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RECENT DEVELOPMENTS IN SEXUAL ORIENTATION AND GENDER IDENTITY LAW

IN THE HEADLINES

U.S. Supreme Court Hears Oral Arguments in Texas Sodomy Challenge. The U.S. Supreme Court heard oral arguments March 26 in *Lawrence v. Texas*, a challenge to the Texas homosexual conduct law based on claims that it violates the U.S. Constitution's promises of equal protection and due process. The law criminalizes acts between same-sex couples that are legal when engaged in by heterosexual couples. The case arose in 1998 when police responded to a false firearms report in the apartment of John Geddes Lawrence. The police entered the apartment and found Lawrence having sex with another man, Tyron Garner. The police arrested the men and put them in jail overnight, fining them \$200 and court costs. The Texas Supreme Court upheld the law on challenge, and the case was appealed to the U.S. Supreme Court, which granted certiorari in fall 2002. Lambda Legal represents Lawrence and Garner in the case, which is expected to be decided this summer. *Lawrence v. Texas*, No. 02-102.

New Mexico Makes Historic Strides Toward Equality. New Mexico Gov. Bill Richardson, a Democrat, signed two historic bills into law April 8, 2003, prohibiting discrimination based on sexual orientation and gender identity in employment, housing, credit, public accommodations and union membership, and providing sentence enhancement for hate crimes committed on the basis of actual or perceived sexual orientation, gender identity or gender, among other characteristics. New Mexico is the 14th state to prohibit sexual orientation discrimination and the third to explicitly prohibit gender identity discrimination. The state is the 28th to include sexual orientation in its hate crimes law and the sixth to explicitly include gender identity. Both laws will go into effect July 1, 2003. The Coalition for Equality in New Mexico, which lobbied for passage of the bills, also played a role in Richardson's decision to – on that same day – issue an executive order that provides employment benefits for the domestic partners of state employees on the same basis as they are available to the spouses of state employees. HRC salutes New Mexico activists who worked to pass these measures, and congratulates the New Mexico Legislature and the governor on this achievement. *An Act Relating to Human Rights, N.M. S.B. 28 to be codified at ch. 196, N.M. Stat. Ann. §§ 28-1-2, 7, 9 (April 8, 2003); N.M. Stat. Ann. § 28-1-7 (2001).*

Bipartisan Local Law Enforcement Enhancement Act Re-Introduced. On May 1, Sens. Edward Kennedy, D-Mass., Gordon Smith, R-Ore., and Arlen Specter, R-Pa., re-introduced the Local Law Enforcement Enhancement Act, a bill that would amend federal hate crimes legislation to add actual or perceived sexual orientation, gender and disability to the existing hate crimes categories. Earlier versions of the bill previously passed the Senate twice and the House once, most recently in June 2000, but the bill has never made it through conference to enactment. The bill enjoys strong bipartisan support, with 49

original co-sponsors and endorsement by more than 175 law enforcement, civil rights, civic and religious organizations.

Massachusetts High Court Hears Marriage Challenge. The full bench of the Massachusetts Supreme Judicial Court heard arguments March 4 in a landmark case seeking the right to marriage for same-sex couples under Massachusetts law. The case centers on seven plaintiff couples arguing that the restriction of marriage to heterosexual couples violates the Massachusetts Constitution's guarantees of liberty and equality. An outcome in the case is expected this summer. Gay & Lesbian Advocates & Defenders represents the plaintiffs. *Goodridge v. Dept. of Public Health*, No. SJC-08860.

U.S. Court of Appeals for the 11th Circuit Hears Gay Adoption Challenge. The U.S. Court of Appeals for the 11th Circuit heard oral arguments March 4 in a landmark case challenging a 1977 Florida law prohibiting lesbians and gay men from adopting. The law was passed in the height of Anita Bryant's anti-gay crusade of the 1970s, and is challenged by several families who are raising children but unable to adopt because the parents are gay. Florida relies on lesbians and gay men to provide foster homes to some of the state's most neglected children. The law is being challenged on federal constitutional equal protection and due process grounds. The ACLU Lesbian and Gay Rights Project represents the families challenging the law, working in conjunction with the ACLU of Florida. *Lofton v. Kearney*, Docket No. 01-16723-D.

Hawaii Adds Gender Identity to Hate Crimes Law. On March 4, the Hawaii Senate passed S.B. 616, a bill aimed at clarifying Hawaii's hate crimes law to ensure anti-transgender crimes could be prosecuted under the law. The Hawaii House followed suit March 31. The bill adds crimes motivated by bias against the victim's "gender identity, gender-related self image, gender-related appearance or gender-related expression; regardless of whether [those characteristics] ... are different from [those] traditionally associated with the person's sex at birth" to the existing law. Previously, Hawaii's hate crimes law covered actual and perceived gender, providing some basis for covering anti-transgender hate crimes. The new law makes the inclusion of gender identity clear. It became law April 24 without the governor's signature. S.B. 616 amends § 846-51 of the Hawaii State Code.

EMPLOYMENT

Kentucky Governor Prohibits Sexual Orientation and Gender Identity Discrimination in State Work Force. Kentucky Gov. Paul Patton, a Democrat, signed an executive order May 29 that prohibits discrimination based on sexual orientation and gender identity in state employment. With the order, Kentucky becomes the only state to have an executive order prohibiting both sexual orientation and gender identity discrimination in public employment, and the only Southern state with an executive order prohibiting either form of discrimination. The Kentucky Fairness Alliance was integral in the process leading to the issuance of the order, Kentucky Exec. Order. 2003-533.

Gender Non-Conforming Lesbian Loses on Summary Judgment in Title VII Suit. After being passed over for a promotion and eventually dismissed, Dawn Dawson, a "butch" lesbian hair assistant in a high-end Manhattan beauty salon, sued her employer under Title VII, state sex discrimination laws and New York City sexual orientation discrimination laws. Dawson claims she suffered discrimination based on her status as "a lesbian who does not conform to gender norms;" however, the U.S. District Court for the Southern District of New York found her claim to be "not readily definable" and ultimately not actionable. Because Dawson's allegations were not confined to strict sex discrimination or sexual orientation discrimination claims, but instead alleged a "disparate treatment by kinds of homosexuality, discriminating against an admitted lesbian who looks and behaves more like a man than like a woman, and presumably not against another lesbian known to be openly gay but who does not display her sexual preference by any visible expression or appearance," the court granted summary judgment to the defendants. Rick Ostrove of Leeds, Morelli & Brown, PC, represents Dawson and plans to appeal. *Dawson v. Bumble & Bumble*, 546 F. Supp. 2d 301 (2003).

Transsexual Police Sergeant Wins Reinstatement, Damages in Sex Discrimination Case Against Cincinnati. On Feb. 27, a federal jury in Cincinnati awarded \$320,000 and the opportunity to be reinstated to Philecia Barnes, a transsexual woman and police veteran with 22 years of service, who was demoted on the basis of her gender identity. Barnes, a former Marine and Gulf War veteran, holds a master's degree in social work and scored 18th out of 150 applicants on her sergeant's exam. Nonetheless, she became the first officer in the city to fail probation as a sergeant. In making the award, the jury found that Barnes had suffered discrimination on the basis of sex under Title VII. In seeking reinstatement, Barnes is also asking the federal court to invalidate Cincinnati's Article 12, a controversial and long-standing provision of Cincinnati law which precludes the city from making laws or policies to protect lesbian, gay, bisexual and transgender people from discrimination.

Transgender Woman Sues U.S. Border Patrol for Job Discrimination. Tracey Nicole Sturchio, a transgender woman employed by the U.S. Border Patrol since 1991, sued her employer in April for compensatory and punitive damages, as well as mental anguish and emotional distress, for gender identity harassment. Sturchio was allegedly denied access to the women's bathroom, prevented from wearing female attire to work, and subjected to harassment, including a survey of her co-workers about their perceptions of her physical condition and appearance.

Minnesota Becomes First State to Rescind Domestic Partner Benefits for State Workers. The ongoing fight over the provision of domestic partner benefits to state employees in Minnesota ended April 10 when union contracts for state employees were ratified without the benefits being included. The original benefits were negotiated in 2001; however, the Legislature refused to ratify them. Gov. Jesse Ventura, an independent, allowed the contracts to take effect without legislative approval during his tenure. This year, though, Republican Gov. Tim Pawlenty insisted on ratifying the contracts without the benefits included, making Minnesota the first state to rescind domestic partner benefits to its employees. Domestic partner benefits, including insurance benefits, for Minnesota state employees are temporarily in effect through June 30, 2003. Domestic partner tuition waivers are temporarily in effect until the semester next ending after April 10, 2003. An Act Relating to State Government, S.F No. 293, 3rd Engrossment: 83rd Legislative Session. (*Minn. 2003-2004*).

HRC and GenderPAC Launch Joint Congressional Pledge Project. The Human Rights Campaign and the Gender Public Advocacy Coalition announced their joint efforts on May 1 to secure signatures on statements from members of Congress asserting that they will not discriminate in employment practices based on sexual orientation, gender identity and gender expression. HRC has been asking members of Congress to sign sexual orientation non-discrimination policies since 1995, and has already secured signatures from 304 current members of Congress, including 93 Republicans, on a statement affirming that they do not discriminate based on sexual orientation in employment practices for their personal congressional offices. GenderPAC began a non-discrimination statement initiative in 1999 and has obtained signatures from 96 current members of Congress, including seven Republicans, on diversity pledges affirming that they do not discriminate based on gender. GenderPAC has also secured signatures from 75 members of Congress on statements that include both gender identity and expression. As of May 11, 108 members of Congress had signed onto the joint pledge.

IN THE STATES

Minnesota Bill to Delete "Sexual Orientation" from Civil Rights and Hate Crimes Provision Fails. The Minnesota Senate pulled a bill in March that would have removed the term "sexual orientation" from the state's anti-discrimination and hate crimes laws, and from the state code's definition of "holocaust survivor." The sponsor of the measure removed it after Republican House Speaker Steve Sviggum announced that the bill had no future in the House. OutFront Minnesota fought the measure, with additional support from HRC's Action Network and Equality Fund grant programs.

North Dakota Legislature Passes Anti-LGBT Adoption Bill. On April 23, Republican Gov. John Hoeven signed into law Senate Bill 2188, a measure that allows adoption agencies to deny adoption and foster care rights based on written policies of “religious or moral grounds.” The move opens the way for discrimination in adoption and foster care against prospective LGBT parents.

More Cities Add Sexual Orientation and Gender Identity Non-Discrimination Ordinances. The El Paso, Texas, City Council voted unanimously April 8 to add sexual orientation and gender identity to its non-discrimination ordinance. The unopposed measure brings El Paso into line with other major Texas cities prohibiting sexual orientation and/or gender identity discrimination, including Houston, Austin, Dallas and Fort Worth. The Peoria, Ill., City Council added sexual orientation to its non-discrimination ordinance April 23, making Peoria the most recent city in Illinois to add these protections. Other Illinois jurisdictions with non-discrimination laws encompassing sexual orientation and/or gender identity include Springfield, Normal, Bloomington, Champaign, Urbana, DeKalb, Evanston and Chicago. On April 28, Covington, Ky., city commissioners expanded that city’s civil rights ordinance to add sexual orientation and gender identity to the list of prohibited bases for discrimination in employment, housing and public accommodations. Other Kentucky municipalities with ordinances prohibiting sexual orientation and/or gender identity discrimination include Louisville, Jefferson and Lexington-Fayette counties, and the city of Lexington.

Monroe County, Fla., Passes Gender Identity Protections. The Monroe County Commission unanimously voted April 16 to amend its local non-discrimination ordinance to add gender identity to the list of prohibited bases for discrimination. The Florida Gender Equality Project, Equality Florida, the National Gay and Lesbian Task Force and the National Center for Lesbian Rights were instrumental in gaining passage of the provision.

Gay Florida Couple Denied Housing Files Suit. Lambda Legal filed suit March 10 on behalf of Fred Sternbach and Stephen Miller, a couple of 16 years, in response to a Florida apartment complex’s refusal to rent to the two because they are unmarried. Palm Beach County law prohibits discrimination in housing on the bases of both marital status and sexual orientation, nonetheless the Royal Colonial Apartments refused to rent to the couple because they are unmarried. No state in the nation currently allows for same-sex marriage, and Florida law expressly prohibits it. The suit seeks damages and an injunction against anti-gay discrimination in housing by the apartment complex.

MARRIAGE/DOMESTIC PARTNERSHIP/CIVIL UNIONS

Federal Anti-Gay Marriage Bill Re-Introduced. Several conservative U.S. representatives re-introduced a resolution May 21 to amend the U.S. Constitution to prohibit same-sex marriage. As was the case in the last Congress, there is no Senate companion to the measure. The resolution states: “Marriage in the United States shall consist only of the union of a man and a woman. Neither this [C]onstitution nor the constitution of any state, nor state or federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried coupled or groups.” The provision would effectively preclude state and federal courts from finding a right to same-sex marriage or the benefits of marriage implicit anywhere in state or federal law. In order to amend the Constitution, the resolution would have to be approved by a two-thirds majority in both the House and the Senate, and then ratified by three-quarters of the states. H.J. Res. 56, 108th Cong. (2003).

Indiana Court Dismisses Same-Sex Marriage Case. On May 7, a Marion Superior Court judge dismissed a suit brought by the Indiana Civil Liberties Union on behalf of three same-sex couples seeking the right to marry. Judge S.K. Reid found that Indiana law recognizes only opposite-sex marriages, and that the exclusive recognition of heterosexual marriages is justifiable because it “promotes the state’s

interest in encouraging procreation to occur in a context where both biological parents are present to raise the child.” The ICLU is expected to appeal. *Morrison v. O’Bannon*.

New Jersey Superior Court Denies Motions to Intervene in Marriage Suit. Three motions by conservative activists to intervene in a lawsuit seeking same-sex marriage in New Jersey were denied March 31 by New Jersey Superior Court Judge Linda Feinberg. New Jersey state legislators Gerald Cardinale, Clare Farragher, Michael Doherty, Anthony Bucco and John Rooney, along with an alliance of conservative organizations and one private company, had submitted motions to intervene in the case, which was brought by Lambda Legal on behalf of seven same-sex couples seeking marriage licenses. The parties alleged that the New Jersey attorney general would not vigorously defend the institution of heterosexual-exclusive marriage, and that as such they should be allowed to intervene to defend the law.

Illinois Court Denies Validity of Transgender Marriage, Denies Custody. On April 6, citing the state’s prohibition on same-sex marriage, an Illinois judge denied custody of a child to his transgender father on the basis that the father’s marriage was invalid. The case arose when the non-operative transgender man and his wife divorced after 13 years of marriage, and each parent sought primary custody of the child. While acknowledging the transgender man had clearly been a good father and shared a loving relationship with his son, Judge Gerald Bender found the man lacked standing to seek custody of the child due to the invalidity of his marriage, but granted visitation to the father. The child was born to the transgender man and his wife through assisted insemination several years after the two married. The child’s guardian *ad litem*, who recommended the child be placed in his father’s custody, plans to appeal.

New York Court Finds Gay Partner May Sue for Wrongful Death. A New York judge ruled April 15 that a widowed partner may sue as a spouse for wrongful death under state law, marking what is believed to be the first case of a court outside Vermont recognizing partners to a civil union as “spouses.” Plaintiff John Langan sued St. Vincent’s hospital for wrongful death last year when his partner of 15 years, Neal Spicehandler, died at the hospital following surgery related to injuries sustained in a hit-and-run accident. The hospital sought to block Langan’s suit, asserting that his relationship with Spicehandler did not make him a “spouse” under New York law entitled to sue for wrongful death. Nassua County Supreme Court Justice John P. Dunne rejected the hospital’s defense, finding that New York law does not exclude same-sex couples from the definition of “spouse” for the purposes of the wrongful death law. Lambda Legal represents Langan in the case.

Texas Institutes Anti-Gay Marriage Law. Republican Gov. Rick Perry signed into law May 27 a measure that defines marriage as reserved for a man and a woman, and allows Texas to deny recognition of same-sex civil unions entered into in other states. With a Republican majority in the Texas House of Representatives for the first session in many years, Chairwoman Susan Weddington announced that a ban on same-sex marriages would be a priority for the legislative session. Texas law already prohibited same-sex marriage, but proponents of the new ban argue that stronger language is needed to prohibit the recognition of civil unions or, eventually, marriages between same-sex couples celebrated out of state. Anti-gay marriage measure S.B. 7, aimed at prohibiting the recognition of same-sex relationships formed outside Texas, was passed by the Senate April 15 and by the House April 30.

Massachusetts Anti-Gay Marriage Constitutional Amendment Goes Before a Constitutional Convention. House Bill 3190, a proposed amendment to the Massachusetts Constitution that would ban same-sex marriage and possibly civil unions and domestic partner benefits, was scheduled to be heard in a constitutional convention convened May 14. The convention was recessed until Nov. 12 with no action. The Joint Committee on the Judiciary declined to take action in early May saying that members of the Legislature were preoccupied by the state’s budget crisis. H.B. 3190 must be approved by two-thirds of the Legislature in two consecutive legislative sessions before it can be placed on the ballot for voter approval. A

similar proposed constitutional amendment was defeated last year when opponents of the anti-gay measure delayed a vote on the bill until a mandated deadline expired.

Maryland Jury Rejects Allegations that Trauma Center Excluded Gay Partner of Dying Patient. A Maryland jury rejected claims Feb. 24 by the widowed partner of a man who died at the University of Maryland Medical System's Shock Trauma Center that the center refused to provide him the same access to his dying partner as would have been afforded a spouse. The jury accepted the Shock Trauma Center's claim that Bill Flanigan was treated no differently from any other family member and, as such, refused to find the center liable for intentional infliction of emotional distress or failure to treat the deceased with a reasonable level of professional care. Lambda Legal, representing Flanigan, is exploring the possibility of an appeal. *Flanigan v. University of Maryland Medical System*.

Texas Same-Sex Divorce Ends With Withdrawal of Petition. In early March, Texas Judge Tom Mulvaney granted a divorce to a Beaumont, Texas, same-sex couple joined by a Vermont civil union. Divorces are traditionally reserved for married parties, and Texas does not recognize same-sex marriage. The divorce is thought to have been the only one of its kind in Texas, and the Texas attorney general immediately sought to have the divorce vacated. In early April, Mulvaney signed a non-suit order in response to one member of the former couple's withdrawal of the divorce petition, with no objection from the other member of the former couple. No further action is expected in the case.

Lambda and ACLU File Suit to Strike Down Anti-Gay Nebraska Law. Lambda Legal and the ACLU filed suit in federal court April 30 challenging Nebraska's constitutional provision barring the recognition of any same-sex relationship, including civil unions, domestic partnerships and other same-sex relationships, as a violation of the U.S. Constitution's Equal Protection Clause. The suit has been brought on behalf of several Nebraska advocacy organizations who argue that the law prevents them from accessing the political process to seek equality for LGBT Nebraskans. *Citizens for Equal Protection, Inc. v. Johanns*.

FAMILY LAW

Mississippi Judge Rules Two Moms May Be Listed on Birth Certificate. A Mississippi judge ruled that a 5-year-old boy born in Mississippi and adopted by a lesbian couple from Vermont must be issued a birth certificate listing his mothers as his parents. The child had been denied any legal documentation of his name, date and place of birth, or parents since Mississippi refused to issue the birth certificate in 2000. Lambda Legal represented the family in the case, and successfully challenged the denial of the birth certificate as a violation of the son's rights under the state constitution's Equal Protection Clause and the state law requiring the issuance of an amended birth certificate in the case of an out of state adoption.

Texas Anti-Gay Foster Care Bill Fails to Pass Legislature. H.B. 194, a measure aimed at prohibiting gay and lesbian Texans from serving as foster parents, died May 8 in the House Committee on Juvenile Justice and Family Issues. The bill would have required the Protective and Regulatory Service to ask prospective foster parents their sexual orientation, and to then terminate the application process if a prospective parent admitted to being gay or lesbian. In the event that a prospective parent answered that he was straight, the service would have been empowered to further investigate that claim and terminate the application of any person it found to be gay. According to the Lesbian/Gay Rights Lobby of Texas, Texas only provides foster care to 23,000 of the 43,000 confirmed victims of child abuse in that state.

Maloney Bill Proposes Including Domestic Partners in Family and Medical Leave Act Coverage. Carolyn Maloney, D-N.Y., has introduced a bill in Congress that would extend the Family and Medical Leave Act of 1993 to cover employees taking leave to care for their domestic partners with a serious health condition. The FMLA provides up to 12 weeks of unpaid leave from employment to care for new babies

or sick family members, or to recover from a serious illness. Currently, gay men and lesbians cannot take advantage of these benefits because their partners are not recognized under federal law.

BENEFITS

California Woman Defeats ERISA Pre-Emption Defense to Sexual Orientation Discrimination Suit. In the first ruling of its kind in any state, a three-judge panel of the California appeals court in San Diego unanimously ruled that doctors and health care providers are bound by the state's sexual orientation-inclusive civil rights laws. The case began when Guadalupe Benitez was refused assisted insemination treatment by her doctors at the North Coast Women's Care Medical Group on the basis of the doctors' religious objections to same-sex couples having children. Benitez's suit was originally dismissed by a state court on the basis that the suit was barred by ERISA, a federal law regulating employee benefits claims. The appeals court overturned this dismissal, finding that Benitez's claim was not barred because it turned on the denial of "medical treatment, not the economic benefits available under the plan" for religious versus "plan-based eligibility reasons." Lambda Legal filed an amicus brief in the case. *Benitez v. North Coast Women's Care Medical Group*.

Port of Seattle Rejects Equal Benefits Proposal. On April 8, the port of Seattle commissioners rejected by a 3-1 vote a proposal to require companies contracting with the agency to provide domestic partner benefits on the same basis as spousal benefits. Prevailing arguments against the measure included concerns about possible conflicts with federal law under the ERISA regime and concerns regarding whether the port had the authority to enact such a policy.

Missoula, Mont., Adds Domestic Partner Benefits for City Employees. The Missoula County, Mont., commissioners voted April 3 to provide domestic partner benefits for its employees. The benefits will be available to same-sex as well as opposite-sex domestic partners. As reasons for providing the benefits, county officials cited the need to be competitive and fair in its treatment of all employees.

Colorado Springs Revokes Domestic Partner Benefits. Four months after Colorado Springs became the fifth city in Colorado to offer domestic partner benefits to its employees, a newly elected City Council made Colorado Springs the first city in the state to revoke such benefits. The decision came after an emotional debate, which included offers from a council member, a private citizen and a church to pay for the cost of the benefits – \$6,700 per year – in order to keep them available to employees with same-sex partners. The council rejected these offers and numerous pleas to continue the benefits, siding instead with social conservatives who argued that city funds should not be used to "support a deviant lifestyle."

HIV/AIDS

Early Treatment for HIV Act 2003 Introduced in Senate. The Early Treatment for HIV Act 2003, which would provide Medicaid coverage to low-income Americans living with HIV before they develop AIDS and become too sick to work, was introduced April 9 by Sens. Gordon Smith, R-Ore., and Hillary Clinton, D-N.Y. Currently, childless adults living with HIV generally qualify for Medicaid coverage once they become eligible for Supplemental Security Income, which occurs when they become disabled. This prevents persons with asymptomatic-HIV infection from being eligible for Medicaid before the disease progresses to full-blown AIDS. Because such HIV-positive individuals do not qualify for Medicaid, many are unable to obtain care and medicine to help slow the progression of HIV and prevent opportunistic infections. The new legislation would give states the option of covering low-income HIV-positive residents, providing access to treatment that may prolong the length and quality of their lives.

HATE CRIMES

Colorado Teen Awarded \$1 Million-Plus in Hate Crime Civil Suit. Two years ago, then 16-year-old Kyle Skyock was beaten and left unconscious on a roadside near Rifle, Colo. Skyock alleges the beating,

which left him in a coma for several days, took place at the hands of four teens who called him a “fag” while assaulting him. No charges were filed, and Skyock, with the assistance of the Colorado Legal Initiatives Program, sought damages in a civil suit as a means of achieving justice. In issuing his verdict and awarding Skyock more than \$1 million in compensatory and punitive damages, federal district court judge John Kane declared the beating incident “worse than savage.” Even though the crime did not result in criminal charges against the four alleged assailants, two of the four settled with the Skyock family out of court prior to the verdict issued in this suit.

Hate Crime Charges Not Filed in California Bisexual Man’s Murder. On April 14, Monterey County, Calif., prosecutors charged three people in the murder of Robert Maricle, but stopped short of charging the three under the hate crimes law. Salinas Police Department officials indicated they believe that Maricle, a bisexual and developmentally disabled man, was kidnapped, tortured and killed by the three suspects because of his sexual orientation. Prosecutor Berkley Brannon indicated that hate crimes charges might be filed later if the continuing investigation leads to sufficient evidence of anti-gay motivation in the murder.

New Jersey Teen Stabbed to Death in Apparent Hate Crime. Police reported May 12 that 15-year-old Sakia Gunn of Newark, N.J., was fatally stabbed by a group of men at Penn Station when she and her friends rebuffed the men’s sexual advances and told them that they were lesbians. The Essex County prosecutor’s office indicated that the evidence pointed toward a hate crime, and that enhanced penalties would be sought when charges are filed in the case.

YOUTH AND SCHOOLS

U.S. 9th Circuit Court of Appeals Allows Anti-Gay Harassment Case to Proceed. The U.S. Court of Appeals for the 9th Circuit affirmed a U.S. District Court denial of summary judgment to the defendant school district in this § 1983 action brought by former students of the Morgan Hill Unified School District in California. The students brought the action several years ago, arguing that the school district’s failure to respond to their complaints of anti-gay harassment and violence constituted a violation of their equal protection guarantees under the U.S. Constitution. The school district asserted a qualified immunity defense based on the premise that the equal protection right to have anti-gay harassment redressed by the school district was insufficiently well-established for the school officials to have been aware that their failure to address the harassment violated the Constitution. They also asserted that the plaintiffs failed to prove improper motive behind the school officials’ failure to take action to protect the students. In affirming the District Court’s denial of summary judgment to the school district, the 9th Circuit panel found that sufficient evidence had been presented to allow a jury to find intentional discrimination on the part of school officials, and that the unconstitutionality of state-sponsored discrimination based on sexual orientation has been clear in the 9th Circuit since the 1990 *High Tech Gays* case. The court also pointed to the 7th Circuit *Nabozny* decision as evidence of an established constitutional right to non-discrimination based on sexual orientation in schools. The case will now be heard on the merits at the U.S. District Court. The students are represented by James Emery and Jill K. Ginstling of Kecker & Van Nest, LLP, for the ACLU and NCLR. *Flores v. Morgan Hill Unified Sch. Dist.*, 2003 U.S. App. LEXIS 6606.

Lesbian Eighth-Grader Excluded from Gym Class Allowed to Proceed With Case. Ashly Massey, an eighth-grader at California’s Coombs Middle School, was excluded from gym class and required to sit in the principal’s office during gym for over a week when her teacher learned that she was a lesbian. Massey sued the school district, principals and teacher under the California Education Code, the Unruh Civil Rights Act, and under § 1983 for violation of her guarantee to equal protection under the U.S. Constitution. The defendants filed a motion to dismiss, asserting 11th Amendment immunity for the school district, qualified immunity for the individual defendants, and lack of standing of the plaintiff, because she has transferred out of the school since the incident. The U.S. District Court for the Central

District of California denied the motion to dismiss on all bases. The ACLU Foundation of Southern California and NCLR are representing Massey.

ACLU Files Suit to Protect Arkansas Student's Right To Be Out. The ACLU has filed suit in U.S. District Court against the Pulaski County, Ark., Special School District on behalf of 14-year-old Thomas McLaughlin. McLaughlin was outed by school officials to his parents without his consent, told not to speak about his sexual orientation at school, punished for speaking about the fact that he was gay, and forced to listen to and read biblical passages in response to his openness about his sexual orientation. The school agreed in the time preceding the trial not to further restrict McLaughlin's speech during non-instructional time. Judge G. Thomas Eisele has agreed to expedite the trial. The ACLU Lesbian and Gay Rights Project and Kathy Hall for the ACLU of Arkansas are representing McLaughlin.

Federal Judge Rules GSA May Meet at Kentucky High School. U.S. District Court Judge David Banning issued a preliminary injunction April 18 mandating that the Boyd County, Ky., School District treat the high school's gay-straight alliance the same as it treats other school clubs. The school district had prohibited all school clubs from meeting at the school in response to protests from conservative students and parents about the newly formed GSA, and the school board's concern that opposition to the GSA could turn violent. Nonetheless, after two days of testimony, Banning found that some student groups, in particular the Bible club and the drama club, continued to meet on school property despite the ban on club meetings. The case will now proceed to trial, where the plaintiffs are represented by the ACLU Lesbian and Gay Rights Project, the ACLU of Kentucky and ACLU cooperating attorney Ed Dove.

RELIGION

Presbyterians Try Minister Who Performed Same-Sex Marriages. The first minister to be tried for violating Presbyterian law by performing same-sex marriages had his case heard in a closed proceeding in early April in Cincinnati. The Rev. Stephen Van Kuiken also admits to having ordained gay deacons and elders who do not adhere to the requirement of chastity for unmarried lay ministers. Van Kuiken, a pastor of 19 years, is currently serving at Mount Auburn Presbyterian Church. If convicted by a two-thirds vote of the court's seven members, he could be rebuked or removed from the ministry.

INTERNATIONAL

Egyptian Court Sentences 14 Men to Jail for Homosexual Activity. On April 17, 2003, an Egyptian court sentenced 14 men to jail for one to three years each, followed by one year of police surveillance, for "practicing debauchery," a euphemism for same-sex sexual conduct in Egypt. The arrests came after police bugged the phones of one of the defendants and followed up with surveillance of men they suspected were engaging in gay sex. U.S. Rep. Barney Frank, D. Mass., sent a letter to the Egyptian ambassador to the United States protesting the persecution of gay men in Egypt, and has called on Congress to curb U.S. assistance to Egypt until the country takes measures to address such human rights violations.

South-African Lesbian Couple Seeks Right to Marry. On May 12, the Supreme Court of Appeal in Bloemfontein, South Africa, accepted the appeal of a lesbian couple denied the right to marry by the Pretoria high court. Marie Fourie and Cecilia Bonhuys lost their bid to marry before the Pretoria court in October. The couple, who has been together since 1994, argued the South African Constitution provides them the right to marry. The case is also being argued in common law, so the Supreme Court of Appeal will hear the case prior to any potential review by the South African Constitutional Court.

Another Canadian Provincial Court Rules Denial of Same-Sex Marriage Defies Constitution. On May 1, the British Columbia Court of Appeals became the third Canadian Provincial Court, after Quebec and Ontario, to rule that denying same-sex couples the right to marry violates the Canadian Constitution. Appeals are pending in the other two cases.

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