

# THE LAMBDA UPDATE

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# VICTORY!

## VICTORIES, VICTORIES, VICTORIES!

by Beatrice Dohrn

**T**he period since our last *Lambda Update* has been the busiest, and surely the most consistently victorious, in our 20-year history. We have had major victories in several important, often long-standing, cases. The range of our recent gains — 16 victories or favorable settlements in four months — affects everything from the military ban to anti-gay initiatives, from equal employment benefits and housing rights to employment discrimination, from custody and adoption to immigration, from insurance caps on AIDS to the importance of universal precautions in the medical setting, and from the access to health care for HIV-infected patients to the employment rights of HIV-infected health care workers.

Please read on and celebrate with us these outstanding accomplishments for lesbian and gay civil rights made possible by Lambda's courageous plaintiffs, hard-working attorneys, devoted staff and volunteers, and the support and contributions of members and friends like you.

### Winning Against the Military *Steffan v. Aspin*

In a major blow to the military ban, on November 16, 1993 the D.C. Circuit Court of Appeals handed down its decision ordering Naval Academy midshipman Joseph Steffan, who had been discharged six weeks before graduation because he is gay, to be commissioned as an officer. Lambda's six years of litigation on Joe's behalf yielded not only a great result for Joe, but also a stunning 29-page decision analyzing in detail the flaws in each of the government's justifications for its claim that it needs a discriminatory policy.

In what was certainly the most-quoted phrase of the decision, the three judge panel noted that "America's hallmark has been to judge people by what they do, and not by who they are."

At the end of December, the government decided to appeal certain sections of the decision to the full court of the D.C. Circuit.

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### 16 VICTORIES IN FOUR MONTHS!

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 "Victories, Victories, Victories!"

### **Doe v. SUNY Buffalo**

A few days after the *Steffan* decision was issued, on November 18, Lambda won a ruling in *Doe v. SUNY Buffalo*, effectively banning military recruiters from all campuses of the second largest university system in the country, because they discriminate against gay men and lesbians. In so doing, the court rejected the state's assertion that the university system is exempt from New York State Governor Cuomo's executive order banning sexual orientation discrimination by state agencies.

The victory is important not only because it solidifies our gains against the military ban, but also because it settles a battle we must often fight about whether executive orders or other policies banning discrimination may be interpreted in a convoluted fashion to permit discrimination by the executive or agency which issued the order.

### **Anti-Gay Initiatives Colorado**

Earlier in November, at the same time as the trial on Colorado's Amendment 2 was underway, the U.S. Supreme Court declined to hear the State's application seeking to overturn the injunction blocking the anti-gay amendment.

This victory was then overshadowed by the ruling from the trial court judge on December 14 which resoundingly rejected all six reasons advanced by the state for the need of the anti-gay amendment. Regarding the "family values" argument, the court said, "Seemingly, if one wished to promote family values, action would be taken that is pro-family rather than anti some other group." Regarding another of the state's purported justifications for Amendment 2, the court said, "The evidence presented does not satisfy this court that there is militant gay aggression in this state which endangers the state's political functions."

The state has indicated that it will appeal this ruling to the Colorado Supreme Court. Since that court upheld a preliminary injunction against Amendment 2 last July we are very hopeful that it will not now overturn the lower court's decision. For further details about this victory, please see the article on page 3.

### **Cincinnati**

On the same day that the *Steffan* decision was announced, a mere hour later, the Federal District Court in Cincinnati grant-

ed Lambda a preliminary injunction, blocking an anti-gay amendment to the city charter which had been passed by voters on November 2.

Lambda's attorneys were in Cincinnati immediately after the election, preparing and filing the suit challenging the measure. Within days, the court held a hearing, and Judge Arthur Spiegel ruled that Issue 3 likely violates the fundamental constitutional rights of lesbians and gay men. The opposing side announced that they would not appeal the injunction. Therefore, Issue 3 will not become law unless it is found constitutional after a full trial, which has not yet been scheduled.

### **Employment Discrimination Chicago**

On November 10, Lambda won a favorable settlement in *Tony Scott v. Noble Horse Coach Company*. The case, which had only recently been brought by Lambda's Midwest Regional Office concerns an employee who was let go after reporting that a co-worker became extremely abusive toward him and threatened him with violence, while shouting anti-gay epithets. Under the terms of the settlement, the employer issued an apology to our client as well as compensating him for his lost income and emotional distress. In addition, the company will sponsor sensitivity training for all its employees, focusing on lesbian and gay issues in the workplace.

It may seem that our other November victories overshadow this case, but the importance of educating employers about lesbian and gay civil rights cannot be underestimated. We must convey at every level — from the Pentagon right down to a small, local business — that it is the bigot and not the victim of bigotry who presents the problem in civil rights discrimination.

Moreover, this case was brought under the Chicago Human Rights Ordinance, which added sexual orientation as a protected category in 1989, and is a good example of the importance of passing and using local laws.

### **Full and Equal Health Benefits: New York City Employees and Retirees**

This victory, which saw the nation's largest city grant all its employees equal benefits, occurred October 30 at 4:30 a.m.! That's when negotiations concluded on the final settlement of Lambda's five-year litigation in the *Lesbian and Gay Teachers* case. The sweeping agreement requires the City of New York to provide domestic partners of all City employees and retirees with identical health benefits to those

offered to "married spouses."

The settlement, which is binding on the City even after the change of administration following the November 2 election, is highly detailed in terms of the registration procedure which will have to be followed by the City. Proof of financial interdependence, such as joint bank accounts, joint ownership of property, and the like may be submitted upon registration. However, for those who cannot or do not wish to submit these types of records, signing an affidavit agreeing to be liable for each other's necessary expenses (defined as food, shelter, and medical expenses not reimbursed by the insurance) will establish the required interdependence. This sets an important precedent: a program that is more flexible and favorable than any other in the country. For further details, please see article on page 7.

### **Housing Succession Rights**

In a New York City housing case brought by Lambda, our client, Alma Gomez, the surviving lesbian partner of Maria Rosas, was awarded a lease in her own name after her landlord abandoned its eviction proceedings. Ms. Rosas was the tenant named on the lease to the apartment that the couple shared as their primary residence for seven years. A hearing was held at the Department of Housing and Community Renewal in November 1991, and the settlement was negotiated while we awaited the decision.

### **Family Law Adoption in Massachusetts**

In an important family law case, on September 10, the Supreme Judicial Court of Massachusetts announced its decision permitting the lesbian partner of a child's biological mother to adopt as a "second parent," in *Adoption of Tammy* (previously listed on our docket as *In the matter of K.M.*). This victory helps solidify gains made in similar cases around the country. Lambda had joined an *amicus* brief written by Mary Bonauto of Gay and Lesbian Advocates and Defenders in Boston.

### **Immigration and International Adoption**

Then, on September 14, we learned of our victory in the appeal of *Gressin v. Slattery*. The appeal overturned the negative finding of the Immigration and Naturalization Service's New York District Director, who had denied Gressin's petition for an orphan adoption visa based on his status as a "single parent residing with an unrelated adult." The victory is of tremen-

ous importance to lesbians and gay men seeking to adopt children from abroad.

### **Custody in North Carolina**

In yet another favorable family law outcome, Lambda was able to maintain custody rights for a lesbian mother and her partner in a lower court ruling and to achieve a satisfactory visitation schedule with the gay sperm donor who had sought custody. In a significant move, the court also recognized the non-biological lesbian mother as a psychological parent.

### **AIDS-Related Discrimination**

Lambda has also had major victories against AIDS-related discrimination.

#### **AIDS Insurance Caps California**

On September 28, Lambda negotiated a settlement abolishing a discriminatory cap on AIDS-related health benefits that was part of a nation-wide health plan. The insurer, Allied Services Division Welfare Fund, had suddenly imposed a \$5,000 lifetime cap on HIV-related medical expenses, while the cap for all other catastrophic illnesses remained at \$300,000.

The federal Equal Employment Opportunity Commission (EEOC) had filed suit in August and Lambda intervened on behalf of a plan member with AIDS. Nearly immediately, the judge granted our motion to block the cap, meaning that the insurer was immediately required to pay for treatment and drugs which our client had been unable to get since the cap had been imposed. The swift disposition of this offensive and illegal provision — the first such result under the Americans with Disabilities Act — sends a strong message to other employers and health plans contemplating similar provisions. Please see article on page 6 for further details.

#### **New York**

On November 19, in the first court ruling expressly holding that the Americans with Disabilities Act applies to private insurance funds, a federal judge in Manhattan refused to dismiss a discrimination action filed by several HIV-positive plan beneficiaries against a self-insured health plan. The plan completely excludes coverage for HIV-related medical care. The plan, which is administered by an agency composed of employer and union representatives, contended that it is exempt from non-discrimination requirements because it does not consider itself a "covered entity" under the ADA. Rejecting

those assertions, the court ordered that discovery proceed in the case, noting that the ADA requires the plan to provide sound justification for any disability-based distinction.

Lambda filed an *amicus* brief in support of the plan members on behalf of the American Medical Association and other AIDS and public health organizations.

#### **Health Care Settings Must Use "Universal Precautions"**

In late September, a settlement was signed in the *Boulais v. Lustig* case. In that case, a jury awarded damages to a surgical assistant who was cut, but not infected, when the surgeon failed to observe universal precautions.

The surgical assistant sued our client, claiming that because our client had not disclosed her HIV status, she should be liable for damages for emotional distress. Ultimately, the court agreed with Lambda that the health care worker's failure to follow universal precautions is not excused

**In 1790, in a letter to the Jewish congregation of Newport, R.I. (which is the oldest synagogue in the U.S.), President George Washington wrote, "the government of the United States . . . gives to bigotry no sanction, to persecution no assistance."**

because she was unaware of the patient's HIV status.

Nevertheless, and inexplicably, the court had left the jury's \$102,000 verdict against our client in place. The settlement we won disposes of that judgment, and leaves in place the prior payment to our client in compensation for the breach of her confidentiality when the medical center publicly announced her name and her HIV status.

This victory acknowledges the importance of practicing universal precautions (i.e., assuming every patient is infected with HIV or other transmittable diseases and taking the necessary precautions against transmission) as the best method of preventing the spread of HIV in the health care setting.

### **Access to Health Care for Patients with HIV**

Lambda achieved a final victory in the right of a gay man with HIV to receive dental care. The New York City Commission on Human Rights recently issued its decision in an AIDS discrimination claim against a dentist who refused to treat a gay man with HIV. The Commission adopted the Administrative Law Judge's "recommended decision," which we won two years ago following a lengthy evidentiary hearing. With the dentist's decision not to appeal and to pay \$7,500 in damages, we have established a final victory in the case.

### **Other Encouraging Developments**

Aside from these out-and-out victories or favorable settlements of cases, we have made litigation gains of a more technical nature in several areas, for example, in employment rights, both in sexual orientation and HIV-related cases (*Runkle, et.al v. Superior Court* and *Kerins v. Hartley*).

And, as always, Lambda went to court and argued other cases like our new Pennsylvania employment case (*DeMuth v. Miller*), and our California co-parents' rights case (*Prescott v. Blume*). Likewise, we filed motions and continued discovery in other areas, like testing health care workers (*Doe v. Mercy Catholic Medical Center*), enforcing New Jersey's state-wide employment and public accommodation law (*Dale v. Boy Scouts of America*), and fighting the military ban (*Pruitt v. Secretary of Defense*).

Each of the cases I've described represents a major victory for the advancement of lesbian and gay civil rights.

Since we practice "test-case" litigation, every case Lambda litigates is an important case. We litigate those cases that would set a precedent and determine new law, thus breaking new ground for hundreds and thousands of people. Sometimes, in a state-wide or national victory, millions of people are affected. The string of victories we have had over the last few months — the cases highlighted here in this article and described in detail in other articles and the docket — are major victories that will effect millions of lives.

*Lambda takes pride in bringing you news of these victories and case developments, for they are what make the hard work and toil which goes on day-in and day-out all worth it. We appreciate your support through each and every season, both when the civil rights work is in progress and when — like past several months — it finally comes to fruition. ▲*