony vandalism with a hate-crime enhancement. The vandal, John Perkyns, was placed on five years of probation, barred from city libraries and ordered to pay \$9,600 in restitution.

Paris Mayor Recovering from Anti-Gay Stabbing. The mayor of Paris, Bertrand Delanoe, was stabbed in the stomach in an apparently homophobic attack. Delanoe is one of France’s few openly gay politicians. The assailant, who told police “he did not like politicians and in particular did not like homosexuals,” stabbed Delanoe at a reception during an all-night festival. Delanoe underwent surgery and is expected to recover completely.

MILITARY

Promotion of Fort Campbell General Delayed. The Servicemembers Legal Defense Network (SLDN), the Human Rights Campaign, the National Gay and Lesbian Task Force and People for the American Way announced their opposition to the nomination of Maj. Gen. Robert Clark for promotion to lieutenant general, the Army’s second-highest rank. According to SLDN, Clark created a command climate that condoned intolerance and anti-gay behavior. Clark was commanding general of Fort Campbell, Ky., in 1999, at the time Pfc. Barry Winchell was brutally murdered by fellow soldiers on the base. Winchell, who was targeted because he was believed to be gay, endured daily anti-gay harassment while stationed at Fort Campbell. A Department of Defense inspector general’s report issued shortly after Winchell’s murder found that anti-gay harassment was commonplace and that Clark had failed to train his leaders and soldiers at Fort Campbell on the military’s anti-harassment policies. After Winchell’s murder, Clark issued no statements against harassment, refused to speak with or meet with the parents of Winchell, or to reassure base soldiers that harassment would not be tolerated. The Senate Armed Services Committee has the authority to reject Clark’s nomination.

Military Recruitment Stirs Campus Protests. Students and professors at several law schools protested military recruitment on their campuses this fall. At Yale, Georgetown and the University of California at Berkeley, protesters objected to the military’s ban on openly gay, lesbian or bisexual service members, which conflicts with the universities’ non-discrimination policies. Under the 1994 Solomon Amendment, colleges and universities that deny access to recruiters risk termination of federal funding under a number of programs.

Bisexual Officer Finally Discharged. An Army officer who tried for two years to resign, claiming he is bisexual, has been discharged from the Army. The Army turned down at least four resignation requests from Capt. David Donovan, suggesting the 17-year veteran was lying to get out of his active duty obligation. Donovan’s lawyer said Donovan was discharged sometime in October, but he did not know what kind of discharge Donovan received. Under the military’s “don’t ask, don’t tell” policy, homosexual conduct still remains a crime under military law, although the policy allows gay and lesbian military personnel to serve if they keep their sexual orientation private and do not engage in homosexual acts. According to SLDN, 1,250 people were discharged last year from the military for homosexuality.

Navy Refuses to Discharge Openly Gay Service Members. In two cases at two separate commands, Navy officials refused to discharge two openly gay service members, despite the military's "don't ask, don't tell" policy. In both cases, naval commanders also refused to guarantee the service members' safety. SLDN, which is assisting both men, noted that the actions of both commands blatantly violated the "don't ask, don't tell" policy, but is nonetheless representative of a trend. SLDN reported an increasing reluctance among all services to discharge openly gay and lesbian personnel.

Army Purges Gay Arabic Linguists. Seven Arabic linguists were discharged for homosexuality at the Defense Language Institute in Monterey, Calif., in November. SLDN provided assistance to several of the soldiers, some of whom were subjected to questioning in violation of the "don't ask, don't tell, don't pursue" policy.

British Gay Service Members Awarded £350,000 in Discrimination Suit. Four men and a woman who were dismissed from the British military because of the armed forces' ban on homosexuality have been awarded more than £350,000, more than \$541,000, by the European Court of Human Rights. The five cases were brought after the ban on homosexuality was revoked in 2000. In the five cases, the British government was found to have breached Article 8's right to respect for an individual's private and family life and Article 13's guarantee of the right to an effective remedy for any breach by a public authority of an individual's human rights.

Gay Psychiatrist Must Repay U.S. Air Force. A gay psychiatrist ordered to repay the U.S. Air Force \$71,000 for his education argued before the 9th Circuit Court of Appeals in October that he doesn't owe the government anything and that the military's policy is discriminatory. After attending medical school at Northwestern University, serving a three-year residency at Yale University, and completing a two-year fellowship at the University of California at San Francisco, Dr. John Hensala believed he owed the Air Force four years of active duty service. Shortly before he began active duty, Hensala announced that he was gay. The Air Force promptly discharged him and demanded its money back, claiming Hensala voluntarily failed to complete his service commitment. In June 2001, a federal judge ruled in the Air Force's favor. Hensala has contended all along that he was willing to serve, but the Air Force simply refused to allow him to serve. The case is *Hensala v. Department of the Air Force*, 01-16791.

RELIGION

Presbyterian Pastors Sued Over Church's Rule on Gays. Sixteen Presbyterian pastors across the country have been named in a complaint filed with the church's ecclesiastical court, accusing them of violating the national church's ban on allowing gays to be ordained as ministers or church officers. If church authorities uphold the complaint, all could be banned from the ministry. The crux of the dispute is a provision narrowly passed by delegates to the church's general assembly barring anyone who is not married or chaste from serving as a church officer. Because same-sex couples do not have the right to marry, this provision effectively requires gay pastors to choose between celibacy and defrocking.

Catholic Priest Baptizes Quadruplets. A gay couple who became parents of quadruplets after enlisting the help of a surrogate mother had their 3-month-old children baptized in October in a Lexington, Ky., Roman Catholic church. The Rev. Paul Prabell blessed the men, Thomas Dysarz and Michael Meehan, and baptized their daughter and three sons at Lexington's Cathedral of Christ the King. Prabell and the Catholic diocese agreed to the baptisms because Dysarz and Meehan agreed to raise the children as Catholics.

INTERNATIONAL

South Africa Allows Gay Adoptions. South Africa's Constitutional Court ruled that same-sex couples may adopt children. In its September ruling, the country's highest court said that people in "permanent, same-sex partnerships" could provide children with a stable home and the necessary support and affection. South Africa is the first African country to permit same-sex couples to legally adopt children.

Anti-Gay Laws Under Scrutiny Abroad. The Indian government is examining the legal, social and ethical aspects of decriminalizing homosexual acts among consenting adults. Under Indian law, homosexual acts are punishable by prison terms up to 10 years. Naz Foundation, a gay rights group that was charged with prostitution offenses after handing out safe-sex brochures in northern India last year, is challenging the laws. Lawyers for the group charge that the laws violate the right to life and liberty as provided in the constitution. Gay rights activists in Hong Kong are challenging that country's law banning same-sex sexual conduct as well. Activists there claim the law violates Hong Kong's civil rights laws by discriminating against gay men.

Advances in Equality for LGBT Canadians. Canada's federal government has referred the issue of same-sex marriage to a parliamentary committee for study. Prime Minister Jean Chretien refused to state his personal views on whether same-sex marriages should receive a legal seal of approval. Justice Minister Martin Cauchon said the government will table a discussion paper with the committee outlining possible policy directions that include: broadening the definition of marriage to cover same-sex couples; reducing government involvement in marriage and leaving it to the churches; or reaffirming marriage as an opposite-sex union while creating a parallel civil union for same-sex couples. Elsewhere in Canada, the British Columbia Supreme Court ruled that a \$380 million class action lawsuit against the federal government by gays and lesbians could proceed. The lawsuit alleges that the federal government discriminates because while it collects Canada Pension Plan premiums from all Canadians, it denies survivor pensions to gays and lesbians whose partners died before Jan. 1, 1998. Ottawa imposed that date in 2000 when it introduced Bill C-23, granting a variety of rights to same-sex couples. Gays and lesbians say the date is arbitrary and without legal justification, denying survivor benefits to an estimated 10,000 gays and lesbians across the country. Justice Marion Allan ruled, "In the absence of a class proceeding, there could be a proliferation of individual actions seeking virtually identical relief." The lawsuit seeks benefits for all eligible gay and lesbian survivors retroactive to April 17, 1985, the day equality guarantees were enshrined in the Canadian Charter of Rights and Freedoms. Finally, in November, Canada's Northwest Territories became the first province in Canada to prohibit discrimination based on gender identity.

China Holds AIDS Activist. Chinese police appear to be holding prominent AIDS activist Wan Yanhai over a classified government report he allegedly leaked to the Internet just before he went missing in August. Rights groups say Wan is in detention, although police have not responded to inquiries from colleagues and his wife, who lives in Los Angeles. Wan was instrumental in exposing the connection between blood transfusions and HIV/AIDS at government-sponsored health clinics. Last July, the government shut down an AIDS counseling center he ran. The United Nations has said that the number of HIV infections in China could rise to 10 million if no effective countermeasures are taken.

Tasmania Considers Same-Sex Marriage. Reforms proposed before the Tasmanian Parliament would give same-sex couples the same rights as married or heterosexual partners. Tasmania has long been a hotbed of homophobia. The proposed reforms are the product of a joint select

committee report on relationship discrimination, which recommended amendments to the De Facto Relationship Act.

Tel Aviv Grants Limited Benefits to Same-Sex Couples. The city of Tel Aviv, Israel, has granted limited benefits to same-sex couples. The law, passed in October, makes same-sex couples eligible for the same benefits as heterosexual couples, including discounts and benefits at cultural facilities, libraries, swimming pools and various city events. Because marriage rights are the responsibility of the national government, Israeli law does not permit the municipality to go any further.

Same-Sex Marriage Benefits Achieved in Zurich. Voters in Switzerland's most populous canton voted to give same-sex couples rights previously reserved to married couples. By a 63 percent to 37 percent vote, the referendum in Zurich canton approved civil registration for same-sex couples. They will have the same tax, inheritance and social security benefits as other married couples. Similar efforts are under way elsewhere in the country.

Britain's House of Lords Approves Government's Plan to Allow Unmarried Couples, Including Same-Sex Couples, to Adopt. The British House of Lords voted to approve a measure that would allow unmarried couples, including same-sex couples, to adopt children, reversing its earlier rejection of the measure. The House of Commons approved the measure last May.

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