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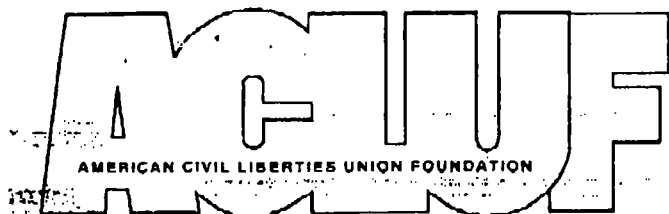
THE WHITE HOUSE
WASHINGTON

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TO: Chrysanthe

FROM: White House Counsel Marvin Krislov
Room 130, OEOB, x6-7903

- X ☐ FYI
- ☐ Appropriate Action
- ☐ Let's Discuss
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MASSACHUSETTS

LESBIAN AND GAY RIGHTS PROJECT
 Matthew Coles
 Director
 Ruth F. Harlow
 Associate Director
 Marc E. Elowitz
 Staff Counsel
 H. Alexander Robinson
 Legislative Representative
 Lisa C. Bordeaux
 Staff Assistant
 William B. Rubenstein
 Of Counsel

Please Respond To: New York, 132 West 43rd Street, New York, N.Y. 10036
 1009 Mission Street, San Francisco, Ca. 94103

COPY

(212) 944-0800 Ext. 546 Fax (212) 880-0061
 (415) 621-2493 Fax (415) 255-8437

December 12, 1995

*Agm to
 M. Coles
 K. Clark*

Richard Socarides
 2220 20th Street, NW #4
 Washington, D.C. 20008

Dear Mr. Socarides:

I'm writing you today as the Director of the ACLU's Lesbian and Gay Rights Project and its AIDS Project to ask you to consider a year end gift to help support our work.

Right now, the ACLU with guidance from the Projects is involved in 118 lesbian and gay rights and AIDS/HIV lawsuits across the country. Each of these cases involve at the least, a serious threat to the most fundamental rights of an individual or a family. Some involve threats to every single American who is a lesbian, a gay man, a bisexual, or a person with HIV.

The Projects, because they are part of the ACLU, are uniquely able to handle these kinds of cases. The ACLU has offices in every state. In many parts of the United States, the ACLU is the first place -- sometimes the only place -- to which a lesbian, a gay man or a person with HIV can turn for help. Moreover, the ACLU has a 75 year history of defending civil rights and civil liberties wherever and whenever they come under attack, giving it both matchless experience and a singular perspective on how the struggles of lesbians, gay men and people with HIV mesh with other battles for basic rights.

We've just completed "dockets" which summarize these cases. I want to point out some of the highlights of these dockets, but first I want to mention how important the support of individuals like you is to us. The Projects must raise virtually all of their operating budgets through earmarked contributions from individuals and foundations. We cannot rely heavily on foundations, as many "mainstream" non-profit groups do, because only a very small number of them will even consider a grant request for lesbian and gay and AIDS-related work. This may help drive home the point that I am compelled to make at this crucial time of the year: the support we receive from individuals like you is absolutely vital.

Let me take a few moments to outline a few of the key areas addressed by the cases described in the dockets to show you what support of the Projects means at a practical level. If, after reading this, you would like to have a copy of either docket or both, please send the enclosed card back to us in the envelope provided, and we'll send them to you.

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Anti-Lesbian and Gay Ballot Initiatives

As you probably know, the case challenging Colorado's notorious Amendment 2 was argued before the Supreme Court on October 10. The Project was co-counsel on this case and either wrote or supervised the drafting of crucial "friend of the court" briefs now being reviewed by the high Court.

As in Colorado, where we helped lead the fight in filing suit and educating the press, civic groups, and others about the true nature of that dreadful initiative, the ACLU and the Lesbian and Gay Rights Project have been working in recent months, as we did in Idaho in 1994, to prepare challenges to a new anti-gay initiative in Maine. Thankfully, both the Idaho and Maine initiatives were defeated by the voters. But our prep work was hardly in vain. The experiences we have while building coalitions with other legal and civil rights groups, developing strategy, discussing the issues with press people, and shaping our arguments to counter most effectively the latest initiative always makes us better prepared for the next time. It was at any rate essential because the Projects would have to have been ready to file suit immediately had either initiative passed. Fighting anti-gay initiatives is becoming routine for the Project and for the ACLU affiliates. The Oregon ACLU, for example, has filed more than 24 lawsuits in response to every initiative that has been passed in that state. The Idaho, Maine, and Washington affiliates have played critical roles in campaigns to keep initiatives from their states' ballots or to defeat them at the polls.

We expect a decision in the Colorado case by spring, 1996. If the Supreme Court agrees that Amendment 2 is unconstitutional, the decision will apply everywhere in the nation and will make it virtually impossible for right wing extremists to use this kind of "anti civil rights" ballot initiative against us again. But we must stay alert. The Maine initiative was written to make it look like it was not targeted at lesbians and gay men. It didn't fool the voters, and we had already developed new legal approaches for a challenge. I have no doubt that the radical right will continue to attack us, using other types of initiatives when they can.

Lesbian and Gay Families

The national Project and the Virginia ACLU affiliate jointly represent Sharon Bottoms. As you will recall, Sharon's own mother successfully sued for custody of Sharon's son by claiming that because Sharon was living with another woman, she was an unfit mother. Although the Virginia Supreme court agreed with Sharon's mother, we remain hopeful that we will succeed in reuniting Sharon and her young son, and are we working toward that goal in lower courts again.

The National Project and the state ACLU affiliates also continue to file briefs on behalf of lesbians and gay men who become embroiled in more conventional custody battles with former

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spouses. We have both litigated against and lobbied to repeal policies which forbid lesbians and gay men from adopting or becoming foster parents. On a more positive note, we have also filed briefs in cases brought to establish full legal recognition of lesbian and gay co-parents--the partners of lesbians and gay men who are biological parents. Just this month, appeals courts in both New York and New Jersey approved of these "second parent" adoptions.

Civil Rights, Employment and Discrimination

Following in the tradition it established with its briefing books on how to fight anti-gay initiatives, how to set up and defend needle exchange and harm reduction programs, and how to use the Americans with Disabilities Act to defend people with HIV, the Project has developed a new book designed to show activists how to pass local civil rights laws banning discrimination based on sexual orientation, and local domestic partnership policies. The book, called "Try This At Home," is a step-by-step do it yourself guide. It will be published by the New Press in March, 1996.

In addition to encouraging the passage of local civil rights laws, the Project continues to lobby for passage of a national civil rights law, and ACLU affiliates around the country lobby for state laws, with some recent successes. And both the Project and the affiliates continue to defend gay rights laws from attack by the militant right. And of course we continue to represent lesbians and gay men who are denied jobs, promotions, or are otherwise treated unequally in the workplace. For example, the Lesbian and Gay Rights Project represents Robin Shahar, who as you will recall lost her brand new job in the Georgia Attorney General's office because it was learned just prior to her reporting for her first day of work that she and her lover, another woman, had participated in a wedding ceremony to solemnize their relationship as a couple. The federal district court in Atlanta ruled against Robin and we have appealed. Ms. Shahar's suit is against Michael Bowers, the man who defended Georgia's sodomy law in the infamous Bowers v. Hardwick. The ACLU of Georgia, with assistance from the Project, is once again challenging Georgia's sodomy law, this time under the Georgia state constitution. That case was argued before the Georgia Supreme Court in October. As you can see from the Lesbian and Gay Rights Docket, repeal of Sodomy laws remains an important priority for us.

HIV/AIDS-Related Discrimination

In 1994, the ACLU's National AIDS Project won the very first lawsuit in the country to ensure that the Americans with Disabilities Act (ADA) prevents doctors and hospitals from refusing treatment to persons with HIV/AIDS. It was a landmark case and it resulted in a major financial award to our plaintiff. We consider open access to treatment to be a critical issue, and ACLU affiliates across the country are involved in numerous cases designed to challenge doctors and health care workers which refuse to treat people with HIV. Our AIDS Project and state affiliates are also challenging the exclusion of HIV disease from insurance plans and state-run

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risk pools, or unreasonable limitations some of these have set on coverage when the insured is known to be HIV positive.

In addition the Project and affiliates are currently involved in cases dealing with:

- restrictions on the content of AIDS-educational materials and on the right of individuals and groups to distribute condoms;
- mandatory testing for the HIV virus and a person's right to confidentiality regarding his or her HIV test results;
- employment discrimination against health care workers who are HIV positive;
- the availability of medications for persons with HIV disease;
- the rights of individuals and groups to operate needle exchange programs designed to limit the spread of HIV among IV drug users;
- the quarantine and isolation of HIV infected persons;
- and the rights of children and young people with HIV to attend school with others in their age groups.

Efforts in each area are described in the AIDS Docker.

The Ban on Lesbians and Gay Men in the Military

The ACLU Lesbian and Gay Rights Project remains a leader in the effort to remove the ban that the military has placed on lesbians and gay men who want to serve the United States as members of the military. Last year the Project and Lambda Legal Defense filed one of the most important cases in our shared histories -- a suit in Brooklyn, New York challenging the government's "don't ask, don't tell" policy on constitutional grounds (Able v. U.S.). Earlier this year I made the closing argument after a full trial on the policy in federal District Court. To put it plainly: our argument is that, when all is said and done, the only reason for the policy is the fear that heterosexual soldiers and sailors are so nervous about being around lesbians and gay men that if the gay people they serve with are identified, the *heterosexuals* will disrupt the military. But, we say, if the constitution forbids anything, it is discrimination against one group of Americans because another group doesn't like them. The federal judge agreed, and expressed doubt that heterosexuals in the military are as intolerant as their superiors seem to think. The government, of course, appealed. The briefing is closed, and that case is awaiting oral argument.

Also awaiting argument is our challenge to the conduct portion of the policy, now pending before a federal appeals court in California. There, we say that the constitution forbids double standards for sexual conduct. All soldiers and sailors should be governed by one set of rules. Recently argued and awaiting decision is our suit on behalf of law students at the University of Connecticut, asking that military recruiters be barred from campus as long as the policy is in effect. At the same time, ACLU state affiliates are representing lesbian and gay

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service members across the country.

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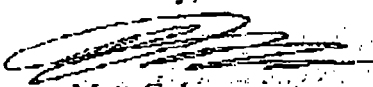
Ultimately, all of these cases involve the most basic freedom which our system was designed to protect--the freedom to be who you are. No organization stands for that most basic freedom as steadfastly as the ACLU, the senior civil liberties organization in America, now celebrating its 75th year. The presence of the ACLU in our cases and on our issues helps judges, legislators and ordinary people connect the modern day struggle for lesbian and gay rights and the rights of those with HIV to the historic struggles of disenfranchised minorities in America. The ACLU's traditional insistence on constitutional principle above political expediency gives our voice a special credibility when we say that the liberties of lesbians, gay men and people with HIV are every bit as critical to our integrity as a society as the liberties of political minorities, now sometimes taken for granted, that brought the ACLU into being in 1920.

To fulfill the unique role the ACLU has, the Projects must look to those who appreciate their work and who care enough to support it. I hope that you will want to become one of the individuals who makes this work possible. The dockets show that the ACLU has the largest caseload it has ever had because the need for our work has never been greater. I am convinced that, taking the long perspective, we are winning this battle, that our opponents think that as well, and that is one of the reasons why they have so intensified their attacks on us. It is critical now that we meet every one of their efforts, and respond with like intensity if not more. Please consider joining us as a donor. We need your help and a gift at any level would be deeply appreciated. If it is possible for you, we would like you to consider joining one of our major donor groups, the FRIENDS (who give \$1,000 and above) and the ASSOCIATES (who give \$500 and above). But every contribution is important to us; any gift you can send will be meaningful to us.

I am about to mark the end of my first year as Director of the Projects, following Bill Rubenstein and Projects founder Nan Hunter. It has been an exciting year, to say the very least. I would be deeply grateful if you'd join our efforts.

With best wishes from all of us for the holidays ahead.

Sincerely,



Matt Coles

AU

unapproved



1995 DOCKET
LESBIAN & GAY RIGHTS PROJECT

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Lambda Legal Defense and Education Fund, Inc.

Marriage Project: *Background*

Lesbians and gay men are on the verge of a tremendous legal victory: winning the freedom to marry. Through a landmark case underway in Hawaii, the doors to civil marriage soon may open for gay people around the country, allowing same-sex couples to share in all the responsibilities and benefits that married couples currently enjoy.

The Plaintiffs

In 1991, three couples—two lesbian, one gay—brought a lawsuit challenging the state government's denial of their application for marriage licenses.

The Preliminary Ruling

In May 1993, the Hawaii Supreme Court ruled that the state's refusal to issue marriage licenses to same-sex couples appears to violate the equal protection guarantee of the state constitution prohibiting discrimination based on gender. (*Baehr v. Lewin*)

The Court held that the "different-sex" restriction on marriage may amount to unconstitutional sex discrimination, much as the "same-race" restriction on marriage was racially discriminatory. (It was only in 1967 that laws barring interracial marriages were finally struck down.)

"Compelling" Interest Standard

Sending the case back to the trial court, the Hawaii Supreme Court directed that the government would have to demonstrate a "compelling" state interest advanced by the restriction, or stop discriminating. If the state fails to show a compelling interest, it must permit same-sex couples to exercise their constitutional freedom to marry.

The State's Response

In June 1994, reacting to the Court's decision, the state legislature passed a law reaffirming its desire to discriminate, asserting—as the sole "compelling" reason for the same-sex restriction—that marriage is "intended for the propagation of the human race by man-woman units." Most legal experts agree, however, that this is not a "compelling," let alone logical reason for refusing to allow same-sex couples to marry.

Under standards set forth by the U.S. Supreme Court, commitment and choice—not procreation—are the basis for civil marriage rights. After all, many non-gay couples who choose to marry are past childbearing age or infertile, or simply choose not to have children, while many gay and lesbian couples do parent and raise children.

Next Trial Date

The case is fully on track in the lower court. Honolulu

attorney Dan Foley and Evan Wolfson of Lambda Legal Defense & Education Fund, co-counsel for the couples, expect a trial in July 1996, with a final decision from the state Supreme Court likely by 1997.

National Implications

Common sense, constitutional doctrines, and legal precedent suggest that when marriages are lawfully performed in Hawaii, they will have to be recognized by other states. The U.S. Constitution requires every state to give "Full Faith and Credit" to the "public acts, records and judicial proceedings of every other state"—which means that marriages performed in one state must be honored by other states.

But even apart from any constitutional imperative, states traditionally honor the rights and privileges accorded by sister states.

It is expected, however, that the radical right will work to carve out a "gay and lesbian exception" to that general trend, attempting to slant public debate so as to deny home state recognition and benefits to same-sex couples who return from Hawaii married.

Why Marriage?

Many same-sex couples share the same responsibilities and commitment as married couples. However, nowhere in the United States do they receive the same recognition or benefits as married couples. In fact, they face massive discrimination.

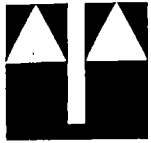
For example, lesbians and gay men who have been their partner's primary caretaker are often turned away at the hospital when there has been an accident or illness, are refused "family" health coverage, Social Security, and inheritance benefits; and are even denied protection if the relationship should end.

Sometimes they see their children taken away, or their role as parents denied. Regardless of the fact that they have taken responsibility for their partner's well-being, both economically and emotionally, their legal status is, at best, that of a roommate. Same-sex couples are denied the emotional and social support and security marriage provides for so many.

"Traditionally," marriage has been defined as only a union between people of the same race or religion, or as a union in which wives were the property of their husbands. That changed. Same-sex couples are the only ones now denied the freedom to marry. The case in Hawaii and the work nationwide to defend against backlash may change that—for the betterment of all.

LAMBDA LEGAL DEFENSE
AND
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Lambda Legal Defense and Education Fund, Inc.

Fact Sheet: *Description of Organization*

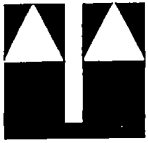
Lambda Legal Defense and Education Fund is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, and people with HIV through impact litigation, education and public policy work. Headquartered in New York, and with offices in Los Angeles and Chicago, Lambda has national and regional expertise in all aspects of sexual orientation and HIV-related policy and law.

Founded in 1973, Lambda is the nation's oldest and largest legal organization working to secure equal rights for lesbians and gay men. Since 1984, when it brought and won the country's very first HIV-related discrimination suit, Lambda has been in the forefront of the battle to protect the civil rights of people with HIV and AIDS.

With nearly 50 cases across the country, Lambda's work involves virtually every area of concern to lesbians, gay men, and people with HIV. This includes discrimination in employment, housing, and the military; AIDS and HIV-related policy and health care reform; parenting and relationships issues; challenging anti-gay ballot initiatives and sodomy laws; and immigration. Below are some of Lambda's current efforts.

- ▶ **AIDS Project.** People with HIV continue to face tremendous discrimination and lack adequate civil rights protection. By combining policy analysis, education and precedent-setting litigation, Lambda's AIDS Project plays a unique role in the AIDS advocacy community. The AIDS Project continues to identify areas of unmet need, and to advocate vigorously for the rights of people with HIV and their access to sound health care.
- ▶ **Anti-gay Initiatives Project.** The radical right is attempting to write gay people out of state and local constitutions through anti-gay ballot initiatives. These measures attempt to repeal laws protecting lesbians and gay men from discrimination, and prevent law makers from passing any such laws in the future. Working in coalition with a broad range of local activists, Lambda seeks to prevent anti-gay initiatives from reaching the ballot, as well as to challenge these measures in court whenever they pass.
- ▶ **Employment Discrimination.** Of the thousands of inquiries received each year by Lambda, the largest number involve employment discrimination. Statewide protection against workplace discrimination can be found in only eight states; in the rest of the country, employees who are fired for being gay are not likely to find legal recourse, unless they happen to live in a locality with a municipal ordinance. Lambda's docket includes several test cases that seek to advance legal protections against employment discrimination.
- ▶ **Family Relationships Project.** Lesbian and gay families are denied many of the rights afforded to non-gay families. From adoption and custody, to guardianship and inheritance rights, Lambda is spearheading several efforts that seek not only to secure the rights of gay people and their families, but also to expand the definition of "family" to reflect the greater diversity of American lives.
- ▶ **The Marriage Project.** Although many lesbian and gay couples share in the same responsibilities as married couples, nowhere in this country do they share in the same rights and benefits afforded to married couples. Following the landmark preliminary ruling in the Hawaii marriage case, Lambda initiated the Marriage Project in 1994 to coordinate the legal and political groundwork for winning and keeping the right to marry.
- ▶ **Military Ban.** For over 20 years, Lambda has been challenging the military's discriminatory policy against lesbian and gay men. Lambda is currently involved in several high-profile lawsuits against the military's ban on gay servicemembers, including an unprecedented challenge to the so-called "Don't Ask, Don't Tell" policy. (9/95)

☎ **Press Contact:** Public Information Officer, (212) 995-8585



Lambda Legal Defense and Education Fund, Inc.

Anti-Gay Initiatives Project: *Colorado's Amendment 2*

Statement of Suzanne B. Goldberg,
Staff Attorney at Lambda Legal Defense and Education Fund

Background on Romer v. Evans (No. 94-1039)

The substance of Amendment 2 is only one sentence long but its consequences for the democratic process in the United States are severe. In a nutshell, Amendment 2 would ban all government entities in Colorado from passing any law or policy to prohibit discrimination against lesbians, gay men and bisexuals, no matter what the circumstance nor how great the need. It erects this special barrier for lesbians and gay men—and them alone. In doing so, Amendment 2 changes the rules of the political process uniquely for these citizens by altering the way in which they can gain protection from discrimination.

Why do we say this changes the rules of the game for gay people? Under Amendment 2, most Coloradans retain their ability to seek anti-discrimination protection from government. If they can convince the legislature, an agency head, or some other government body that they need anti-discrimination protections, laws and policies can be passed to put those protections in place. For example, elderly citizens or veterans or even left-handed people could lobby government to secure protection against discrimination based on age, veteran-status or “handedness.”

In contrast, under Amendment 2, gay people can go to the legislature seeking necessary protections but the legislature will be powerless to act. Instead, lesbians and gay men must first have the state's constitution amended to restore their equal citizenship rights before government could prohibit discrimination against them. In other words, under Amendment 2, gay people must follow a different and much more burdensome set of rules, imposed on them alone, to seek the same protection which all others can seek by following the ordinary political process.

In effect, the doors to government protection are firmly shut and declared off-limits to lesbians and gay men under Amendment 2.

As you can see, the case is not about whether laws protecting gay people from discrimination are good or bad, although it does highlight the need for civil rights laws prohibiting sexual orientation discrimination.

Instead, it is about whether gay people should be forced into a different and virtually insurmountable political process because they are politically unpopular. The key flaw of Amendment 2 is that the amendment actually changes the structure of government to put gay people on a different and lesser footing than all others in the political process—it changes the political playing field to disadvantage lesbians, gay men, and bisexuals—and that is why every court to consider it has declared it unconstitutional.

In our constitutional democracy, there is no right more fundamental than the right of all citizens to participate in the political process by the same rules. By overriding this fundamental right, Amendment 2 blatantly defies our constitution's guarantee of equal protection of the laws to all.

Legal Arguments and Consequences

Our primary legal argument is that Amendment 2 violates the Fourteenth Amendment's Equal Protection Clause, which guarantees all citizens the fundamental right to participate in the political process on an equal footing with others. Although Amendment 2 does not bar gay people from the voting booth, the right to cast a vote is a hollow right if government is barred from acting on the voter's behalf because of who that voter is.

Indeed, the Court has recognized in numerous cases that the constitution guarantees meaningful and effective participation in the political process, not just the right to pull a lever at the ballot box. Amendment 2 creates a special barrier to equal participation which is precisely what the constitution forbids.

Our related argument is that the amendment lacks even a rational basis because none of the explanations offered by the state of Colorado—which range from saving money to “promoting the physical and psychological well-being of Colorado's children”—illustrate why lesbians, gay men and bisexuals are singled out and forced onto a separate political playing field to bear the burden of achieving these government goals.

Under either theory, invalidation of Amendment 2 will be an important victory for lesbian, gay and all other Americans. The Court will have the opportunity to make clear that *every citizen* has an equal right of access to the political process and that the fundamental rights of a minority cannot be subjected to the whims of the majority.

Likewise, were the Court to disregard the grave danger to our democratic process posed by Amendment 2 and permit it to stand, it would—for the first time in many decades—give a judicial seal to unequal citizenship rights.

Broad Impact of Amendment 2

A wide range of groups recognize this danger. A powerful array of civil rights organizations, including the legal defense and education funds representing the NAACP, NOW, Puerto Ricans, Mexican Americans and Asian Americans all filed *amicus* briefs in support of the respondents, Amendment 2's challengers. They were joined by, among others, the Japanese American Citizens League, National Council of La Raza, the Women's Legal Defense Fund and People for the American Way.

In addition, seven states and eleven cities filed *amicus* briefs also recognizing the widespread consequences for civil rights posed by Amendment 2, as did the American Bar Association, the National Bar Association and eighteen state and local bar associations from Kansas to Vermont to Arizona and Minnesota.

Underlying Goal of Amendment 2

Although there is no doubt that Amendment 2's promoters sought to take advantage of popular anti-gay sentiment, it is equally clear that the amendment also aims to undermine, and ultimately to devastate the framework of civil rights protections in the United States.

Amendment 2, like many of the other anti-gay initiatives nationwide, was promoted with the rhetoric "no special rights." This rhetoric suggested that the state's few existing laws against sexual orientation discrimination provide "special rights" to gay people rather than providing the basic right to all to be free of discrimination, which they in fact provide.

By equating civil rights with "special rights," promoters of anti-gay amendments appeal to the notion

that no one group "deserves" something special from government that others do not have. It is then a short step in this equation for voters to conclude that no one deserves civil rights because no one deserves "special rights." After hearing endless renditions of the "special rights" theme, many Americans are surprised to learn that being fired because you are gay or lesbian is not prohibited in most jurisdictions.

Of course, this rhetoric is familiar from the 1960's opposition to the race-related civil rights movement. Likewise, the device of Amendment 2 closely parallels amendments of 30 years ago that sought to change the rules of the political process for those seeking protection against race discrimination.

Indeed, in 1969, the Court struck down a charter amendment in Akron, Ohio that imposed special rules making it harder for the Akron City Council to prohibit discrimination based on race, religion and ancestry. In that case, *Hunter v. Erickson*, the Court held that the state may no more make it harder for government to act on a particular group's behalf than it may dilute any person's vote or give any group disproportionately small representation.

Here, lesbians, gay men and bisexuals had achieved *very* limited political success in Colorado. Three cities had passed laws forbidding sexual orientation discrimination and a few other non-discrimination policies and laws were in place at the state and local level.

This is similar to the status of many of the nine states targeted with Amendment 2-type initiatives in 1994 (including Washington, Oregon, Idaho, Nevada, Arizona, Michigan, Missouri, Florida, and Maine). Although only two made it on to the ballot and none passed at the statewide level (local anti-gay amendments passed in Oregon and Alachua County, Fla.), similar measures have already been introduced for upcoming elections. Maine will vote on its anti-gay measure this November, and Amendment 2-like measures have been proposed for 1996 ballots so far in Washington, Oregon and Idaho.

Also, just a year after Amendment 2 passed, Cincinnati voters passed a virtually identical amendment to their city charter. We have been litigating a challenge to that amendment since election day 1993. Although the Cincinnati measure, known as Issue 3, was declared unconstitutional by a federal district court, a Federal Court of Appeals for the Sixth circuit

overturned that ruling last May. Our petition for a writ of certiorari is currently pending before the Court. We have asked the Court either to grant review or, at least, to hold the case pending its resolution of this case, *Romer v. Evans*.

In sum, rather than engage in open debate and a fair fight about the merit—or lack of merit—of laws prohibiting sexual orientation discrimination, opponents of these laws decided to create a sledgehammer in the form of Amendment 2 to shatter existing government structures. In defense of the Constitution and the basic principles of American government, we had no

choice but to file suit. Measures like Amendment 2 cannot be permitted to isolate the nation's minorities from their government.

Simply put, Amendment 2 rewrites the rules of the democratic process by singling out one group of citizens for lesser political rights. By rigging the process in this way, Amendment 2 dramatically alters the meaning of citizenship in the United States, and threatens the deepest foundations of our democratic process and the American vision of equality for all.

Chronology of Legal Challenge to Amendment 2:

In November 1992, voters in Colorado approved Amendment 2, the nation's first and only state-wide anti-gay initiative to have passed. Immediately thereafter, Lambda Legal Defense and Education Fund, the American Civil Liberties Union, and a coalition of Colorado attorneys sought a preliminary injunction to stop the measure from taking effect. After a four-day hearing in January 1993, Denver District Court Judge Jeffery Bayless issued a preliminary injunction ordering Governor Roy Romer not to enforce the measure. The state appealed the ruling directly to the Colorado Supreme Court, as this case involved a direct state constitutional question.

In July 1993, the Colorado Supreme Court upheld the district court's preliminary injunction, finding that Amendment 2 appeared to infringe on the fundamental rights of lesbian, gay and bisexual Coloradans to participate equally in the political process. It sent the case back to the trial court for a ruling on whether the state had a "compelling" government interest to justify Amendment 2's discrimination. The state then appealed to the United States Supreme Court, which denied the petition.

Following a nine-day trial in October 1993, Denver District Judge Jeffrey Bayless ruled in December 1993 that Amendment 2 is unconstitutional for violating the fundamental rights gay people to have an equal access to the political process, and made his injunction permanent. The Colorado Supreme Court affirmed on October 11, 1994, finding again that none of the state's proffered interest justified the amendment's discriminatory aim. The Colorado state attorney general again petitioned the U.S. Supreme Court to grant review of the case.

On February 21, 1995, the U.S. Supreme Court agreed to review the case, setting the stage for its first ruling on a lesbian and gay civil rights case in a decade. Oral argument before the Supreme Court is scheduled for October 10, 1995.

THE LAMBDA UPDATE

THE NEWSLETTER OF LAMBDA LEGAL DEFENSE AND EDUCATION FUND ■ VOLUME 12 ■ NO. 3 ■ FALL 1995

Implications of the U.S. Supreme Court ruling in the St. Patrick's Day Parade case

by Beatrice Dohrn

In June, the United States Supreme Court ruled that sponsors of Boston's combined Evacuation Day and St. Patrick's Day celebration are free to exclude a contingent of lesbian and gay celebrants — or indeed anyone — from marching with them in their parade. Of course, the outcome of this case is unfortunate in that it contributes to the invisibility of lesbians and gay men. We are a part of every community celebration and many of our struggles would benefit if that fact were better known.

Fortunately, the decision does not create the sweeping First Amendment right to discriminate that some of our opponents would like to see. Indeed, there are elements of the opinion that bode well for the rights of lesbians and gay men, where a parade — with its unique relationship to free expression — is not at issue. In addition, the court treats sexual orientation issues in a remarkably sensitive way, showing how far we've come in little more than a decade since the Court's last major ruling on a gay topic in *Bowers v. Hardwick*.

For example, the Court recognized that identifying publicly as lesbian or gay is a statement of identity that, contextually, may also be a political statement challenging a history of nonacceptance. As Justice Souter wrote, "a contingent marching behind the organization's banner would at least bear witness to the fact that some Irish are gay, lesbian, or bisexual, and the presence of the organized marchers would suggest their view that people of their sexual orientations have as much claim to unqualified social acceptance as heterosexuals and indeed as members of parade units organized around other identifying characteristics." This "message" derives less from anything that a contingent of lesbian and gay marchers actually say than from our society's history of indoctrinating individuals to believe that a lesbian or gay sexual orientation is something to be ashamed of, and therefore is best hidden.

While private parade organizers may have the right to exclude this or any other message, we must now move on to assure that the same isn't true of myriad other contexts in which lesbians and gay men are punished mere-

continued on page 7

The Importance of Olivia

by Pat Logue

There is still a distinctive importance to any victory for lesbian and gay parents and families in 1995. Each victory defies the pernicious stereotype that we cannot be trusted with children or will harm them in some way. These images persist, with fuel from our opponents, because they are so deeply ingrained from the days before every reputable study proved them wrong.

No one could meet "Olivia," the daughter of our clients K.M. and D.M., and wonder about the ability of her lesbian parents. This kid has spunk, intellect, good humor, a healthy appetite, and many, many young friends. She also has two mothers.

In only the second appellate decision in the Midwest to consider the rights of lesbian and gay couples to "second-parent adoptions," the Appellate Court of Illinois ruled unanimously for our clients. The *Olivia* decision is thus the law of Illinois, joining favorable appellate decisions in Vermont, Massachusetts and the District of Columbia, and trial court decisions from nearly 20 other states.

(Unfortunately, the Wisconsin Supreme Court recently went the other way in a split decision.)

Thanks to little Olivia and her mothers, lesbian and gay parents in Illinois can become legally recognized for their very real role as second parents to their partners' biological or adoptive children. Olivia and her peers can now have the emotional security of knowing their parental ties are fully protected, and the financial security of health insurance, inheritance, social security and other important rights and benefits. And, barring a legislative backlash, *Olivia* also definitively secures the right of single lesbians and gay men to adopt, and of gay or lesbian couples to adopt together a foster child or children unrelated to either member of the couple.

Using the vehicle of second-parent adoption to secure our families is not a new idea, but, as with any family law issue, the right has to be secured on a state-by-state basis and sometimes judge-by-judge. In some states, there are county judges who will allow the petitions and others who will automatically refuse them. The security of our families should not depend on these arbitrary factors, but the reality is that they still do in many states.

In light of this, the nonjudgmental, fully rational approach of the Illinois Appellate Court in *Olivia* came as a breath of fresh air. The court did not change its approach simply because the couples before it were lesbian. That is all we ask. As this kind of treatment becomes the norm rather than the exception, especially in family law, we will be able to measure real progress. ▼



1995 Liberty Awards Recipients and Presenters: Rabbi Sharon Kleinbaum, Arthur Leonard, Henry van Ameringen, George C. Wolfe, Judith Peabody, Richard Feldman, Roberta Achtenberg, and Kathy Spahn. See story on page 8.

Margen Guernwald

Lambda Update HIGHLIGHTS

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Gay Kids Need the Help of Antibias Laws

By Gabriel Rotello

IT STARTED in the seventh grade when the other students began taunting Jamie Nabozny. Just little stuff at first: "Faggot," they'd call him in the hallway. "Queer." Jamie appealed to the guidance counselor and principal of his Ashland, Wis., school, but his tormentors got only mild reprimands, if that, and things soon escalated. Jamie began to be kicked and punched in the halls.

One day, when a teacher left the classroom for a moment, two boys pulled him to the floor and pretended to rape him while the rest of the class looked on and laughed. When Jamie fled to the principal's office, he says he was told that since he was obviously gay, he had to "expect this kind of stuff to happen."

It's not that Jamie had made any particular announcement. This seventh-grader was no activist wearing his sexual orientation on his sleeve; he, like many gay and lesbian kids, was simply perceived to be homosexual. As the years went by, the abuse got worse. Jamie says that he was routinely beaten and that when his parents protested to school officials, they were told this was to be expected. Boys will be boys. At one point, Jamie says, he was urinated on. At another, he recalls, even a teacher called him a "fag."



Gabriel Rotello is a columnist for The Advocate, a news magazine for the national gay and lesbian community.

Jamie eventually attempted suicide, thankfully without success, and finally dropped out of school. But, as a young adult, he has decided to fight back. With the help of the Lambda Legal Defense and Education Fund, he is suing school administrators for failing to stop the violent harassment directed against him.

Last month, his lawsuit wound its way into the a federal appeals court, where observers are hoping it will prove to be a landmark case.

Jamie's lawsuit is unique, but sadly his story is not. Studies indicate that more than 90 percent of lesbian and gay youth report having suffered verbal abuse and harassment in school, and more than a third report being the victims of antigay violence.

People who believe that gays and lesbians would be fine if they just shut up about their sexual orientation and didn't "flaunt" it should note that in most cases of teenage abuse, the victims are not even out of the closet. Indeed, in many cases, the victims have not even accepted their own sexual orientation.

Anybody who cares about eliminating antigay violence in our nation's schools should hope that Jamie's lawsuit will set an important precedent. But experts in child abuse say there are many things parents and educators can do right now to try to ease the pervasive climate of antigay harassment in the schools.

The first is to rewrite harassment and personnel policies to explicitly include sexual orientation. Most schools already have rules that forbid sexual harassment and abuse of racial, ethnic and religious minorities. By failing to extend the same protections to homosexuals, we send a clear message that it's still OK to

target gay and lesbian kids.

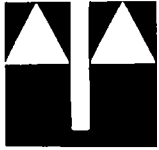
Parents and teachers should also make up their minds to intervene directly whenever they hear students use words like fag and dyke and sissy, the same way they do when kids use racial slurs. And adults should teach children themselves to intervene when they see or hear abuse being directed at others, as well as teach kids the skills they need to protect themselves.

Parents and teachers should also include homophobia in their discussions about bigotry. There's nothing more alienating for a gay or lesbian child than to hear an otherwise compassionate adult call for fairness and inclusion, but then pointedly include homosexuals out. Bigotry is bad enough when it comes from bigots.

Finally, educators and parents need to make clear that if a child comes to them with problems or questions concerning sexual orientation, they will be understanding and gay-affirming. Most gay and lesbian kids automatically assume that their parents and teachers would despise and reject them if their secret came out, no matter how open-minded the teacher or parent may be. There's no way to counter that impression, really, without being explicit.

In a sense, Jamie Nabozny is one of the lucky ones. He survived to tell his story and fight back. Many don't — a federal study concluded that gay and lesbian kids account for one third of all of youth suicides. Such tragedies are often the result of the kind of harassment that was directed against Jamie, harassment that's played out every day in school districts across the nation. Ultimately, no court or lawsuit can stop that. Only parents and educators and fellow students can. One child at a time.

Newsday, Nov. 11, 1996



**Lambda Legal
Defense and
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RELEASE... NEWS RELEASE... NEWS RELEASE... NEWS

Test Case Challenge to the Military's Ban on Gays Argued Before Federal Appeals Court in New York

FOR IMMEDIATE

RELEASE

Tuesday, January 16, 1996

Contacts: Denny Lee (ACLU), 212/944-9800 ext. 424

Margie Hanssens or Beatrice Dohrn (Lambda),
212/995-8585 or 995-8985

NEW YORK — Moving closer to a widely anticipated ruling by the United States Supreme Court, a constitutional challenge to the Clinton Administration's ban on gays in the military was argued today before a federal appeals court in New York.

The case, Able v. USA, is the first case to challenge in its entirety the law barring lesbians and gay men from openly serving in the military. Brought on behalf of six service members, the lawsuit contends that the so-called "don't ask, don't tell" legislation is discriminatory, based on prejudice, and in violation of free speech and equal protection.

"It's shocking that, in 1995, the government is still arguing that it can discriminate against lesbians and gay men simply because some harbor biases against us," said Beatrice Dohrn, legal director of Lambda Legal Defense and Education Fund, which brought the case jointly with the American Civil Liberties Union. "The government admits that the ban isn't about the ability of lesbians and gay men to serve. The question now is, does the Constitution allow the government to force us into the closet, because that's where many prefer us to remain."

"This ban, like its predecessor, is at war with the most basic assumptions of our Constitution," said Matthew Coles, director of the ACLU's Lesbian and Gay Rights Project. "Laws designed to discriminate, with no justification except to coddle some people's prejudices, can not pass constitutional muster and must be struck down."

Arguments in the case were heard before a three-judge panel of the Second Circuit Court of Appeals comprised of Judge Wilfred Feinberg, a Johnson appointee, Judge Pierre N. Leval, a Clinton appointee, and Judge John M. Walker, Jr., a Bush appointee. The appeal was initially scheduled for argument on Dec. 19th, but one of the judges assigned to hear the case recused himself at the last minute in order to avoid any appearance of partiality.

The challenge is on appeal from a federal district court in Brooklyn, which dealt a major blow to the military's new ban in March. The lower court ruled that the law violated the First and Fifth Amendments, and was based solely on the fears and prejudices of heterosexual troops.

"Congress may not enact discriminatory legislation because it desires to insulate heterosexual service members from statements that might excite their prejudices," wrote Judge Eugene Nickerson in a sharply-worded decision striking down the ban. "The Supreme Court has held that the First

(more)

The American Civil Liberties Union is the nation's leading civil liberties and civil rights organization. Lambda Legal Defense and Education Fund is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men and people with HIV/AIDS through impact litigation, education and public policy work. Together, Lambda and the ACLU have over 50 years experience in challenging the military's discriminatory policy against lesbian and gay servicemembers.

Amendment will not countenance the proscription of the expression of an idea because others find it repugnant.”

The current ban -- which subjects lesbians and gay servicemembers to discharge if they say or do anything that reflects their sexual orientation -- marked the first time the military’s discriminatory policy was codified into law.

Signed by President Clinton in November 1993 as a “political compromise” with Congress, the law sought to modify the previous guidelines, issued in 1981, under which 17,000 service members were discharged, at a cost of \$500 million to taxpayers, according to a study issued by the General Accounting Office.

But the new ban, according to military observers, has done very little to change how service members become the subject of discharge proceedings when fellow officers suspect that they are gay. In fact, the text of the regulations remains largely unchanged.

In place of guidelines stating that “homosexuality is incompatible with military service,” the current law holds that lesbians and gay men, who are open, pose “an unacceptable threat to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.”

The six plaintiffs in the case, who were not facing discharge proceedings when the case was brought, come from a variety of ranks and military branches: Lieutenant Colonel Jane Able (a pseudonym), Petty Officer Robert Heigl, First Lieutenant Kenneth Osborn, Sergeant Steven Spencer, Lieutenant Richard von Wohld, and Seaman Werner Zehr.

Although a ruling in this case is not likely to be handed down for several months, the U.S. Supreme Court, which has never before examined the issue, is expected to take up the law as early as next year. Another case in Virginia, Thomasson v. Perry, in which the ACLU and Lambda filed a friend-of-the-court brief, is also making its way up through the courts, as is Phillips v. Perry in Washington State.

“The military’s ban on gays is explicit government-sanctioned prejudice,” said Lambda’s Dohrn. “We are determined to end this chapter of American history. Policies based on prejudice should never be given the power of law.”

“In America, we don’t pass laws that single out one group of citizens for discrimination in order to make another group more comfortable,” said the ACLU’s Coles. “But that is what this law does: it keeps lesbians and gay men, who are every bit as capable as heterosexuals, out of the military just because the government thinks they make some heterosexuals nervous. That is not acceptable.”

Leading the Legal Charge

As Executive Director of the Lambda Legal Defense and Education Fund, Kevin Cathcart is in a unique position to drive the movement into the next century.

By Beth Harrison

The Lambda Legal Defense and Education Fund, headquartered in New York is the oldest and largest legal organization for the gay and lesbian community. Its Executive Director, Kevin Cathcart has been an organizer for 15 years, and joined Lambda in 1992. Prior to that, he was Executive Director of Gay and Lesbian Advocates in Boston.

He will appear in Raleigh on Sunday, November 12 as the honored guest at the fourth annual Triangle Lambda Fundraiser, which will be held at ArtSpace from 2-5 pm. Minimum donation is \$25, \$10 for students. For information, call (919) 787-1150.

The Front Page: There seem to be several threads right now that involve legal challenges by lesbians and gay men in different arenas: the workplace, the military, and even in the wedding chapel. Which of these do you think promises the greatest gains for our community?

Kevin Cathcart: Well, I'll give one of my long round-about answers to begin with. I'm not sure I could pick any one specific thread for a number of reasons. One is that though we like to talk about the community and the issues facing us, our community is really made up of a wide range of communities, and different issues are important to different segments.

There are people for whom second-parent adoption is the single most important issue because for them protecting their family legally is most important. There are people who live in states where the right wing has targeted them, so for them state legislation and referenda are most important. However, no one issue separates out completely from any of the others. The public debate about state referenda has shaped — and been shaped by — the debate about gay marriage. The debate about gay marriage has been affected by the debate about gays in the military. They're all connected.

At the moment, though, the single most important case is the Colorado Amendment 2 case, which was heard on October 10 before the U.S. Supreme Court. This is important for several reasons. It is obviously critically important to people who live in Colorado, because if it is upheld it will become law. Though it was passed by voters in 1992, it has never gone into effect because of a lawsuit that was filed ten days later challenging its constitutionality. Last year, the Colorado supreme court agreed with us and ruled that the amendment was unconstitutional because the court found that it violated the rights of lesbians and gay men to have equal participation in the political process. If Amendment 2 goes into effect, cities like Denver and Boulder will lose the protections they already have.

I don't think anyone believes the Colorado state legislature is about to pass a statewide law to give gay men and lesbians civil rights, regardless of the outcome of this case or of our opponents' rhetoric. But what would happen if we lose this case is that discrimination against gay people would be enshrined in the Colorado state constitution and it would tie the hands of government at all levels permanently when it comes to protecting lesbians and gay men from discrimination based on sexual orientation. It would also set up a two-tier system for political participation, with one set of laws governing gay civil rights, and another, much

more easily met standard set for everyone and everything else. Another reason the Amendment 2 case is important to states other than Colorado is a political one. If the right wing wins on this, then Colorado will be the first state in which they have been able to create a situation in which all branches of state government will be prohibited from having policies which would protect people against anti-gay discrimination. It would be a tremendous shot in the arm for our opponents, who would take this fight to other states, like they already have in Idaho, Oregon, Florida, or Maine.

TFP: What is your take on the outcome of the Amendment 2 case in the U.S. Supreme Court? Some pundits are already anticipating a 6-3 vote against the amendment. Are you?

KC: I am optimistic. I was

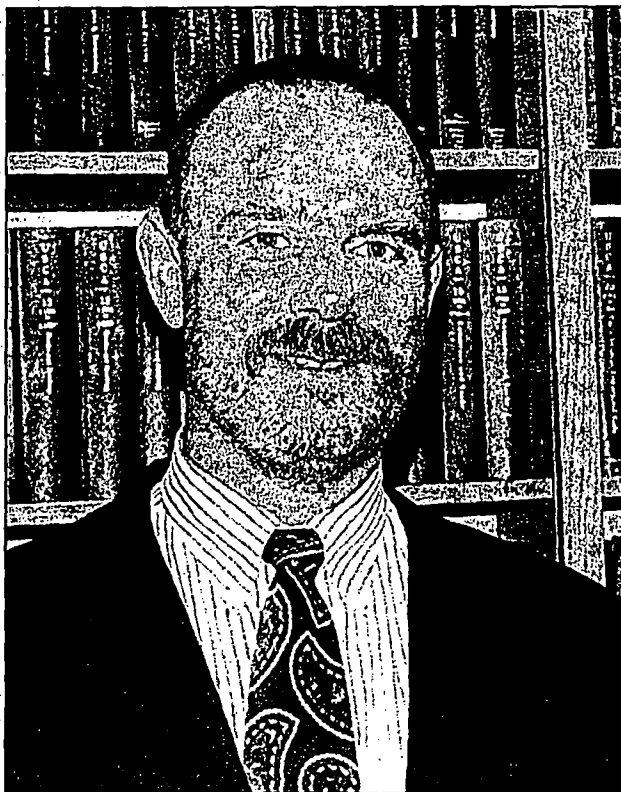
in Washington at the Supreme Court to see the arguments. I was pretty pessimistic going in because the U.S. Supreme Court has not, in its history, distinguished itself in recognizing constitutional protections for gay and lesbian people. I was very worried about whether or not the court would see and understand what was at issue here. I came away very heartened because a majority of the justices seem to understand just what's at stake here. However, I don't have a crystal ball, and I try to avoid making predictions. I don't know if it will be a 6-3 vote. All I want is 5-4. Yes, it would be nice to have a bigger margin, but I'm much more concerned about winning than I am about the margin.

TFP: When do you expect a decision?

KC: I don't think we'll know for several months. We might get a February decision, it might be later, and it could even be a little earlier, but I doubt it. Generally the justices release all their opinions before they break for the summer in June, and there's always a flurry of action about then, so the very latest we might get an opinion would be July. Some people try to interpret the outcome by the length of time until the decision is handed down. Personally, I will not be convinced it means anything if it doesn't come down in March or April.

TFP: How severely would a Supreme Court defeat on Amendment 2 hurt our movement? Conversely, how significantly would a win benefit us?

KC: The U.S. Supreme Court did a great deal of damage with the *Hardwick* decision nine years ago. I think this is the time when a different decision, a new decision, on a gay rights issue would have a significant impact on our civil rights. The direct effect would be limited, though. There are a lot of people who think that if we win on Amendment 2, then lesbian and gay people in Colorado will have civil rights protection. There are some people who even think that a win would



Kevin Cathcart will attend a Lambda Fundraiser Nov. 12 in Raleigh.

mean we would have civil rights protection across the country. But this is a case about a Colorado constitutional amendment and a win in this case will only have a direct impact on the Colorado constitution.

In fact, if we win, people in Denver and Boulder and a few other cities will continue to have their ordinances and other governmental bodies in the state will have the right to pass similar legislation, but they will not be required to. There will be nothing in a victory to require any other governmental body anywhere to do anything. On the other hand, there are people who think that if we lose on Amendment 2, we lose all civil rights protections across the country. In reality, the only direct effect would be that Amendment 2 would go into effect in Colorado, and cities that have anti-discrimination ordinances would lose them. Coloradans would also be faced with a very important and probably very difficult political battle to change their constitution again. However, it wouldn't change any other state constitution.

Indirectly, the loss for us on this issue would mean there is no bottom line of protection from the U.S. Constitution that would protect lesbian and gay people in other states. The other thing is that, although I think the outcome of this case will have a tremendous impact on referendum cases we see in the future — I expect there will be a whole flurry of them — it doesn't go to zero or 100 percent either in terms of them being passed or defeated. If we win, I expect we will see efforts by the right wing to put more carefully crafted referenda on state ballots. For example, in Maine they're being more thoughtful and cautious in how they're crafting their initiative. The Maine referendum is written without ever using the words gay or lesbian. Instead, they're writing it in terms of "no special rights."

TFP: What kinds of right-wing attacks do you anticipate in those states, such as North Carolina,

that don't allow citizen-initiated referendums?

KC: In states like that, I think the real battle will take place in school board and city council and county commissioner elections. It doesn't take an outright anti-gay initiative state by state to hurt us.

TFP: What kind of effect do you expect the decision on Amendment 2 to have on the right wing?

KC: I think there certainly is a good chance the right wing will be fired up if they win. But what will really fire up the right wing is if and when we win. Nationwide, how that will play out will depend on local politics. There will be referendums in some cases. We may see more right wing projects with school boards or city councils or some similar ways. I think the right wing will try to capitalize on any findings by the court that gay people have civil rights under the Constitution for their fund-raising purposes or for their usual hate- and fear-mongering. For our part, I actually worry that if and when we win that rather than firing our community up, it will make people think, "Oh, good. That's been taken care of."

TFP: Do you think it was that kind of apathy that hurt us when we were caught off guard by right wing attacks in 1993 about gays in the military?

KC: I think it's clear our community wasn't ready for the gays in the military debate. But I

think the issue about the military may be more complicated than we assume. I think there is less consensus in our community about the military policy. A lot of people have very mixed feelings about the military, and I think that also played a role in our response to the issue. A lot of people say they think it's terrible that the military has this policy, but it was very difficult to get people to feel that it affected them.

The majority of people in our community have no intention of being in the military; lots and lots of people in the community distance themselves from the issue because the notion of serving is so implausible to them. When it comes to issues like Amendment 2, I think it is easier to rally support within the community because it seems much more plausible that it could happen other places.

TFP: Do you think the military cases currently in the legal system will ultimately reach the U.S. Supreme Court?

KC: I actually expect there will be a military case before the Supreme Court in the near future, probably within the next year or eighteen months. I don't think the Supreme Court will be able to avoid the issue of gays in the military any longer than that. At this point, I think it's going to be one of two cases — either *Able* (a lawsuit filed by six plaintiffs in New York), which we won in federal district court and is currently on appeal to the Second Federal Circuit Court of Appeals; or *Thomasson*, which is in the Fourth Circuit Court of Appeals, the arguments for which were heard this fall. Both of these are new policy cases, and they both raise constitutional challenges to the "don't ask, don't tell" policy. Fundamentally, they are both based on First Amendment and equal protection arguments. It's even conceivable that the cases would be up at the same time and the court would hear both of them at the same time. It all depends on which case gets through the lower courts first.

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Leading the Legal Charge

Continued from page 3

TFP: Do you expect the military to do away with the ban before a case can get to the Supreme Court, to avoid having it declared unconstitutional?

KC: I would say that the Supreme Court is currently our only hope for change in the policy. Of the three branches in government — the executive branch, the legislative branch, and the judicial branch — we have already lost this issue with the administration and Congress. The courts are all that's left.

TFP: Do you perceive the gays in the military debate to have ended in a total loss for our community?

KC: It's true in many ways that the military debate of 1993 was a failure. We didn't end the ridiculous situation we have been in for many years, and from that simple perspective, we lost. And a lot of people continue to think that entire debate was a failure. Now, certainly I won't say it was a success, but what I have seen is that the ripple effect of the debate has been enormous.

Up through 1993, it used to be very common to have people say, "There aren't really gay people in the military," because people have such deep-rooted stereotypes about who gay people are. Because people have these notions about what gay and lesbian people are like — sissies or something — they had this notion that there wouldn't be gay people in the military. But now, the only people who don't think there are any gay people in the military are those who still believe the world is flat. Even crackpot right-wingers have to recognize that there are gay people in the military and that they are serving with distinction.

A lot of the debate has really shifted people's perceptions of us and our issues. They've seen too many people come out on national television and many of the people are young patriotic scrubbed white guys who look like they're model soldiers and sailors — and indeed they are model military men and women — saying, "I'm gay." This gets at another range of deeply held but not always articulated set of beliefs about gay people, that even if we were in the military we couldn't possibly be as professional and dedicated as we in fact are.

TFP: On a different legal topic, what is the current status of *Baehr v. Lewin*, the Hawaii same-sex marriage case?

KC: The current status is that the state has asked for and received one more postponement until July 1996. I believe the Hawaii State Supreme Court is unlikely to give them any more time than that.

TFP: Why another postponement?

KC: To come up with an argument! The Hawaii Supreme Court said that the refusal to grant marriage licenses to same-sex couples appeared to violate the Hawaii state constitution, which prohibits discrimination on the basis of sex, and sent the case back to the trial court where the trial court has the job of deciding whether the ban actually does violate the state constitution. The Hawaii legislature has appointed a commission to come up with proposals to try to work around the supreme court's finding, but I don't think they'll be able to do it. I think what is likely to happen in Hawaii — regardless of who wins in trial court — is that the issue will be appealed back to the Hawaii Supreme Court. However, based on its previous ruling, I think it's likely that the state Supreme Court will ultimately rule in favor of same-sex marriage. There's going to be so much spin-off legislation that this issue is not going to end at the level of the Hawaii Supreme Court. Even if Hawaii goes no further with it, and allows same-sex marriages, we will still have a long way

to go.

TFP: If and when we win in Hawaii, what do you expect the effect to be on other states?

KC: Right now, heterosexual people from all over the country go to Hawaii to get married and then they come home to North Carolina or New York or whatever state they're from and their marriage is automatically recognized by the state they live in, by the federal government, by insurance companies, by everyone. Even if they move from state to state, their marriage is considered legal and valid. Well, if and when we win in Hawaii, gay and lesbian people are going to go to Hawaii and get married and then not have their marriages automatically recognized by the state they go back to or the federal government for tax purposes or insurance purposes or immigration purposes or any other reason. There will have to be a great deal more litigation to force the recognition of same-sex marriages that are legally and validly contracted in Hawaii. And frankly,

what's going to happen is that some of those cases we're going to win and some we'll lose. Some states are going to be more difficult to win in than others. We're talking about a many-year process to get same-sex marriages legally recognized.

Jumping back to your first question about what is the issue that's going to have the most positive effect for our community... I actually think it is the Hawaii case. Over time that will do an enormous amount toward changing the way people think about us. What we're talking about here is overturning the entire

history of the way people think about marriage, and the entire social structure of marriage. It would be naive to believe that winning this case in Hawaii would mean same-sex couples all have the legal right to get married. Civil rights don't move this simply or smoothly. If they did, all sorts of things would have happened by now.

There's an enormous need for education about this issue, and for organizing, and for litigation. Without this case in Hawaii, there would not be the kinds of discussions about marriage that we're hearing today. Litigation cannot take you too far ahead of where society is because decisions are made by judges who live in the real world. That's why we created the Marriage Project, because we know this is an issue that requires enormous attention. We've created an Equal Marriage Rights Coalition which involves pretty much all the national and many of the regional and local gay and lesbian organizations in order to get groups thinking about the work they need to do.

What we're really planning for is not just winning but defending and maintaining the right to marry and expanding the circle of places in which our marriages are recognized. Regardless of whether any individual wants to get married or doesn't want to get married, regardless of a person's personal or political feelings about the institution of marriage, this is the issue that can really force a lot of people to reexamine their feelings about gays and our civil rights in ways nothing else has ever done. This issue will have enormous potential to have a spill-over effect in many ways, and this is the issue that really answers your original question.

TFP: How do you think the AIDS epidemic of the past decade and a half has affected our the queer community's struggle for equal rights?

KC: In two ways that sort of fit together somewhat ironically. On the one hand, I think we rarely if ever are able to conceptualize the full, terrible impact that AIDS has had and will continue to have into the future on the gay and lesbian community. The number of people who have died, the number who are sick, the number of — particularly — young gay men who are continuing to seroconvert, is staggering. The lack of a response from the government and society is also staggering. In fact, I would say that the lack of

What we're talking about here is overturning the entire history of the way people think about marriage, and the entire social structure of marriage.

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Leading the Legal Charge

Continued from page 8

a response from the gay community is also staggering.

I think at this point people are so overwhelmed by the magnitude of the epidemic and the demands it has placed on us that it's a miracle that we function at all. And it's only going to continue to get worse. I can remember back in the early and mid-'80s when we were talking about what this epidemic would mean. Would it mean an end to all progress on lesbian and gay issues? That has clearly not been the case. Ten years ago we could not begin to conceptualize the enormity of the epidemic or what kind of a toll it would take. Instead it was bigger and more horrendous than anything we could have imagined. I don't think we know what the impact of this ongoing trauma is going to be on. What does it do to us? We're sick, we're not sick, we may get sick. What does it do to how we conceptualize our community, the world, life? What does it mean that we continue to let the government ignore this epidemic?

Think about it. We're in the middle of a debate about Medicare that could gut the medical care for a lot of people with AIDS in this country. In an odd — you could say perverse — way the epidemic has also provided enormous visibility for us. It has provided an issue around which people in our community have organized and come together and worked to fight this epidemic. I don't believe it's been worth the price to have the forced visibility the epidemic created. Yet, without all of that, we would not be where we are today.

TFP: What legal issues with respect to people living with HIV/AIDS are the most challenging today?

KC: I think the biggest issues around HIV are

twofold: we need a cure, and we need a vaccine. Actually, we need a variety of cures to cope with all the opportunistic infections that come along with HIV. Those are not legal issues, but if I could have two things I would take those — a cure and a vaccine — before any law. In terms of legal issues, I think the major issues right now are insurance and access to health care. These are important for people with private insurance as well as for the millions of people who have no insurance whatsoever. The House and Senate are dealing with the budget in ways which will dismantle Medicare. There are going to be fewer federal resources involved. There will be virtually nothing that we would call minimum standards of care. All of this has real impact on people's access to treatment and that has direct impact on the quality and length of people's lives.

TFP: Given the comments by former U.S. Supreme Court justices that suggest they would vote differently in the 1986 *Bowers v. Hardwick* case, do you think it at all likely that a similar challenge to sodomy laws will arise in the future and that we might win then?

KC: I don't think the U.S. Supreme Court is eager to revisit the issue of sodomy laws. Their opinions tend to stay in place for some years before the courts revisit them. It's not impossible though, to think a case might get up there. At the moment, we know we're going to get a decision on Amendment 2 and the military cases will probably be before them in the next year and a half. As we start getting opinions and as the Court has to grapple with gay and lesbian issues, they may be willing to take on sodomy laws. It's very difficult to make predictions about an outcome, though, because the court is likely to change.

My answer is, "I don't have a crystal ball, so tell me who the next president will be..." People talk

about the Supreme Court as if it's relatively static but we're not going to go more than five years without there being changes. To think otherwise is completely unrealistic. It's quite possible there will be no changes in the Supreme Court during what's left of the Clinton administration, but then it's very unlikely to go for the next four years without changing. The question then is, who's appointing the next justices? Even though we're making some progress in getting the Supreme Court to move into the 20th century, there are some very frightening presidential candidates out there that gay people should be worried about who could do real damage if they got to make appointments to the court. So who's president is going to make a difference. Imagine how dramatically things could change if, say, Phil Gramm becomes president.

TFP: What kinds of strategies has Lambda found to be the most effective in countering anti-gay laws?

KC: In terms of the work Lambda does, the strategy that is most effective is to continue hammering away with constitutional arguments and to continue to insist that the Constitution must include lesbians and gay men. If the Constitution means anything, it must mean we only have one set of laws that covers everyone. It must mean that we don't have separate laws that apply to heterosexuals and other laws that apply to lesbians and gay men.

But it is important to remember that the courts don't exist in a vacuum. The fact that lesbians and gay men are ever more visible and more out, that there are out legal groups and attorneys and judges, all this stuff actually has an impact on the court because it demystifies gay people. The more experience the courts have with gay people not just as plaintiffs but as people in their communities, the more likely it is they'll understand our arguments. The movement cannot turn over all its issues to the lawyers. I think the law is a critical tool. However, the law is only a tool. It is part of a whole social movement. The more visible we are, the more of an open presence we have in society, then the more victories we are going to get out of the courts.

TFP: How do you answer critics who say that when our community argues the similarities between our struggle and other movements, especially the black civil rights movement, that the issues are totally separate and that we do a major disservice to other minorities?

KC: I think it's very important that we characterize our struggle as a civil rights struggle and I think we have to resist any attempts that come from anywhere to paint us into a corner that this is not about civil rights. What we are involved in is a struggle for civil rights, equal rights, and fair treatment under the law. As such, I think it is valid and fair to make comparison with other civil rights movements, including the race-based civil rights movement and the women's movement in the United States.

At the same time, I think people make overbroad comparisons and I think we have to be very careful about that. There are enormous differences. When lesbians and gay men try to make quick and easy comparisons with where African-Americans were 50 or 100 or 150 years ago, it doesn't add up. We do face enormous discrimination that should not be allowed by law, but throughout much of our society and our history, our situation is not the same as it was for people of color. It's very tricky to try to cloak ourselves entirely in the history of the civil rights movement where race issues and economic issues were so intertwined.

Another thing is that the lesbian and gay movement is viewed as a white, middle-class movement and there's a reason for that. While our movement is not just a white movement, unfortunately its face is often a white one. There are lesbians and gay men in every facet of society but some of us get the microphone more often and many of those faces are white. I also think that, although we do it for a variety of reasons, people make these comparisons in order to lend legitimacy to our movement.

That's a legitimacy we should demand not because we're in a situation similar to the one people of color were in years ago, but because this is the situation we are in right now.

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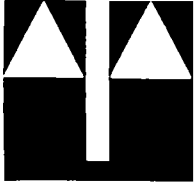
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Thursday, December 21, 1995

Press Contact: Beatrice Dohrn
Margie Hanssens
(212) 995-8585/8985

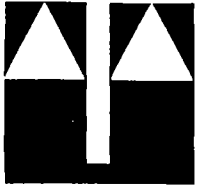
In the Eyes of the Law, Dana Really Does, Finally, Have Two Mommies

Adoption is Final in the Case Which Established a Right Throughout New York State

In the final phase of a case which established the availability of "second parent adoption" for lesbians and gay men in New York State, Putnam County Family Court Judge John W. Sweeney, Jr. today granted Gail Messina's petition to adopt Dana, the biological child of her lesbian partner. Sweeney is the same Judge who originally denied the petition because of his finding that the state's adoption law did not permit the adoption.

"On November 2, 1995, my client won her case at the Court of Appeals and established an important right for all New Yorkers; today, she and Dana won the most precious victory the law can convey: recognition of their mother-daughter relationship," said Beatrice Dohrn, Legal Director at Lambda Legal Defense and Education Fund.

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FOR IMMEDIATE RELEASE

Monday, December 18, 1995

Contact: Patricia Logue
(312) 759-8110
David Buckel, Margie Hanssens
(212) 995-8585

LAMBDA LEGAL DEFENSE FILES BRIEF IN FIRST FEDERAL APPEAL CHALLENGING ANTI-GAY VIOLENCE IN SCHOOLS

In the first federal appellate case challenging anti-gay violence in public schools, Lambda Legal Defense and Education Fund filed its brief today in a case by a gay student whose school failed to stop anti-gay assaults on him and ignored his pleas because of his sexual orientation.

"Despite years of physical assaults and continual harassment by other students, school officials told our client he had to take the abuse because he is gay. That is unacceptable," said Patricia M. Logue, Managing Attorney at Lambda's Midwest Regional Office, and counsel to Nabozny. "Every child deserves a safe environment in which to get an education, and that education should emphasize teaching the value of respect for others."

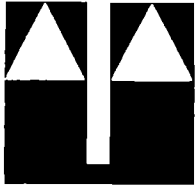
Jamie Nabozny -- the plaintiff in the case -- suffered multiple physical assaults during his years in an Ashland, Wisconsin school district, from seventh grade to eleventh grade. Students would trap him in the hallways or the bathroom and beat, punch, kick, and even urinate on him. In addition to the repeated beatings, during the four-year ordeal he suffered relentless verbal abuse and sexual harassment. The torment led him to make multiple suicide attempts, to dropping out of school, and to develop post traumatic stress disorder.

Throughout the years, Jamie's parents stood by their gay son, constantly attempting to get the school to discipline the boys who abused Jamie. However, no meaningful discipline was imposed and school officials scoffed at Jamie, telling him that he had to expect such abuse because he is gay.

"If I didn't have parents who showed they continued to love me after they found out I was gay, I would probably be dead," said Nabozny. "I hope this case will help other teens who go through this terror year after year, especially those who don't have the love they need at home to help them through it."

"Anti-gay violence is on the rise in schools, and students themselves have forced public hearings in the states of Massachusetts and Washington, and in the cities of Austin, Providence, and Wichita," said David Buckel, Lambda Staff Attorney working on the case. "It's a national shame that schoolchildren have to pursue safety issues on their own behalf."

Lambda, which took the case over on appeal, filed its brief in the federal Court of Appeals for the Seventh Circuit in Chicago today, challenging a grant of summary judgment on October 5, 1995 by a federal judge in the Western District of Wisconsin. Joining Lambda in a friend-of-the-court brief are the National Association of School Psychologists, the National Association of Social Workers, the national office of Parents and Families and Friends of Lesbians and Gays, and Horizons Community Services of Chicago.



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FOR IMMEDIATE RELEASE

Contact: Catherine Hanssens
(212) 995-8585

Federal Appeals Court Invalidates Denial of Benefits for Health Plan Member With AIDS

Court Rejects HMO's Refusal to Pay for AIDS Care Outside Service Area

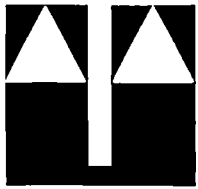
(December, 13, 1995) A federal appeals court late last week rejected a trial court's conclusion that effectively forced a person with AIDS to choose between travel and health care coverage of medical emergencies. The decision was applauded by Lambda Legal Defense and Education Fund, a national legal organization focussed on the civil rights of lesbians, gay men and people with HIV. The case involved a Washington, D.C.-area HMO's refusal to pay Jeffrey Bernstein's emergency hospitalization for CNS lymphoma while he was staying with his brother in New York under a plan provision excluding foreseeable care outside the HMO's service area. The CapitalCare HMO had argued that Bernstein's AIDS diagnosis made any need for medical care "reasonably foreseeable."

"An AIDS diagnosis can have a wide range of physical consequences that vary with each individual, hardly a basis for the broad conclusion that hospitalization becomes automatically foreseeable," noted Catherine Hanssens, AIDS Project Director at Lambda Legal Defense and Education Fund, which joined the Whitman-Walker Clinic in a brief on behalf of Bernstein. CapitalCare denied payment of Bernstein's New York hospitalization on the basis that Bernstein's AIDS diagnosis, and his recent treatment history, made his hospitalization for CNS lymphoma, a form of brain cancer, foreseeable.

The Fourth Circuit Court of Appeals, which covers Maryland, North and South Carolina, Virginia and West Virginia, acknowledged that persons with AIDS undergo widely divergent courses of the disease. The court wrote that "the foreseeability of a particular illness depends on myriad factors such as the patients' age, the severity of the disease, and prior history with the particular illness. Such complex medical determinations are peculiarly within the ken of medical professionals, not federal judges." CapitalCare's medical director, a pediatrician with no specialized training in AIDS, was the only physician who participated in the decision to deny benefits to Bernstein, the court pointed out, and the information available to make that decision simply wasn't adequate.

The case now goes back to CapitalCare, which must gather and review sufficient evidence to make a determination as to whether Bernstein's treatment for CNS lymphoma was reasonably foreseeable or otherwise covered under the benefits plan.

Hanssens observed that the decision was important in part for the quality of evidence required to support the conclusion that an illness was foreseeable. "A broad ruling on what constitutes a foreseeable need for care, with an AIDS diagnosis and an out-of-town hospitalization for any condition whatsoever used as reason to deny benefits for an HMO member, would make it virtually impossible for a person living with AIDS to travel. CapitalCare's decision would have required a person with AIDS to remain home-bound and isolated from family and friends in order to ensure continuing medical coverage."



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FOR IMMEDIATE RELEASE

Monday, December 11, 1995

Press Contact: Beatrice Dohrn,
Margie Hanssens
(212) 995-8585

Lambda Asks United States Supreme Court To Review Case of Invidious Discrimination

Lambda Petitions High Court For Ruling That State May Not Act Based On Anti-Gay Animus

(NEW YORK, December 11, 1995) —Lambda Legal Defense and Education Fund has filed a petition asking the United States Supreme Court to review a Pennsylvania State Court's decision to uphold a judgment, in effect, subjecting Dan Miller to a penalty of over \$100,000 for being gay. The petition asserts that no court may properly uphold the judgment because it enforces a provision drafted by Miller's employer that said "homosexuality" could be a "cause" for firing, and that after being fired for that cause, Miller was subject to a penalty if any of his former clients with DeMuth took their business to Miller.

"It's long been established that courts may not allow themselves to become the vehicle for enforcing people's biases," said Beatrice Dohrn, Legal Director at Lambda Legal Defense and Education Fund and Miller's attorney. "This case is an invitation to the Supreme Court to clarify that animosity against gay people is treated no differently under that rule."

The petition, which Demuth and his lawyers have until January 6, 1996 to answer, points out that as more lesbians and gay men choose to be open about who they are, the number of cases concerning sexual orientation discrimination has risen exponentially. Thus, the petition argues, it is an important time for the Supreme Court to address the question of government action against lesbian and gay men that is based only on anti-gay animus.

Daniel Miller is a certified public accountant who was fired abruptly in 1990 from his job with a management consulting firm when his boss, Donald L. Demuth, found out Miller was gay. Years earlier he had signed an employment contract which included that "homosexuality" was "cause" for discharge. Despite five exemplary years at Demuth Management Consultants, Miller had no recourse under Pennsylvania law, as Pennsylvania is one of 41 states which still do not prohibit employment discrimination based on sexual orientation. Miller subsequently started up his own firm in Harrisburg, Pennsylvania. Several months later, Demuth brought a lawsuit against Miller seeking to invoke a clause in his employment contract that called for hefty penalties if, after being fired for being gay, Miller got business from any of DeMuth's clients.



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FOR IMMEDIATE RELEASE
Friday, December 1, 1995

Contact: Lambda: Beatrice Dohrn, Esq.
(212) 995-8585
NWLC: Lisa Stone
(206) 682-9552

Appeal in Cammermeyer Case Against Gay Ban to be Heard

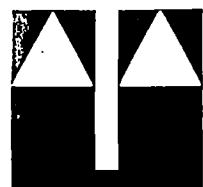
(NEW YORK, December 1, 1995) — The U.S. government's appeal of Col. Margarethe Cammermeyer's successful challenge to the constitutionality of the former military ban on lesbian and gay service members will be heard by a panel of the Ninth Circuit federal Court of Appeals at 1:30 p.m. on Monday, December 4, 1995. As the government does not contest Col. Cammermeyer's reinstatement, the court will only be reviewing whether the order issued by the lower court was overbroad.

Based solely on her statement that she is a lesbian, the military discharged Col. Cammermeyer from her position as Chief Nurse of the Washington National Guard on June 11, 1992. Col. Cammermeyer, a Bronze Star recipient with twenty-eight years of service in the Army, Army Reserve, and National Guard, filed suit that day. On June 1, 1994, U.S. District Court Judge Thomas Zilly, granting Col. Cammermeyer's motion for summary judgment, found that the military ban on lesbians and gay men has no rational basis and is rooted solely in prejudice. Judge Zilly ordered the military to reinstate Col. Cammermeyer to her former position, prohibited the government from taking any adverse action against her based on statements concerning her sexual orientation, and declared the military's discharge of her and the military's former regulation unconstitutional.

Because the government admits the reinstatement is proper, Col. Cammermeyer will continue to serve regardless of the resolution of the appeal. The appeal is limited to the issue of whether it was proper for the district court to go beyond ordering Col. Cammermeyer reinstated to rule that the former policy, as applied to her and on its face, is unconstitutional.

Col. Cammermeyer is represented by Mary Newcombe and Sherry Elise Michaelson of the Los Angeles law firm of Hedges & Caldwell (who are cooperating attorneys for Lambda Legal Defense and Education Fund, Inc.), Jeffrey I. Tilden and Michael Himes of the Seattle law firm of Perkins Coie (who are cooperating attorneys for the Northwest Women's Law Center), and Jon W. Davidson and Beatrice Dohrn of Lambda Legal Defense and Education Fund. The Military Law Task Force is acting as of counsel in the appeal.

Argument of the appeal will be held in Courtroom 815 of the U.S. Courthouse located at 1010 Fifth Street, Seattle, Washington. Mary Newcombe will be presenting the argument on behalf of Col. Cammermeyer.



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FOR IMMEDIATE RELEASE

Thursday, November 2, 1995

Press Contact: Beatrice Dohrn/Suzanne Goldberg

(212) 995-8585/8985

New York's Highest Court Grants Adoption to Lesbian Co-Parent of Five Year Old Daughter

Ruling Will Enable Children of Lesbian and Gay Parents Statewide to Have Legal Relationships with Both Parents

(NEW YORK, November 2, 1995) — For the first time in New York, the state's highest court today issued a ruling allowing the children of lesbian and gay parents to establish legal ties with both of their parents.

Beatrice Dohrn, legal director of Lambda Legal Defense and Education Fund, which represented the lesbian couple in the case, said, "This is a tremendous victory for the thousands of kids in New York who have unmarried parents. This ruling will allow those children to have the security of a full legal relationship with both their parents."

In a 4 to 3 ruling, the New York Court of Appeals allowed a lesbian mother to adopt her partner's biological child without also severing the legal bond between the child and the biological parent. The decision, which sets adoption policy for the entire state, overturned a lower appellate court ruling in April which denied the adoption.

The case involves a lesbian mother from Putnam County who petitioned the court to adopt her partner's biological daughter, Dana. The biological mother, Patricia Irwin (identified in court papers as "P.I.") gave birth to Dana five years ago after having been inseminated with sperm from an anonymous donor. The couple has taken care of, and shared responsibility for Dana since her birth. Ms. Irwin's partner of 19 years, Gail Messina ("G.M."), petitioned for the adoption to secure a legally recognized relationship with Dana without also disturbing Dana's legal relationship with her birth mother.

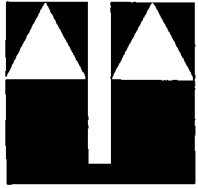
"My family is ecstatic about the court's ruling," said Messina, who is a special education teacher in Poughkeepsie. "It's a shame that we had to go through years of court proceedings to secure something as basic as this adoption, but I'm happy we persevered. This ruling, I hope, will pave the way for other parents who are in our situation."

(more)

The ruling, the first by New York's top court, covers the entire state and sets adoption policy in all 62 counties under the New York Domestic Relations Law. New York joins two other states, Massachusetts and Vermont, with statewide high court rulings allowing second-parent adoptions. In addition, appellate courts in Illinois, New Jersey, and the District of Columbia, and trial courts in ten other states have granted second-parent adoptions. In the Illinois case, a lesbian couple represented by Lambda were permitted to adopt their three-year-old daughter Olivia.

"New York has joined a growing number of states in recognizing that children of lesbian and gay parents should have the same protections as all other kids," added Dohrn, who argued the case's appeal in June. "Gay parents, like non-gay parents, want the best for their children. The court's ruling will allow many parents in this state to better provide for their children's needs and interests."

Lambda also filed a friend-of-the-court brief in a separate case decided today by the New York Court of Appeals granting an unmarried man from Oneida County the right to adopt the child he is raising jointly with the child's birth mother. (*Matter of Dana*, New York Court of Appeals, No. [196].)



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FOR IMMEDIATE RELEASE

Tuesday, October 31, 1995

Contact: Barry Taylor
(312) 759-8110

Bartender Wins Favorable Settlement From Indiana Restaurant That Fired Him Because He Has HIV

(CHICAGO, October 31, 1995) - Lambda Legal Defense and Education Fund announced today that a settlement has been reached in a suit by a bartender who was fired when his employer, a restaurant called The Pub, learned he is HIV-positive.

Larry Conway, the former bartender, now works as an administrative assistant for the AIDS Resource Group in Evansville. He said, "I am very pleased with this settlement, which accomplishes my goals in challenging the discriminatory acts of my former employer. I brought this lawsuit to educate both my employer and the public that HIV-positive food workers do not pose a risk in the workplace."

Under the terms of the consent decree, The Pub must pay Mr. Conway a significant monetary sum and start HIV transmission and sensitivity training sessions for all of its employees. The Pub also is required to adopt a policy which ensures confidentiality for all employee medical information. Compliance with the settlement will be monitored by the Equal Employment Opportunity Commission (EEOC), the federal agency charged with enforcing the American's with Disabilities Act (ADA).

"This settlement should serve as a warning to employers that firing someone based on irrational fears about HIV is not only wrong, it's also time-consuming and costly," said Barry Taylor, AIDS Project Staff Attorney in the Midwest Regional Office of Lambda and co-counsel in this case. "AIDS discrimination is neither legal nor cost-effective."

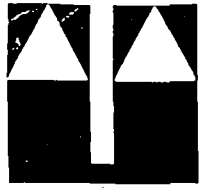
The EEOC brought suit against The Pub in 1994 under the ADA, a federal law which prohibits discrimination against employees with HIV and other disabilities. Lambda, in coalition with the HIV/AIDS Legal Project of the Legal Services Organization of Indiana (LSOI) and the Indiana HIV Advocacy Program (IHAP), intervened in the suit on behalf of Mr. Conway.

"The actions of The Pub were motivated by irrational fears and ignorance about HIV transmission," said co-counsel Stephanie Ortoleva from the LSOI. "Public health authorities and the National Restaurant Association have consistently stated that HIV-positive restaurant workers do not pose a risk to their patrons or co-workers."

"Our client is particularly pleased that the settlement requires mandatory education about HIV in the workplace," added co-counsel Sandra Gosling from IHAP. "Mr. Conway wanted his suit to inform people that employees with HIV can be productive in the workplace without compromising the safety of others."

For more information contact:

Sandra Gosling, Indiana HIV Advocacy Program
Indianapolis, IN
(317) 920-3190 or (800) 775-2437



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FOR IMMEDIATE RELEASE

Monday, October 9, 1995

Press Contact: Margie Hanssens
(212) 995-8585/0085

The United States Supreme Court To Hear Argument On Colorado's Amendment 2

Lesbians and Gay Men Nation-Wide Anticipate High Court's Ruling on Issue of Fundamental Importance

(Washington, October 9) - On October 10, 1995, the United States Supreme Court will hear argument in Romer v. Evans, the challenge to Colorado's 1992 anti-gay ballot initiative. The case is brought by Lambda Legal Defense and Education Fund, along with the American Civil Liberties Union and several Colorado attorneys, and it marks the first time in nine years that the high court will hear a case that directly presents questions concerning the application of constitutional protections to lesbians, gay men and bisexuals. Former Colorado Supreme Court Justice Jean Dubofsky will argue for the plaintiffs.

"Amendment 2 is an outrageous violation of the Constitution," said Suzanne B. Goldberg, staff attorney at Lambda Legal Defense and Education Fund. "By banning laws that would prohibit discrimination against lesbians, gay men and bisexuals, it changes the political playing field, but only for people who are gay," Goldberg added.

Beatrice Dohm, Lambda's legal director, added: "In erecting its special barrier for lesbians, gay men, and bisexuals, Amendment 2 violates a most basic tenet of our constitution. Voters in a majority group cannot change the rules of participation for members of a minority because they are unpopular. It is the most fundamental principle of our constitution that you can't do that and still have a democracy."

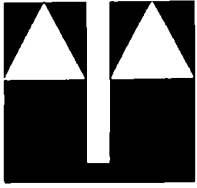
Under Amendment 2, most Coloradans retain their ability to seek redress from their elected representatives. However, under the amendment, lesbians and gay men cannot seek redress for discrimination or even anti-gay violence legislatively. Lesbians and gay men would be forced to seek amendment of the state constitution before government can provide to us what it remains free to provide to anyone else. Amendment 2 imposes upon gay people a much more burdensome set of rules than those which apply to all other citizens who have full access to the ordinary political process.

By doing so, Amendment 2 violates the Fourteenth Amendment's Equal Protection Clause, which guarantees all citizens the fundamental right to participate in the political process on an equal footing with others. "Although Amendment 2 does not literally bar gay people from the voting booth, the right to cast a vote is a hollow right if government cannot act on the voter's behalf because of who that voter is," said Goldberg.

Although this case represents the first time such a measure will be examined by the high court, Amendment 2 and similar ballot initiatives have been invalidated repeatedly by courts around the country.

Lambda's Executive Director, Legal Director, and a number of our staff attorneys will be available for comment after the case is heard.

(The case is Romer v. Evans, Case No. 94-1039)



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FOR IMMEDIATE RELEASE

Tuesday, September 19, 1995

Press Contact: Denny Lee

(212) 995-8585

(917) 277-1661 Pager

Lambda Hosts D.C. Press Briefing on Wed., Sept. 20th on Colorado's Anti-Gay Initiative Before U.S. Supreme Court

Measure Creates Different Political Rules for Lesbians and Gay Men

(WASHINGTON, Sept. 19) — Lambda Legal Defense and Education Fund will host a press briefing tomorrow, Wednesday, September 20th, to provide reporters with background information and analysis on *Evans v. Romer*, the case challenging Colorado's anti-gay Amendment 2 that is currently under review by the United States Supreme Court. The press briefing will be held at 12:30 p.m. at the National Press Club, located at 14th and F Streets in Washington, D.C.

Lambda—the nation's oldest and largest legal organization working to secure the civil rights of lesbians, gay men, people with HIV—will be joined by representatives from the American Civil Liberties Union (ACLU), Colorado Legal Initiatives Project (CLIP), Leadership Conference on Civil Rights (LCCR), Human Rights Campaign Fund (HRCF), and the National Gay and Lesbian Task Force (NGLTF). The participants will discuss the historical, political, and legal ramifications of *Romer v. Evans*.

The case challenges the constitutionality of Amendment 2, an anti-gay ballot initiative passed by Colorado voters in November 1992. If enacted, the measure would amend the constitution of Colorado to prohibit state and local lawmakers, as well as all government branches, from ever passing laws providing gay people protection from discrimination. It would also nullify any existing anti-discrimination laws that cover lesbian, gay and bisexual Coloradans. Oral argument in the case is scheduled for Tuesday, October 10th at 10:00 a.m. before the U.S. Supreme Court.

"Amendment 2 is offensive to the guarantees of the Constitution," said Suzanne B. Goldberg, staff attorney at Lambda, which is co-counsel in the case. "Anti-gay initiatives like Amendment 2 single out gay people for discrimination by changing the rules through which one group of citizens can secure basic protections from discrimination." (*Romer v. Evans*, U.S. Supreme Court, No. 94-1039)

What: Press briefing to provide reporters with background information and analysis on Colorado's anti-gay Amendment 2 that is currently under review by the United States Supreme Court.

Who: Hosted by Lambda Legal Defense and Education Fund. Participants include **Suzanne B. Goldberg**, staff attorney at Lambda; **Matthew Coles**, director of the ACLU's national Lesbian and Gay Rights Project; **Mary Celeste** of CLIP; **Richard Wolmack**, executive director of LCCR; **Elizabeth Birch**, executive director of HRCF; and **Melinda Paras**, executive director at NGLTF.

Where: National Press Club (13th Floor), 14th and F Streets, N.W., Washington, D.C.

When: Wednesday, September 20, 1995 at 12:30 p.m.

—30—

Jan/Feb 1996

Winning Adoption Rights For Unmarried Couples

NICHOLAS PRIORE, a 34-year-old partner in Utica, New York's Johnson, Arkinson, Gemick & Livingston, is not a lawyer who specializes in impact litigation. His practice runs the gamut from personal injury and creditors' rights cases to real estate work. So he had no grand designs two years ago when he agreed to represent an unmarried man who wanted to adopt his girlfriend's child. But when a family court dismissed the adoption petition on the grounds that state law does not authorize adoptions by unmarried couples, Priore was shocked. "Whatever you think about a nontraditional relationship," he says, "a child is better off in a formalized relationship."

Priore challenged the ruling, claiming that New York courts had read state law too restrictively. On November 2 the New York Court of

Appeals agreed with him. In a 4-to-3 vote, the state's highest court held that unmarried people can adopt their partners' children. "To rule otherwise would mean that the thousands of New York children actually being raised in homes headed by two unmarried persons could have only one legal parent, not the two who want them," chief justice Judith Kaye wrote.

Priore argued his case alongside Beatrice Dohm, legal director of Lambda Legal Defense and Education Fund, Inc., an advocacy organization for gays and lesbians. Dohm had filed a similar case, which was then joined with Priore's, to enable a lesbian woman to adopt her partner's biological child.

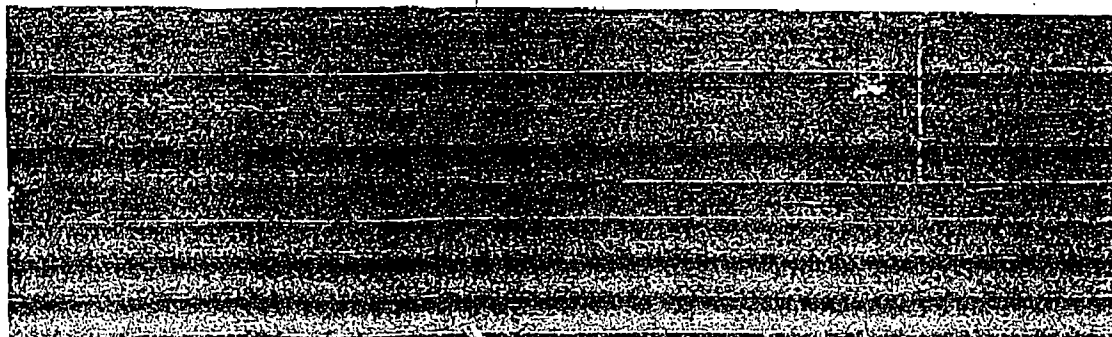
In back-to-back oral arguments, Priore and Dohm contended that the language of the adoption law—which states that an "adult unmarried person or an adult husband

and his adult wife together may adopt another person"—does not require couples to be married. In addition, they contended that the language in a second adoption statute, which implied that the biological parent would lose his or her rights as a parent if a non-married person adopted the child, was at odds both with the other statute and with the legislature's intent.

Although Dohm is no stranger to high-profile civil rights cases—she recently represented challengers to the armed services' "don't ask, don't tell" policy—it was a new and "exhilarating" experience for Priore, who first represented his client in a house closing.

Priore says his friends constantly wondered, "Why don't they just get married?" But that's like asking, why not just ride in the back of the bus? It just wasn't right."

—SHERIE F. NACHMAN



Health Insured?

The ADA offers new hope of preserving coverage

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BY CATHERINE HANSSENS

If there is one issue people with HIV are virtually guaranteed to encounter, it is the issue of health care insurance and access. HIV can be a severe barrier to getting and maintaining health coverage, a problem that typically worsens with the advancement of the disease. The volatility of the issue recently was illustrated when New Jersey announced its plan to adopt regulations allowing insurers to test new applicants for HIV and to deny coverage to those who test positive or who refuse the test. The move provoked an uproar among state medical experts and consumer advocates, causing the insurance commissioner to extend her study of the regulations and delay possible implementation.

There are a number of hotly contested legal issues which can arise for a person with HIV who is seeking, or trying to keep, private insurance. However, an important development in challenges to HIV-specific benefit exclusions is currently being battled out in the courts, with employers and insurance companies seeking to limit the Americans With Disabilities Act's (ADA) protections against insurance-related discrimination.

Before the ADA, advocates failed in their attempts to attack one of the more egregious examples of discrimination—the capping or exclusion of benefits for persons with AIDS who had been covered under an employee benefit plan for years, but found themselves without coverage after submitting an AIDS-related claim. A well-known and horrifying example of this is *McGann v. H&H Music*. In that case, Houston's H&H Music replaced its group health insurance plan offering \$1,000,000 lifetime benefits after a long-time employee, Jack McGann, submitted AIDS-related treatment claims. H&H changed to a plan which maintained this level of benefits for everyone except those with AIDS-related claims, which had a \$5,000 lifetime limit under the new plan. The federal appeals court decided that the cap on AIDS benefits

did not violate ERISA, the applicable federal law which at least in theory prohibits discrimination intended to deprive a plan beneficiary of benefits.

The ADA may prove to be an antidote for the McGann brand of insurance discrimination against people with HIV. The ADA's provisions on disability-related employment discrimination, and the Equal Employment Opportunity Commission's (EEOC) guidelines, seem clear that employer-provided health benefits are among the "terms, conditions and privileges of employment" in which employers cannot single out people with HIV for different treatment. A little over two years ago a New York federal trial judge, in *Mason Tenders District Council Welfare Fund v. Donaghey*, concluded that a union health plan's exclusion of AIDS-related claims violates the ADA. Since

***The ADA may
be an antidote
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with HIV.***

the ADA's adoption, the EEOC has pursued, and successfully settled, a number of cases attacking employer-provided health benefits plans with AIDS caps. These settlements, however, leave a shortage of law defining the extent of the ADA's application.

The ADA also allows advocates to argue that plans which exclude benefits only for AIDS care violate the ADA's protections against discrimination in public accommodations. The heart of the battle here is whether the "public accommodations" access governed by the ADA is limited to actual physical structures, or whether it also forbids interference with a disabled individual's equal enjoyment of goods and services when the individual's purchase or inquiry occurs outside the place of business. A federal appeals court in New England decided late last year that the ADA's public accommodations protections are not limited to actual physical structures, a conclusion echoed by an Illinois federal court in late September, 1995 in *Baker v. Hartford Life Insurance Co.*. In the past year, however, federal courts in Ohio and Tennessee have come to the opposite conclusion. ■

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Some States Trying to Stop Gay Marriages Before They Start

By DAVID W. DUNLAP

A battle over the very definition of marriage, which began two years ago in Hawaii, is spreading through Western states as lawmakers hasten to foreclose any possible legalization of homosexual matrimony.

Homosexual marriages are not now legally recognized anywhere in the nation, but commitment ceremonies have become an increasingly common feature of gay life.

Anticipating that Hawaii may one day sanction gay weddings, Utah legislators voted overwhelmingly this month to deny recognition to marriages performed elsewhere that do not conform to Utah law. This would include same-sex unions.

On the same day, March 1, a bill rendering any same-sex marriage "null and void" failed by one vote to get on the calendar of the South Dakota Senate. It had already been approved by the state's House of Representatives.

Two days later, a bill was introduced in the Alaska House by Representative Norman Rokeberg, a Republican, to make it explicit that "marriage is a civil contract entered into by one man and one woman."

This legislative trend has alarmed gay and lesbian organizations.

What lies at the heart of the notion of family?

"Radical-right legislators will attempt to block recognition of marriages once we win them in the future," said Evan Wolfson, senior staff attorney of the Lambda Legal Defense and Education Fund, "and will prevent the American people from having a serious discussion about the denial of marriage rights."

For opponents of same-sex marriages, however, there is nothing to discuss and nothing radical about the proposition that the family has a man and a woman at its nucleus. This traditional structure cannot be expanded to embrace gay couples, they say.

"Marriage is the basis of family life, and families are central to civilization," said Robert H. Knight, director of cultural studies for the Family Research Council in Washington.

"The law doesn't discriminate against homosexuals," Mr. Knight



University of Utah

No state recognizes same-sex marriages, but several legislatures are considering steps against legalizing homosexual matrimony. Whitney Hannah, left, and Dina Hannah at a commitment ceremony with the Rev. Bill Hamilton-Holway last year in Salt Lake City.

said. "It merely says that each sex must be represented in marriage. Same-sex couples do not qualify. It might be called a partnership, but if it's called marriage, it's a counterfeit version. And counterfeit versions drive out the real thing."

What Mr. Knight sees as counterfeit, many gay and lesbian organizers see as a legitimate expansion of what family means. "We're labeled as promiscuous," said Robert Bray, of the National Gay and Lesbian Task Force, "but when we ask for recognition of our long-term relationships, we're denied."

Chris Ryan, president of the Utah Log Cabin Club, a group of gay Republicans, said, "All we want are the legal rights that go along with marriage." He mentioned visiting a partner in the hospital, inheriting property, providing insurance coverage, filing a joint tax return and distributing assets in a divorce.

In 1993, the Hawaii Supreme Court ruled that a refusal to grant marriage licenses to three same-sex couples presumptively violated the State Constitution. It sent the case back to a lower court.

That case is pending and, depending on the outcome, could pave the way to legalized gay marriage.

Such a development would set off not only a social debate but also a constitutional one, over the applicability of Article 4, which says in part: "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state."

Unless a state explicitly declares an exception, State Representative Roger Hunt of South Dakota said, "it may be obligated to give full faith and credit to a marriage entered into by two people of the same gender in another state."

"I believe, by and large, that would be counter to what, in this state, has been the sanctity of families for the last 100 years," said Mr. Hunt, a Republican who was the legislation's main sponsor.

But Barry Wick, executive director of the South Dakota Gay, Lesbian and Bisexual Federation, called the bill "patently offensive to anyone who remembers the miscegenation laws of the South that banned interracial marriage" as late as 1967.

Lynn D. Wardle, a law professor at Brigham Young University, said the new Utah law was designed to close a loophole that might have compelled local authorities to recognize marriages of gay or lesbian couples — including Utah residents — who

traveled to Hawaii to be wed.

The law would also ban recognition of marriages performed in other states or countries if they involved incest, bigamy or minors under the age of 14.

"No one is going to lose any rights they didn't already have," said State Representative Norm L. Nielsen, the Orem Republican who introduced the bill. "All it did was make our laws consistent."

A spokeswoman for Gov. Michael O. Leavitt of Utah, a Republican, said Mr. Leavitt was likely to sign the bill when it reached his desk.

Supreme Court to Rule on Anti-Gay Rights Law in Colorado

By LINDA GREENHOUSE

Special to The New York Times

WASHINGTON, Feb. 21 — Setting the stage for its first ruling in a decade on gay rights, the Supreme Court agreed today to decide whether Colorado violated the constitutional guarantee of equal protection of the law by amending its Constitution to bar all measures protecting homosexuals against discrimination.

The Colorado Supreme Court ruled last October that the state provision violated the United States Constitution by restricting the rights of homosexuals "to participate equally in the political process." Several Colorado cities, including Denver, Boulder and Aspen, had passed ordinances barring discrimination against homosexuals by the time the state's voters adopted the provision, known as Amendment 2, in a referendum in November 1992.

The Colorado court based its ruling on United States Supreme Court precedents dating from the 1960's, when the Court ruled that local governments could not make it harder to enact protective civil rights legislation than other types of laws.

By relying on those precedents, the state court did not need to decide whether gay people constitute a group deserving of the special protection that the courts have accorded to members of racial minorities. Rather, the Colorado court said, the case involved the "right of equal participation in the political process," a right the court deemed "fundamental."

By reason of that analysis, the Colorado case is both broader and narrower than recent cases that have come before the lower Federal courts on the rights of gay members of the armed services. Those cases concern the constitutional status of homosexuality itself, a question not directly presented in the Colorado

ARTIST WINS ROUND OVER AMTRAK

In a victory for a New York artist, the Court ruled that Amtrak is an agency of the Federal Government and must respect Constitutional free-speech rights. Metro, page B4.

case and not likely to be resolved by the Justices. But at the same time, the case could provide a forum for a broad review of the political-access doctrine, with important implications not only for homosexuals but also for other groups.

The case could be "one of the pivotal civil rights cases of the 1990's," Suzanne B. Goldberg, a staff lawyer for the Lambda Legal Defense and Education Fund, a gay rights group serving as co-counsel in the challenge to Amendment 2, said in an interview today. At issue, she said, are "the boundaries on what the majority can do to a minority."

Not surprisingly, the state presented a very different view of the issue in its appeal to the Justices. Calling Amendment 2 an "anti-special rights amendment," the state called the ruling by the Colorado Supreme Court "a dramatic and unwarranted interference in the political process."

The decision "strikes at the heart of voter sovereignty and of federalism itself," the state said, adding that because all legislation affects some identifiable group, such as property owners or welfare recipients, all laws could be open to constitutional challenge under the State Supreme Court's theory of fundamental rights.

The case, *Romer v. Evans*, No. 94-1039, will be argued next fall and will probably not be decided until at least a year from now. Measures similar to Amendment 2 are on the ballot for

the elections next November in at least three jurisdictions: Tampa, Fla., and the states of Maine and Washington.

In the 1992 referendum, 53 percent of Colorado's voters voted for Amendment 2, while 47 percent opposed it. The amendment led to a boycott of the state by gay rights and civil liberties groups, costing Colorado \$40 million in lost convention and tourist business, by the state's own estimate. Lower state court rulings blocked the amendment, and it has never taken effect.

The Colorado Supreme Court issued an important preliminary ruling in July 1993, in which it set out the constitutional framework for the case. It ruled that any legislation that infringed on the "fundamental right to participate equally in the political process" by "fencing out an independently identifiable class of persons" must be subject to "strict judicial scrutiny." That is, the challenged legislation must be shown to be "necessary to support a compelling state interest," and must be "narrowly tailored to meet that in-

terest."

A state trial court, applying that standard, found that the state had failed to justify Amendment 2, and the Colorado Supreme Court agreed in its 8-to-1 ruling last October. It rejected the various state interests put forward by the state and the amendment's supporters, including, for example, the assertion that Amendment 2 was necessary because gay rights ordinances violated the rights of families who did not support the gay rights cause.

"It is clear that government does not burden an individual's constitutional rights merely because it endorses views with which that individual may disagree," the State Su-

preme Court said, noting that parents remained free to give their children any instruction they wished on homosexuality.

While dozens of jurisdictions around the country have barred discrimination against homosexuals, battles over repealing those protections have become increasingly common. Voters have repealed or prohibited gay rights legislation in Cincinnati; Lewiston, Me.; Springfield, Mo.; Austin, Tex., and Alachua County, Fla. The Cincinnati initiative was found unconstitutional by a Federal District Court, and an appeal will be argued next month before the United States Court of Appeals for the Sixth Circuit, in Cincinnati.