THE ANNUAL UPDATE OF THE **ACLU'S** NATIONWIDE WORK ON **LGBT RIGHTS** AND **HIV/AIDS**

ACLU FOUNDATION
AMERICAN CIVIL LIBERTIES UNION

THE ANNUAL UPDATE OF THE **ACLU'S** NATIONWIDE WORK ON **LGBT RIGHTS** AND **HIV/AIDS** 2009

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ANNUAL UPDATE 2009

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The Value of a Little History

— MATT COLES —

RECENTLY I LISTENED to a bright, accomplished young man tell a group of LGBT activists that it was time for the community to unite around the strategy that has won civil rights for other groups in America: a sweeping federal civil rights bill.

He got an enthusiastic response. And he's hardly alone. Calls for the LGBT community to follow the "historic" model for ending inequality, a broad federal law, are appearing on blogs, in discussion groups, and in political conversations among LGBT people all over America.

There is, however, something deeply wrong with the idea: It has its history dead wrong. A single, federal solution is not how any movement for progressive change has worked in America.

The speaker I heard, like almost everyone talking about this, used the African-American civil rights movement of the 1960s as his template example of how change works. His proof of the "big federal law" approach was the great Civil Rights Act passed by Congress in 1964. But that Act—great as it was—was neither a comprehensive equality law nor the single policy change that brought about legal equality (which some, including myself, would say is still a work in progress).

In the 1964 Civil Rights Act, Congress banned most forms of employment and public accommodations discrimination based on race. It also banned discrimination by federal grantees. But the 1964 Act was preceded by the 1957 Civil Rights Act, a limited voting rights law. And it was followed by the critically important 1965 Voting Rights Act, the 1968 Housing Discrimination Law, and the 1972 law that banned discrimination in schools.

Those laws were hardly the end—Congress has since passed other important civil rights laws on race. And this list leaves out Congress's 19th century laws against government discrimination—maybe the most important civil rights laws ever passed—and against public accommodations discrimination (the latter was derailed by the U.S. Supreme Court—keep that in mind, you who are anxious to hurry there now).

But the "single" law isn't the only thing wrong with this argument about how change in America works; the idea that reform starts and ends with the federal government is also wrong.

Returning again to race as the paradigm, the movement to ban slavery began in the states, not with the Emancipation Proclamation and the 13th Amendment. Many states banned segregation long before the federal government got around to it in 1955—some in the 19th century. And if Congress did pass one of the first laws against public accommodations discrimination, states took up the task in the late 19th Century after the Supreme Court struck the federal law down. Congress didn't try again until 1964.

Even the jewel in the crown of the '64 federal Civil Rights Act, the ban on employment discrimination, was not Congress making groundbreaking change. New York passed the first statewide employment discrimination law 19 years earlier in 1945. Twenty-four states had already passed laws against employment discrimination when Congress finally did.

You might think that when Congress or the federal courts does act, that is the end of a civil rights struggle, or at least the legal part of it. But that isn't right either. Federal law typically doesn't go as deep as state and local law. State employment laws reach small employers while federal law doesn't. Limitations in federal public accommodations law have made state law the recourse of choice in most states.

None of this is to disparage the crucial role of federal laws. The passage of the 1964 Civil Rights Act was a defining moment in the struggle of African-Americans for equality. It marked the emergence of a national understanding that discrimination was wrong. The nation understood how important it was at the time.

But that dramatic fight which redefined the conscience of the nation didn't start in Washington. The groundwork for it was laid in the states. The story of the legal battle for civil rights in America is like the story of most battles for progressive change. Change comes first in the most progressive cities and states, moving out to more moderate states until, usually when 40 to 60 percent of the states have acted, the federal government acts. The federal action is then used to pressure more recalcitrant states to embrace the emerging national consensus.

The movement for LGBT rights is following this time-honored pattern. Congress is probably ready to pass a law on employment discrimination. That's hardly surprising. About half the population is covered by the state laws we've been passing since 1982.

The Employment Non-Discrimination Act (ENDA), of course, will not bring about full equality. That it won't points up the other weakness of the "big federal solution" argument: Not all civil rights struggles are the same. For African-Americans, the two most important legal achievements were probably securing the right to vote and the right to be free of employment discrimination (okay, let's add school desegregation and make it three). Laws against interracial marriage, by the way, weren't near the top of most lists.

For the LGBT community, family, recognition of relationships and parenting, and schools probably top the list, along with gender identity discrimination, which is pretty all-pervasive. The first two—family and schools—are areas in which most of the law is made by states. That's partly tradition, but it is also partly a reflection of the federal government's limited power. Desirability aside, it is very doubtful that the federal government has the power to create a nationwide marriage system, or a nationwide adoption and foster case system.

This isn't to say that there aren't important things to do in Washington. I think ENDA will help cement a nationwide norm that employment discrimination based on sexual orientation is wrong. Congress needs to repeal the military ban and its refusal to recognize the marriages and other relationships of same-sex couples. And doing so will help forge a national norm on equality.

But federal law is not going to be the complete answer. Just as it hasn't been on race, sex and disability. And we are not going to get federal help until we've laid the groundwork in the states. Just as it was with race, sex and disability.

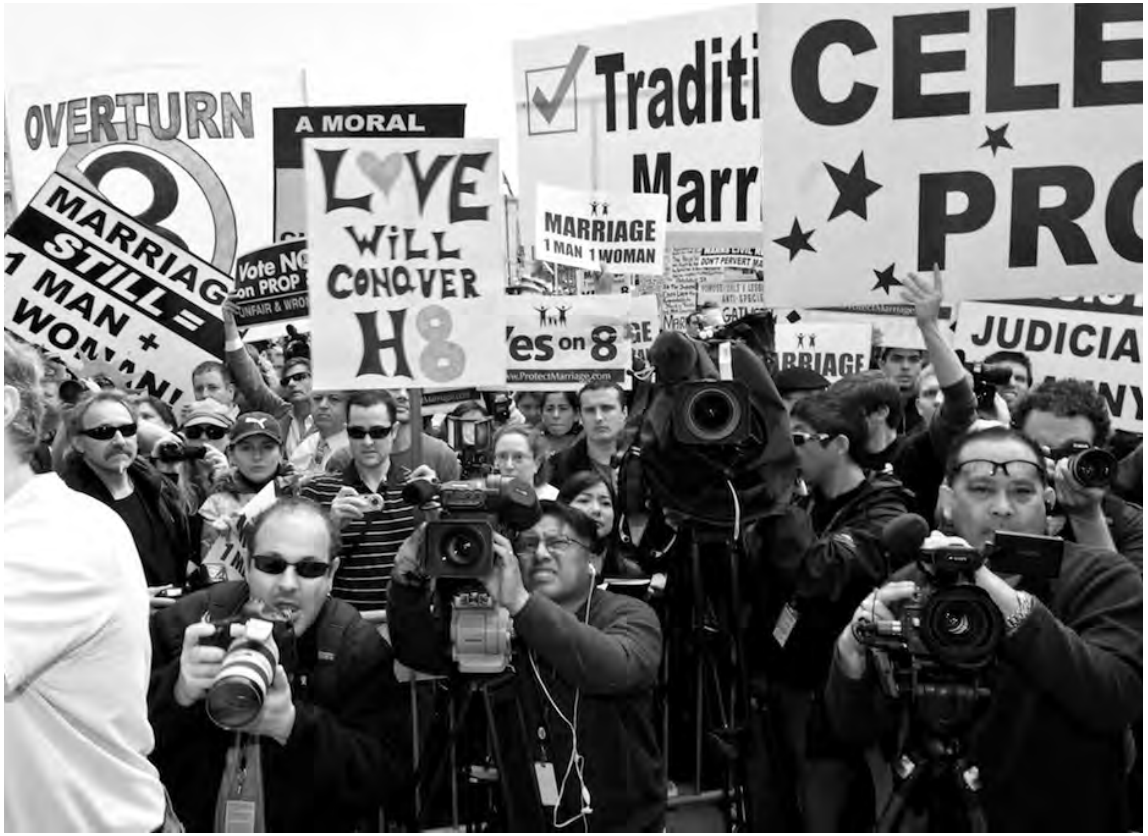
It would be nice if we could fix everything with one sweeping act—nice too if we could count on a bunch of lobbyists and lawyers in DC to take care of it for us so we could just get on with our lives.

But that isn't how change happens either. Change happens because attitudes begin to change. And that happens because people get laws against discrimination in cities and towns and create a public dialogue. It happens when they get their employers to adopt domestic partnership plans, and start conversations in the workplace.

It happens because LGBT people talk to their closest friends and neighbors, and tell them what it is like to be gay. When people truly understand how ordinary—sorry folks—LGBT people are, but how challenging discrimination makes their lives, they change their thinking. They become real allies. And that's how things change.

Passing a local law sounds like a lot of work. Having a conversation or two (or three) sounds easy. For most people, it turns out that it is actually easier to get the law passed. The ACLU is ready to help you with both. We've got step-by-step help on passing local laws and workplace polices. We've got a website that explains why conversations are so important and how to have them.

We can make it easy. But only you can do it. You want equality? Forget the federal cavalry. You can do this one yourself. In fact, you've got to.



Protesters and media gather outside the California Supreme Court during oral arguments in *Strauss v. Horton*.

Transitioning on the Job Protected Under Title VII

— BY PAUL CATES —

After being offered and accepting the job, Diane asked her future boss out to lunch to explain that she was starting to transition from male to female. The next day, Diane's future boss called to say that she had decided to rescind the offer.

AFTER RETIRING FROM THE MILITARY, Special Forces veteran Diane Schroer applied for a job as a terrorism researcher with the Library of Congress. She was looking for a position that would take advantage of the experience she gained in her 25-year military career in which she completed over 450 parachute jumps into some of the most dangerous places on Earth in the fight against terrorism. After 9/11, she was hand-picked to lead a classified national security operation.

Just beginning the transition process and still living as a man at the time, Diane submitted her application as Dave. After being offered and accepting the job, Diane asked her future boss out to lunch to explain that she was starting to transition from male to female and felt that it would be best for everyone if she started work as a female. The next day, Diane's future boss called to say that, after a "sleepless night," she had decided to rescind the offer. As soon as it became clear that Dave was about to become Diane, the Library of Congress willingly cast aside Diane's 25 years of experience fighting terrorism in favor of a less qualified candidate. (This may explain why we've made so little headway in the war on terrorism.)

As Diane has said, at first she was disappointed, but then she got angry. She had, after all, spent her entire life serving our country and was merely asking to be judged on her qualifications. Never one to give up without a fight, she contacted the ACLU, which filed a Title VII sex discrimination case on her behalf in federal court in DC.

The government never disputed the fact that Diane was offered and then refused the job after she came out as transgender. It claimed that it was perfectly legal to fire Diane for being transgender because there is no civil rights law protecting against transgender discrimination. It also came up with several other excuses to justify its actions. It claimed, because Diane is transgender, it would take too long for her to get the necessary security clearance to do the job. It claimed that her former military and counterterrorism contacts wouldn't respect a transgender person, and therefore, she

wouldn't be able to do the job. And perhaps most offensive of all, it claimed that because Diane was in the Special Forces, which only allows men to serve, members of Congress would know she is transgender and therefore wouldn't take her seriously.

Even before the trial began last August, that turned out to be a rather disingenuous argument when Diane was invited by House Education and Labor Committee's Subcommittee on Health, Employment, Labor and Pension to testify about transgender discrimination. On June 26, 2008, Diane became one of the first transgender people to testify before Congress, speaking about the discrimination she faced from the Library of Congress.

At trial before Judge James Robertson, LGBT Project lawyers presented a number of experts. They had to disprove the faulty excuses raised by the government and had to prove that laws barring sex discrimination also include gender identity discrimination.

Even during the trial, it became pretty clear from Judge Robertson's comments that he wasn't buying the government's flimsy excuses about why they changed their minds and refused to give Diane the job. He urged the lawyers to focus instead on the question of whether or not gender identity discrimination should be considered sex discrimination.

Ultimately, the court ruled that the Library was guilty of sex discrimination against Diane. In a decision that is sure to give employment lawyers everywhere pause when advising their clients about potential liability, the court compared the discrimination faced by Diane to religious based discrimination, saying, "Imagine that an employee is fired because she converts from Christianity to Judaism. Imagine too that her employer testified that he harbors no bias toward either Christians or Jews but only 'converts.' That would be a clear case of discrimination 'because of religion.' No court would take seriously the notion that 'converts' are not covered by the statute."

What's so great about this is that the court extends sex discrimination protections to people who are transitioning, which is when transgender people are probably most vulnerable in the workplace. But Judge Robertson didn't stop there. He also said that the Library of Congress was guilty of sex stereotyping, that the Library discriminated against Diane for failing to live up to traditional notions of what is male or female. In other words, the court said that anyone, including a transgender person, who is perceived as gender

Diane Schroer, whose job offer was rescinded after she told her new boss she was transitioning.

non-conforming and experiences discrimination because of that gender non-conformity is protected under Title VII.

It's too soon to gauge exactly how powerful this decision will be in ending transgender discrimination. It has already sent a loud and clear message to employers everywhere that companies can be sued and found liable for discriminating against transgender workers. While it isn't binding on other courts, it is a well-reasoned decision by a respected judge that will undoubtedly be respected by other courts, including other state courts considering whether to apply state sex discrimination laws to transgender people.

But as Congress is already well aware through the testimony of Diane and other transgender people, transgender discrimination is a real problem in the workplace, and the best way to end that discrimination is to pass a federal law prohibiting discrimination based on sexual orientation and gender identity.

Of course it's hard to overlook the way things played when leadership in the House decided to eliminate gender identity from the Employment Non-Discrimination Act (ENDA), before it passed last year. But a lot has changed since that vote and hopefully we've learned a few hard fought lessons. We also know that we are now dealing with a president who, unlike his predecessor who vowed to veto the bill, has pledged his support for civil rights legislation protecting against sexual orientation and gender identity discrimination. Meanwhile, we will continue our advocacy for transgender equality on all fronts—in the courts, in Congress, and in statehouses across the nation and in the court of public opinion.

Karissa Rothkopf, who is suing the state of Illinois for refusing to change the gender marker on her birth certificate because she had sex reassignment surgery abroad.

ADVOCATING FOR NEW LEGAL PROTECTIONS FOR TRANSGENDER PEOPLE

Federal: Helped put together first-ever Congressional hearings on discrimination against transgender Americans (before House Subcommittee on Health, Education, Labor and Pensions)

Federal: Worked behind the scenes to try to keep ENDA trans-inclusive

Connecticut: Worked in coalition to lobby for statewide bill prohibiting discrimination in employment, housing, and public accommodations based on gender identity or expression (pending)

District of Columbia: Worked for broad and effective implementing regulations to enforce provisions of Human Rights Act making discrimination against transgender persons unlawful

Illinois: Helped persuade the City of Chicago to adopt comprehensive policies for its homeless shelters to ensure a safe and supportive environment for clients regardless of sexual orientation or gender identity

Maryland: Advocated for bills to add gender identity to state anti-discrimination laws (unsuccessful)

Massachusetts: Worked in coalition to add gender identity and expression to protected class language in state nondiscrimination laws and laws against bias-motivated violence (unsuccessful)

Michigan: Successfully advocated for City of Detroit to amend its human rights ordinance to add protections for transgender people

Missouri: Worked successfully in coalition to add gender identity to Kansas City's non-discrimination ordinance

New York: Worked for passage of the Gender Expression Non-Discrimination Act (GENDA) (passed Assembly by wide margin but tabled in Senate committee)

Washington: Worked in coalition to help make the Washington Interscholastic Athletic Association the first in the nation to adopt sensitive and individualized rules about participation in athletics by transgender students

LITIGATING AGAINST DISCRIMINATION IN EMPLOYMENT, HOUSING, PUBLIC ACCOMMODATIONS

Nationwide: Published "Know Your Rights: Transgender People and the Law"

Arizona: Represented a transgender woman assaulted in state's largest homeless shelter when forced to use men's restroom; shelter has preliminarily agreed to new policy requiring clients to be housed according to their gender identity

District of Columbia: Won at trial against Library of Congress for denying a job to a transitioning Special Forces veteran; federal judge issued groundbreaking ruling that not hiring someone for changing genders is sex discrimination under federal law

District of Columbia: Represented transgender federal employee whose security clearance was revoked after transitioning

Missouri: Successfully persuaded the state Commission on Human Rights that a truck driver fired because of her gender identity could sue under existing state law prohibiting sex and disability discrimination; now representing aggrieved driver in suit against trucking company

New York: Representing Hispanic AIDS Forum, settled litigation against landlord over dispute that began when HAF's lease was not renewed because other tenants complained about use of the building's single-sex restrooms by HAF's transgender clients; as part of settlement, defendant agreed to make all reasonable accommodation for transgender individuals concerning restroom facilities

Tennessee: Filed sex discrimination lawsuit against Old Dominion Freight Lines for firing a truck driver for "impersonating a female" after she informed them that she was transitioning from male to female

Utah: Filed friend-of-the-court brief in 10th Circuit Court of Appeals on behalf of Utah bus driver fired for using the "wrong" bathroom (unsuccessful)

CHALLENGING BARRIERS TO OBTAINING ID DOCUMENTS

Illinois: Filed suit against the state on behalf of two women unable to change the gender marker on their birth certificates because they had sex reassignment surgery abroad

Michigan: Worked in coalition to get state officials to change their policy requiring proof of sex reassignment surgery for change of gender marker on one's birth certificate

Missouri: Represented M-to-F transgender woman in perjury criminal proceedings; client had received Missouri court judgment changing her name and gender but Nebraska refused to change the gender marker on her birth certificate; client and female partner then got marriage license and county prosecutor charged her with perjury; charges dropped on day of hearing

FIGHTING DENIAL OF TRANSGENDER-SPECIFIC HEALTH CARE

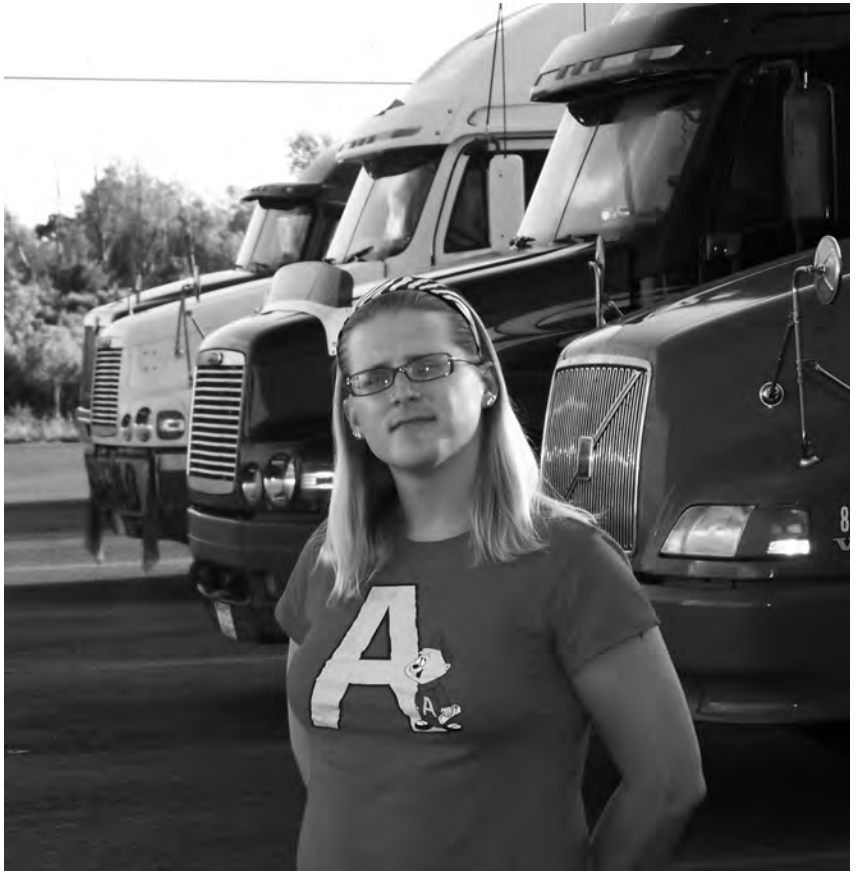
Idaho: Helped Native American transgender inmate receive hormone therapy for gender identity disorder

Michigan: Unsuccessfully represented transgender woman in effort to get Medicaid coverage of prescribed hormone therapy

Michigan: Worked in coalition to get state Medicaid officials to change their policy of denying coverage for gender identity disorder

New York: Filed friend-of-the-court brief in appeals court on behalf of teenager in foster care who sought sex reassignment surgery from the state (unsuccessful)

Wisconsin: Took case to trial in federal court challenge to new law barring state prisons from providing hormone therapy to inmates (court has yet to render decision)



Kaylee Seals, a transgender woman who sued her employer for sex discrimination after being fired for "impersonating a female."

Victory for Florida Family First Step to Ending Adoption Ban

— LESLIE COOPER —

> The court said the evidence shows that the ban "causes harm to the children it is meant to protect." Thus "the best interests of children are not preserved by prohibiting homosexual adoption."

ON NOVEMBER 25, a juvenile court judge granted our client Martin Gill's petition to adopt two young children he and his partner had been raising as foster parents for the past four years. In granting the petition, the judge ordered that the boys, known as John and James Doe in the court papers, be declared the legal children of Martin "now and forever" and be given their father's surname.

This would have been unremarkable but for the fact that Martin is gay and lives in Florida, where the law deems all gay people inherently unfit to be parents. Florida law declares: "No person eligible to adopt . . . may adopt if that person is a homosexual." In order for Martin to be able to adopt John and James, we would have to take on that statute. The ACLU had been down that road before.

In the early 1990's, the ACLU brought three challenges to this notorious law in Florida state court on behalf of gay and lesbian Floridians who were seeking to become adoptive parents. While the results at the trial courts were mixed, none of those cases resulted in an appellate court decision invalidating the statute. Only one of these cases made it to the Florida Supreme Court, which upheld the statute.

Then the ACLU met Steven Lofton and his family. Steven and his partner, Roger Croteau, had been long-term foster parents to three Florida children, at that point aged 11, 11 and 8. Steven and Roger, who were pediatric nurses, were asked to take care of these children when they tested positive for HIV as infants. Despite raising these children as their own for many years, they were unable to give them the sense of stability that comes with being adopted because of the Florida law. So in 1999, we tried again, this time turning to federal court and arguing that the law violated the federal constitution. The case was also joined by Wayne Smith and Daniel Skahen, who had also been long-term foster parents to two young children, and Doug Houghton, who had been the legal guardian of a child at the request of the boy's biological father years earlier.

In the Lofton case, the federal district court dismissed our claims before trial and a three-judge panel of the court of appeals affirmed in a shocking opinion that accepted as a sufficient justification for the law the "unprovable assumption" that children are best off with a married mother and father. It did not matter to the court that there was no evidence presented in the case to support the assumed superior parenting of heterosexual couples. Our request for review by the full court divided the court six to six, a heartbreaking one vote shy of the seven votes we needed for it to hear the case.

Shortly after the Lofton case concluded with the Supreme Court declining to take the case we got a call from Martin Gill. He called the ACLU because John and James, who had become bonded with Martin and his partner after years in their care, were about to become free for adoption. That meant, under Florida law, the state would have to seek a new family that would be eligible to adopt the boys. James was an infant when placed in Martin's home and this is the only family he has ever known. John was four at the time and had already suffered the loss of being separated from his biological family. He was so traumatized when he arrived in Martin's home that he didn't speak at all. He was depressed and distant for a long time. Just when he was finally overcoming that loss and beginning to bond with his new family, he could have to be uprooted once again. The thought that John would have to be put through the loss of another family was unbearable to Martin and his partner (who is using a pseudonym in this litigation to protect the privacy of his biological son, who shares his name). Martin asked the ACLU if there was anything we could do.

There were still some claims under the Florida Constitution that had not been decided by the Florida Supreme Court and we were committed to doing everything possible to do away with this destructive law. And of course we were moved by Martin's story. So we filed a petition to adopt on his behalf in Florida juvenile court. We argued that the gay exclusion cannot be a basis to deny Martin's petition because that law is unconstitutional. John and James were represented by separate counsel who argued that the law violates their constitutional rights as well.

During the course of the litigation, the Department of Children and Families (DCF) agreed that Martin and his partner are providing a good home for John and James, that this placement is in their best interests, and that the boys are bonded to their foster parents. Indeed, DCF said it would have approved Martin's application to adopt John and James but for the statute prohibiting it from doing so.

Martin Gill with ACLU of Florida attorney Rob Rosenwald.

A representative from DCF testified that gay people and heterosexuals make equally good parents and that the exclusion does not benefit children in any way, and in fact, eliminating the ban would serve children's interests. If the ban were lifted, she testified, more children could be adopted out of foster care.

Despite these admissions by DCF, the agency responsible for child welfare in Florida, the State's lawyers put on expert witnesses who offered an outlandish menu of justifications for the exclusion. They argued primarily that the exclusion is warranted because gay people are prone to problems like psychiatric disorders, drug abuse, and unstable relationships. They also asserted that gay parents cause their children to be gay and that gay people should be excluded from adopting because society is prejudiced against them and their children might be exposed to that prejudice.

In response, we presented the testimony of leading experts in the fields of developmental psychology, child abuse, epidemiology, couple relationships, human sexuality and child welfare to explain the relevant scientific research and that the opposing experts' arguments have no empirical support.

The court determined based on the evidence presented that children of gay parents do just as well as their peers and that this is accepted as a matter of consensus in the relevant professional fields. Given the quantity and reliability of the research, the court deemed the issue of the suitability of gay parents "far beyond dispute." The court also rejected the assertion that children's sexual orientation is determined by the sexual orientation of their parents. And it found that children of gay parents are hardly the only children who may be exposed to prejudice because their families are different than others. The court also said the scientific evidence showed that sexual orientation no more correlates with psychiatric disorders and the other problems asserted by the State's experts than other demographic characteristics such as race and socioeconomic status. Finally, the court said, the evidence shows that, in fact, the ban "causes harm to the children it is meant to protect" by depriving some children of permanency with their caregivers and leaving more children with no family at all. Thus, the court concluded, "the best interests of children are not preserved by prohibiting homosexual adoption."

Based on these facts, the court struck down the exclusion as a violation of Martin and the children's constitutional right to equal protection as well as the children's right to permanency and granted the petition to adopt.

The State has appealed the juvenile court's decision. But we are confident that after fighting this terrible law for nearly 20 years, it is finally falling once and for all. The juvenile court determined based on the scientific evidence that every justification for the law put forth by the State is factually untrue and that the law is detrimental to children in the foster care system. That means the State can only prevail if it can convince the appellate courts that the truth about gay parent families and the law's damaging effects on children is beside the point. We have faith that the courts will rule based on the evidence.

Florida's ban on adoption by gay people was never actually about protecting children. It was enacted in 1977 as part of Anita Bryant's infamous campaign against the gay community after Miami Dade's historic enactment of a sexual orientation anti-discrimination ordinance. Hopefully a victory in this case in Florida's appellate courts will not only get rid of the Florida law but will also put an end to politicians everywhere allowing their desire to condemn gay people to trump the interests of children who desperately need families. With proposals to restrict adoption and fostering by gay people continuing to be introduced in state legislatures, putting the nail in the coffin of Florida's notorious law can't come too soon.

FOSTER PARENTING AND ADOPTION

LITIGATED AGAINST ANTI-GAY ADOPTION AND FOSTER PARENTING BANS AND DECISIONS

Arkansas: Filed challenge to law enacted by the voters in November 2008 that bans unmarried couples from serving as adoptive or foster parents

Florida: Won trial court ruling overturning Florida's ban on adoption by gay people; successfully used this fifth ACLU challenge to the ban to get out our twin messages that (1) the evidence shows that children raised by gay people do just as well as those raised by heterosexuals, and (2) this ban is harmful to at-risk kids

Georgia: Successfully represented lesbian mother against criminal contempt charges filed against her by judge who had denied her petition to adopt a close friend's daughter

Michigan: Represented co-parent of three Illinois-adopted daughters in custody case; family court ruled that neither parent could enforce her rights as parent in Michigan because that would violate the Michigan Constitution's amendment that recognizes only unions between a man and a woman; on appeal

Texas: Lesbian couple who were foster parents seeking to adopt five siblings, some with developmental disorders, were before a judge who ruled that the siblings should be "re-broadcasted" as adoptable children for other potential families; we helped transfer case to new judge in another county who approved the adoption

FOUGHT AGAINST DISCRIMINATORY PARENTING MEASURES IN STATE LEGISLATURES AND ELECTIONS

Arkansas: Worked with local organizers in unsuccessful effort to defeat ballot initiative that bans unmarried couples from serving as adoptive or foster parents

Tennessee: Successfully lobbied against proposed bill to ban adoption by LGBT couples

CUSTODY & VISITATION

Tennessee: Challenged local court rule that all divorce agreements involving children include the following provision: "Any paramour of either parent to whom a parent is not legally married is not to spend the night in the presence of or in the same residence with any minor child of the parties." (pending)

DE FACTO PARENTHOOD

Maryland: Filed friend-of-the-court brief before the state high court arguing for the non-adoptive parent's bid for recognition as a "parent-in-fact" in a child custody dispute between lesbian former partners (unsuccessful but considering legislative fix)

Missouri: Filed friend-of-the-court brief before Court of Appeals, arguing for the right of a lesbian to be treated as a parent in a custody case involving her former partner's biological child

Montana: Represented non-adoptive lesbian parent in custody dispute over two children, eight and four, adopted by her former partner when they were a couple; District Court confirmed the rights of the children to maintain relationships with both parents after trial in which expert testimony, for the first time in a same-sex de facto parenting case, was introduced on the significance of dual parenting to children's development

Virginia: Represented lesbian non-biological mother seeking visitation with child she raised jointly with her former partner; Court of Appeals refused to recognize her parental rights

Martin Gill with John and James, who he is trying to adopt.

SECOND-PARENT ADOPTIONS

Maine: Worked with GLAD on *amicus* strategy for case seeking joint adoption rights for unmarried couples; helped persuade Maine Supreme Judicial Court to grant joint adoption rights

Michigan: Worked to pass bill making it clear that two unmarried persons can jointly adopt children (and thus specifically allowing for second-parent adoptions) (pending)

Nebraska: Unsuccessfully lobbied for legislation to enable second-parent adoptions

Nevada: Worked with child welfare professionals on legislation to permit second-parent adoptions

North Carolina: Helped North Carolina State Senator Julia Boseman in her case for joint custody of her adopted son with her ex-partner, his biological mother; helped persuade ex-partner to drop class action effort to invalidate all second-parent adoptions by same-sex couples; now assisting Boseman against ex-partner's efforts to invalidate her second-parent adoption

Iowa and Vermont: The Politics of It

Most Americans believe that marriage for same-sex couples will come some day, and deep in their hearts know that it really is a simple matter of fairness and equal treatment.

— MATT COLES —

WITHIN A WEEK, the Iowa Supreme Court decided that it is unconstitutional not to let same-sex couples marry, and the Vermont legislature voted to let same-sex couples marry. Together, these two events are a much needed shot in the arm for marriage.

Iowa is the first win in a flat state without an ocean view. And the decision was unanimous. Vermont is the first time a state legislature (as opposed to a court) has opened marriage, and it did it by a stunning veto override.

Iowa and Vermont don't erase the damage from losing Proposition 8 in California. They don't have either the cultural or economic influence that the Golden State has. Still, there's nothing like winning big to put the wind back in your sails.

Where the marriage movement heads now, though, is complicated. Iowa and Vermont will not be the start of same-sex marriage all over the country because that simply isn't possible.

Winning marriage in six states has been politically expensive; in getting it, we also got amendments to state constitutions that block marriage in 29 states. There are just two ways to get marriage now in those 29 states. First, you could go to the voters to get the amendments repealed. That's a very costly process, and one not likely to work in many of the states with amendments (like Alabama and Mississippi).

You could instead go to the federal courts, and ask them to rule that the state constitutional amendments violate the federal constitution. But that's not a very good bet. A few years ago, the ACLU and Lambda Legal sued to set aside the most egregious amendment, Nebraska's (it bans every form of relationship recognition for same-sex couples, and none for heterosexuals). We lost, in a moderate federal appeals court.

Moreover, any federal case in which we win will surely wind up in the Supreme Court. Winning there is a long shot anytime soon. As I have explained before, losing could prevent us from

winning state cases and might even hurt us in cases about parenting, schools and jobs.

That means that the landscape for change right now is 21 states, not 50. Six of those of course already have marriage or soon will. Six more are states like Pennsylvania and Indiana, which don't even have civil rights laws banning sexual orientation discrimination. They're unlikely to move to marriage anytime soon. In a couple, like Wyoming and North Carolina, any progress on marriage seems a long way off. So the immediate playing field is more like nine states.

Some of those nine states are ready for marriage, or could be soon. We should have several additional marriage states over the next few years. At some point though, if we are going to get marriage in America, we're going to need to do something about those state constitutional amendments. There are three things we can do.

First, in a couple of states like California and Oregon, we probably can get the voters to repeal constitutional amendments in a few years. But we have to be careful, particularly in California. A second loss there would be very damaging to the movement, both in terms of the resources it would consume and the extent to which it would discourage our community and our allies. We should go back to the ballot when we can win.

Second, in some of the other amendment states we can lay the groundwork for future repeal by getting either civil unions or domestic partnerships now. But in most of the amendment states, even that isn't possible. Of the 29 constitutional amendments, 19 also ban anything similar to marriage; some ban any recognition. Outright repeal isn't likely in this third group of states in the near term. In some, we could probably get partial repeal, allowing civil unions. But doing a repeal that doesn't allow marriage may be deeply unsatisfactory to many in our own community.

It would be nice if there were an easy way to get rid of these amendments, or if we could get marriage despite them. But there isn't. Our work is going to have to include some repeals, some fights for domestic partnership and civil union instead of marriage, and likely some fights for partial repeal.

Iowa and Vermont make this prospect a little less daunting than it was just a few months ago. Most Americans believe that marriage for same-sex couples will come some day, and deep in their hearts know that it really is a simple matter of fairness and equal treatment. Because both Vermont and Iowa are so politically eloquent—such strong wins—they give us the opportunity to tap into those feelings.

In the states that are ready for marriage, we should take the opportunity these wins have given us to press ahead and press hard. In the other states, this is the moment to lay the groundwork.

The hardest thing about laying that groundwork is the truth about the best way to do it. The best way to change people's minds is to talk to them about gay people. The best way is to talk not about abstract issues, but about the ordinary lives of gay people, and the way being gay makes life more challenging.

That's frustrating because it isn't easy to have conversations like that. But the Iowa and Vermont give us all a pretty fabulous conversational hook. And if the bad news is that no outside force is going to do this for us quickly, the good news is that, to a great extent, we have the power to make it happen ourselves.

MARRIAGE

LITIGATED MARRIAGE CASES

California: Before state supreme court, won marriage for same-sex couples and constitutional protection for gay people as highly vulnerable minority, as part of legal coalition

California: With legal allies, filed challenge to Proposition 8 before state high court and defense of 18,000 same-sex married couples

Connecticut: With GLAD, won marriage for gay couples in state high court

Iowa: Filed *amicus* brief in marriage litigation before state high court

New York: Successfully pursued groundbreaking cases compelling the state to recognize same-sex marriages validly entered into elsewhere

Rhode Island: Filed *amicus* brief in supreme court, arguing that gay couple married in Massachusetts should be able to get a divorce in Rhode Island; lost by three-to-two margin

FOUGHT AGAINST DISCRIMINATORY MARRIAGE CONSTITUTIONAL AMENDMENTS AND SIMILAR MEASURES

Arizona: Worked within Arizona LGBT alliance against anti-gay marriage ballot initiative

California: Raised more than $2.5 million for No on 8 campaign; did extensive field organizing; with allies, litigated successfully over official title and summary of Prop 8

Delaware: Succeeded in stopping legislation providing for a constitutional amendment barring same-sex marriages and any status similar to marriage

Florida: Raised about $215,000 for fight against Amendment 2; did field organizing; found couples with compelling stories for communications effort

Iowa: Lobbied legislature to prevent anti-gay marriage constitutional amendment from passing

Maine: Helped turn back Christian Civic League's petition drive for legislation to ban marriage, civil unions, domestic partnerships, adoption, gay student groups, and civil rights protections for LGBT Mainers.

Michigan: Before state high court, lost challenge to Michigan's anti-gay marriage constitutional amendment which has been used against domestic partnerships

Oregon: Filed *amicus* brief in Court of Appeals, seeking to invalidate marriage constitutional amendment (unsuccessful)

Pennsylvania: Succeeded in tabling bill providing for constitutional amendment banning same-sex marriages and other legal recognition; organized phone banks, regional educational events, rallies, and legislative meetings

Puerto Rico: Worked in coalition in successful effort to defeat legislative attempt for a referendum on marriage

ORGANIZED AND ADVOCATED FOR MARRIAGE BILLS AND OTHER RELATED LEGISLATION

Maine: Launched field organizing and public education campaign for marriage equality in coalition with Equality Maine, Maine Women's Lobby, and GLAD

Maryland: Developed grassroots outreach and built legislative support for marriage equality legislation; teamed with civil rights activists to launch Maryland Black Family Alliance, a group of straight and supportive African-American leaders

Massachusetts: Helped repeal 1913 law which had been used to bar out-of-state gay couples from getting married in this state

New Jersey: Testified before legislative commission on failures of civil union law

New York: Did grassroots organizing and legislative visits in critical districts for Marriage Fairness Act

Rhode Island: Worked for passage of legislation providing for divorce for gay couples married elsewhere; got removed from state budget authorization to apply for federal funding for "healthy" marriage programs that often have decidedly unhealthy perspectives on marriage

Vermont: Helped persuade Commission on Family Recognition and Protection to issue report advising that Vermont is ready to make transition from civil unions to marriage

CIVIL UNIONS

ADVOCATED FOR EQUAL TREATMENT OF COUPLES IN CIVIL UNIONS

Connecticut: Persuaded H & R Block (nationwide) to charge the same tax preparation fees for civil union couples as it does for married couples

Idaho/New Jersey: Championed the plight of Konica Minolta employee whose New Jersey-registered domestic partner lost his health coverage when employee was transferred to Idaho

New Jersey: Represented two lesbian couples whose applications to rent an outdoor pavilion, often used for weddings, for their civil union ceremonies were rejected; helped stop pavilion's attempt to thwart state investigation and successfully lobbied to discontinue pavilion's tax-free status

Vermont/Virginia: Helped persuade Virginia Supreme Court to rule that the state must honor a child custody order from a Vermont court issued after a civil union breakup

WORKED FOR PASSAGE OF CIVIL UNION LEGISLATION

Hawaii: Did not succeed but bill was revised this year

Illinois: Organized in key legislative districts; lobbied House members; provided legal analysis to legislators (bill pending)

New Mexico: Did extensive field organizing and public education in support of comprehensive statewide domestic partnership legislation

Washington: Bill granting to gay couples over 170 rights and responsibilities once reserved for married couples passed and signed

DOMESTIC PARTNERSHIPS

ADVOCATED/LITIGATED FOR EQUAL TREATMENT OF DOMESTIC PARTNERS

Georgia: Got Commissioner of Insurance to back down from his decision to reject the application of a gay man for health insurance through a state plan to help the uninsured because his previous health insurance coverage was as a domestic partner

Minnesota: Filed *amicus* brief in appellate court on case against a health club that has refused to extend family discount policy to lesbian couple

New Mexico: Continued litigating case against state for health benefits for domestic partners of state retirees

Photo Essay

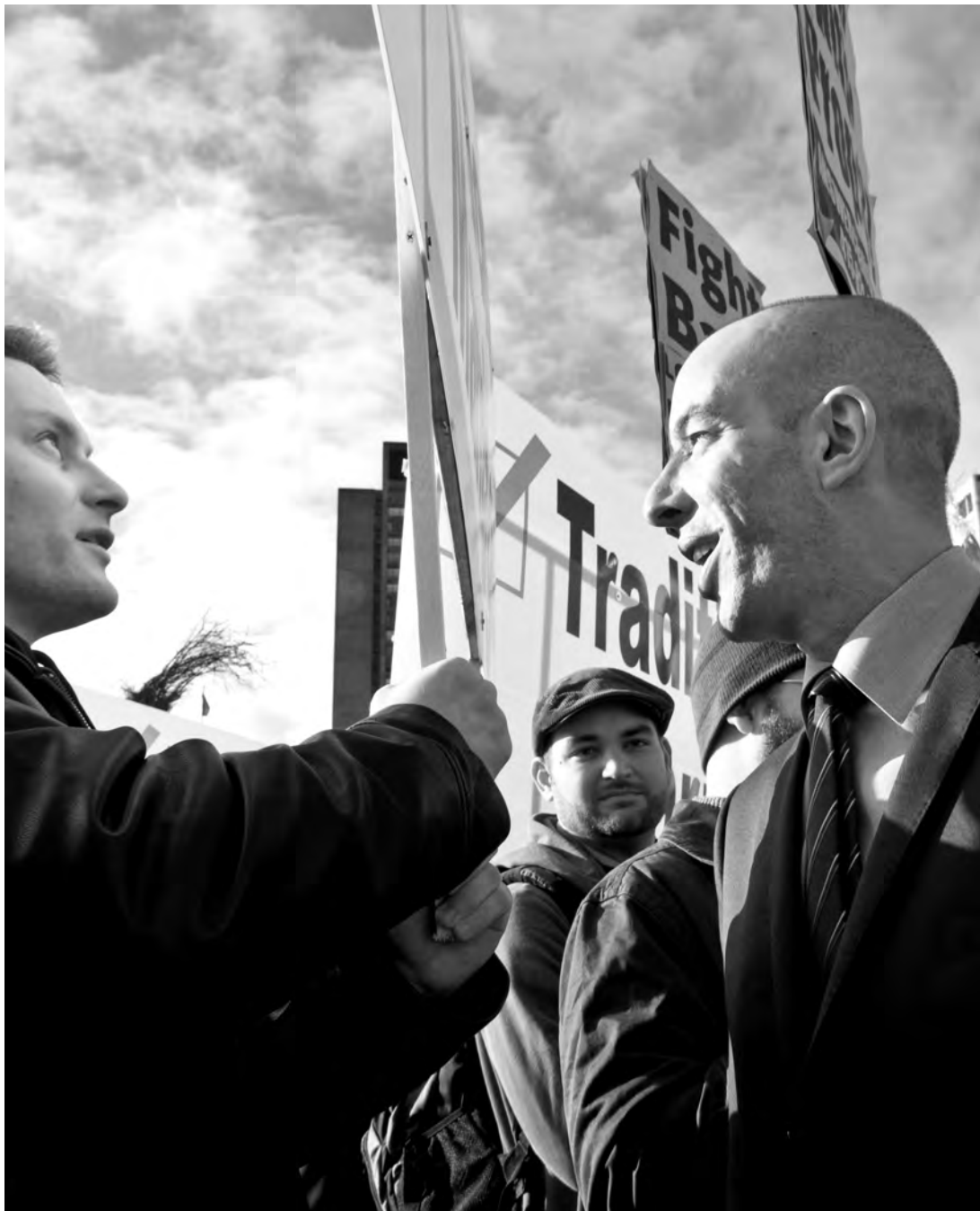
— MICHAEL WOOLSEY —

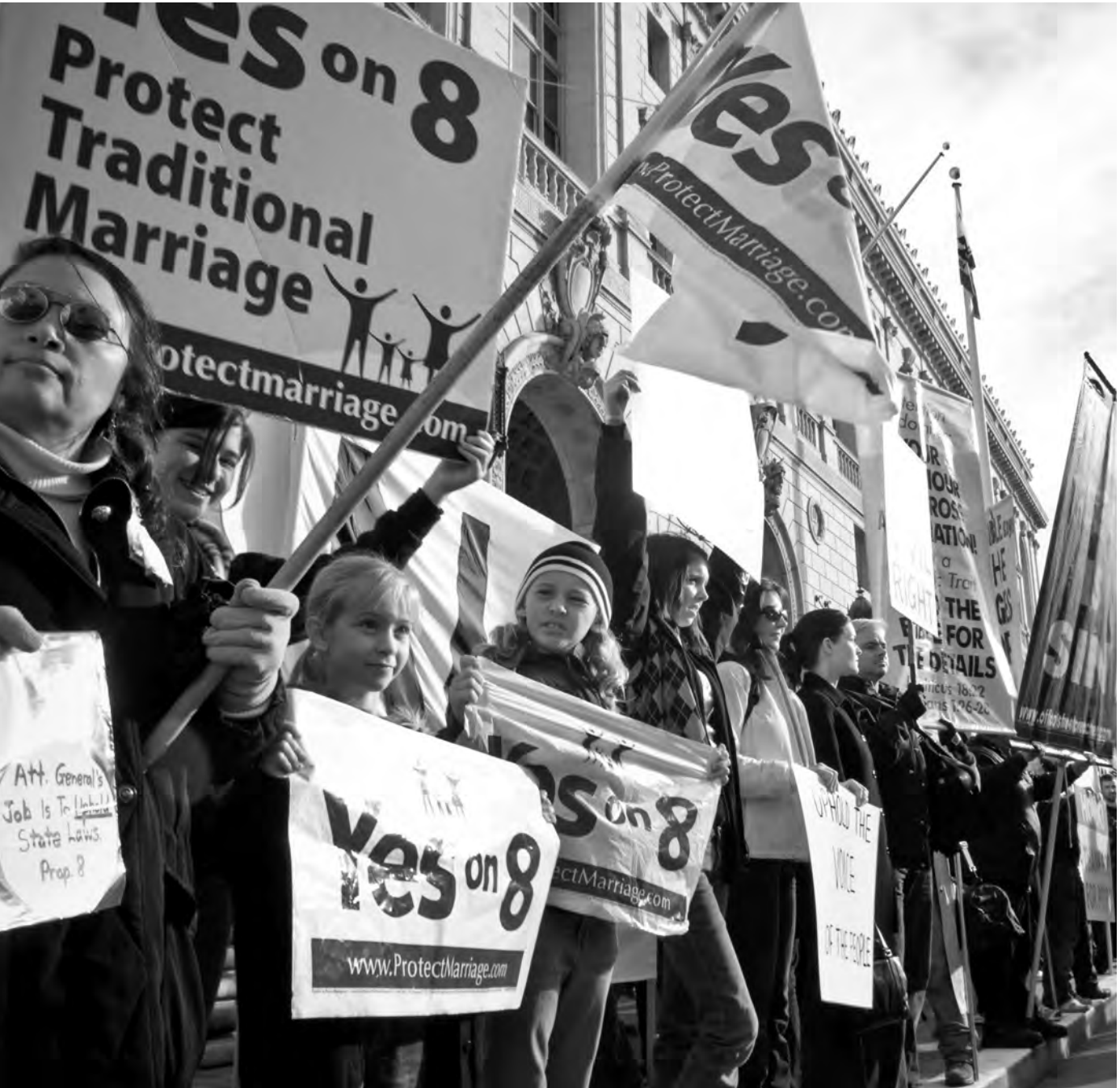
Michael Woolsey, campaign associate at the ACLU of Northern California, has been photographing and documenting events since he was 13 years old. Over the last two years, he's documented the victories and defeats in the movement for marriage in California.

"I have a long history of activism in the LGBT community and when I learned that the decision on In re: Marriage Cases *came down in May 2008, I grabbed my camera and rushed to the California Supreme Court to document what I felt was going to be a historic moment for the LGBT community. I was so moved by my experience that day and inspired by what I saw in my photographs, I felt compelled to continue documenting the marriage equality issue as it played out through same-sex weddings, the Prop 8 ballot initiative and the court case,* Strauss v. Horton. *The photos within these pages were taken within the period from May 2008 through the oral arguments in February 2009. These photos and the impulse behind them were a natural fit within the ACLU's communication strategy and my own desire to capture and to put a face on the issue."*

— Michael Woolsey

The following pages feature Michael's powerful images of the California marriage journey.

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Yes on 8
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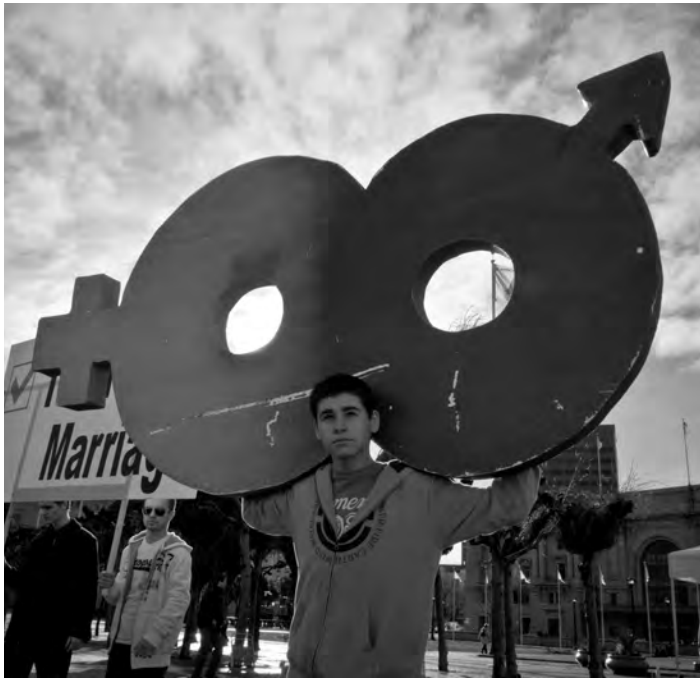

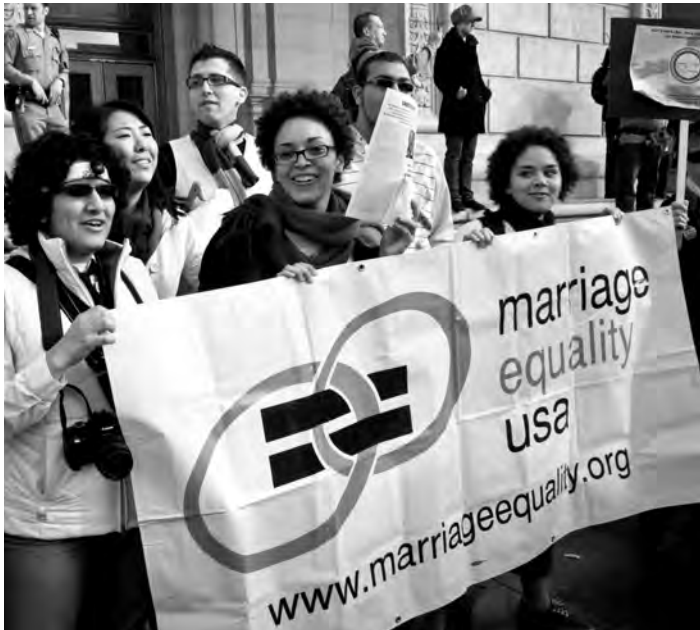
marriage
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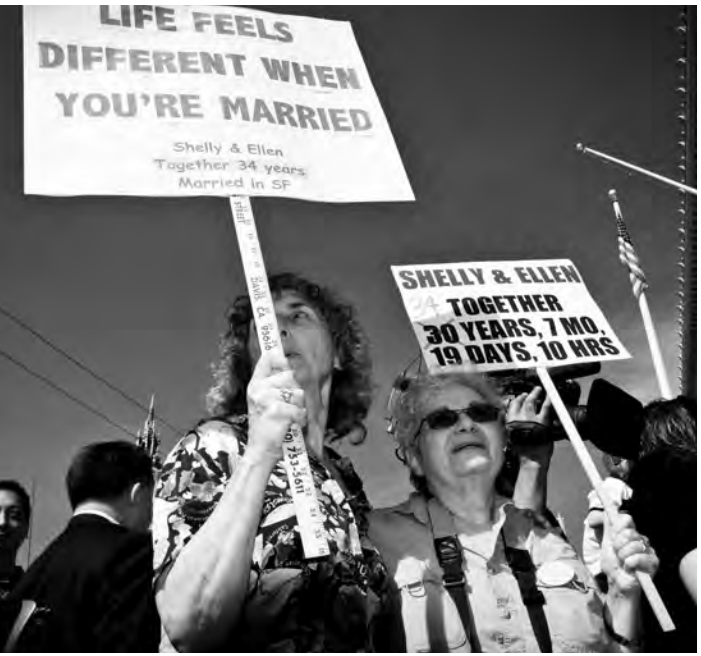
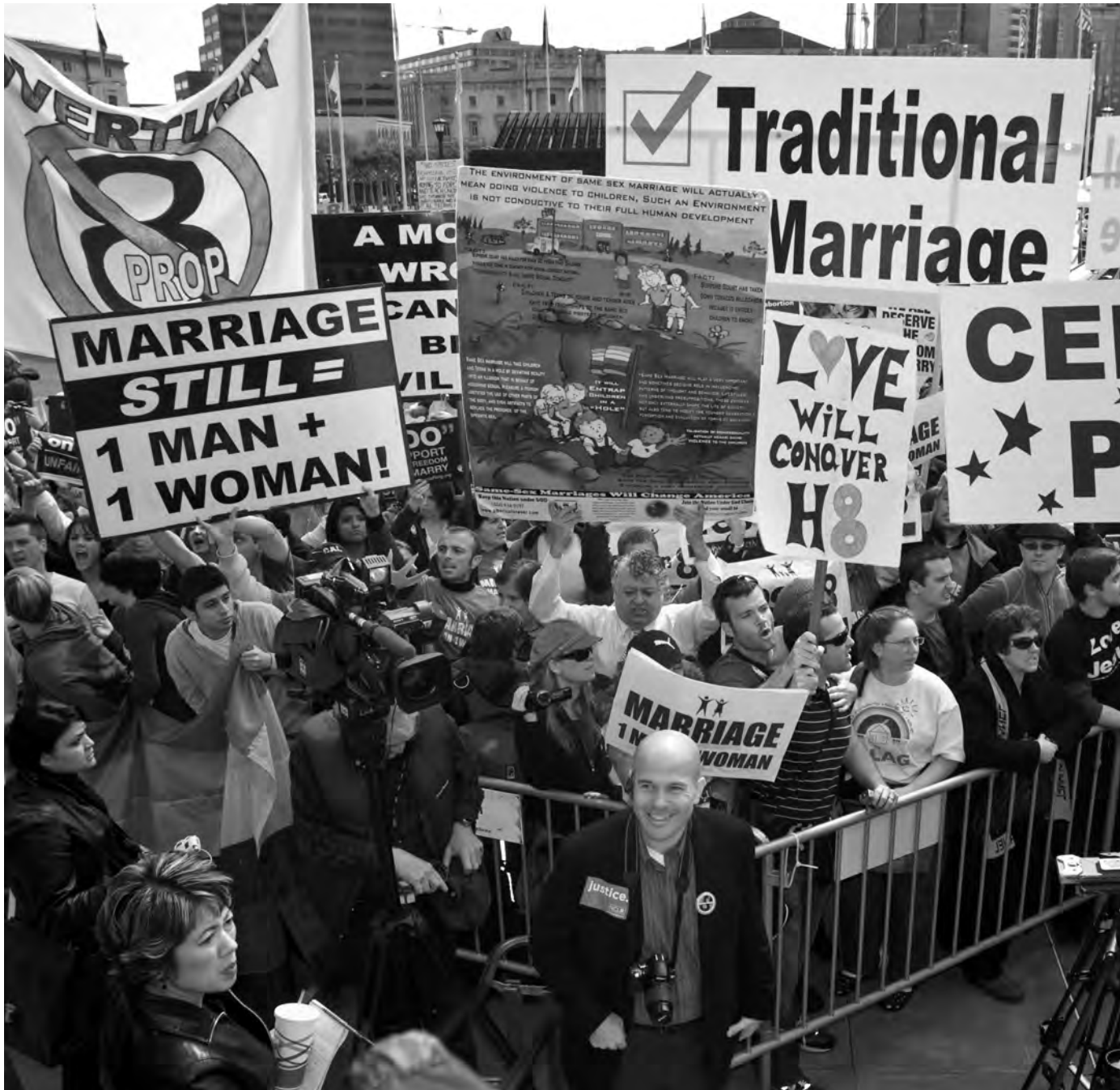

LIFE FEELS DIFFERENT WHEN YOU'RE MARRIED
Shelly & Ellen
Together 34 years
Married in SF
SHELLY & ELLEN
TOGETHER
30 YEARS, 7 MO.
19 DAYS, 10 HRS


PROP
MARRIAGE
STILL =
1 MAN +
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Traditional
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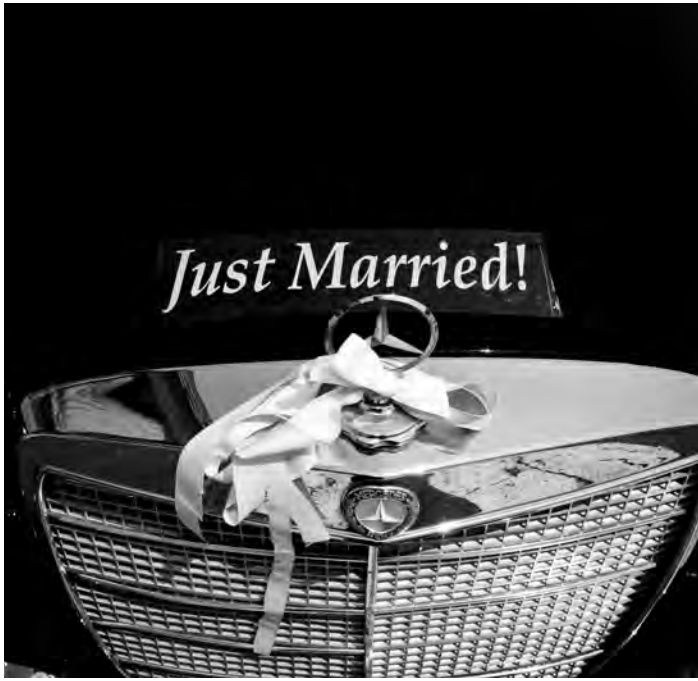
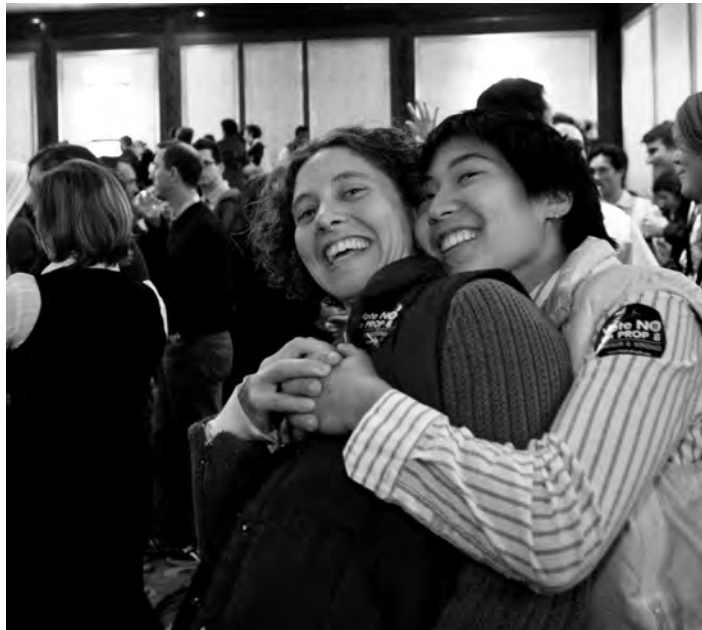
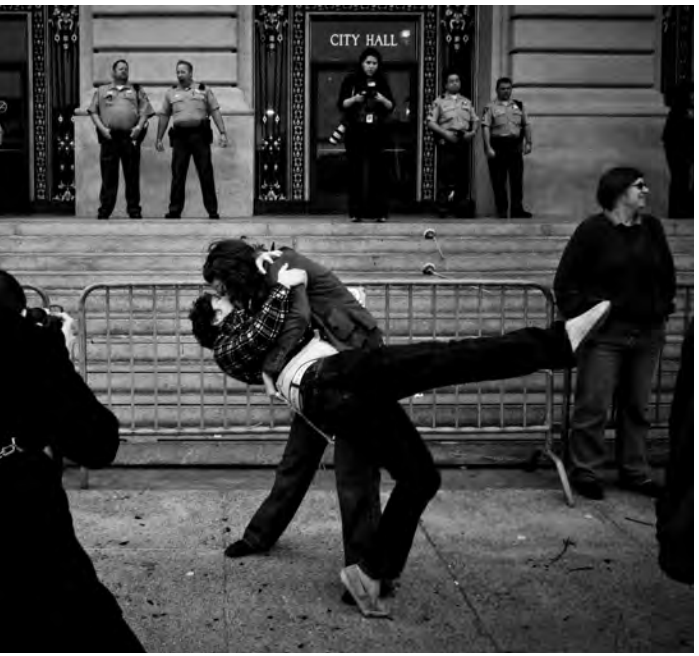
Vote NO
on PROP 8
UNFAIR & WRONG


Just Married!

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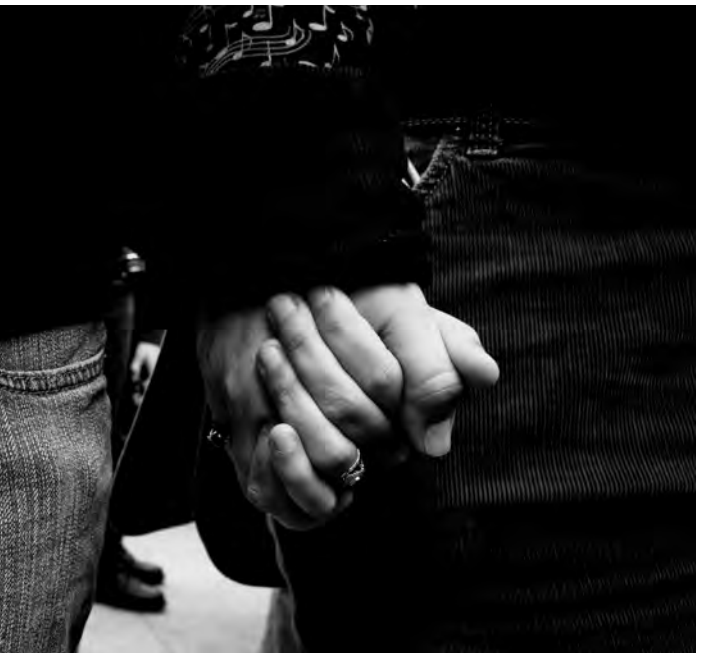
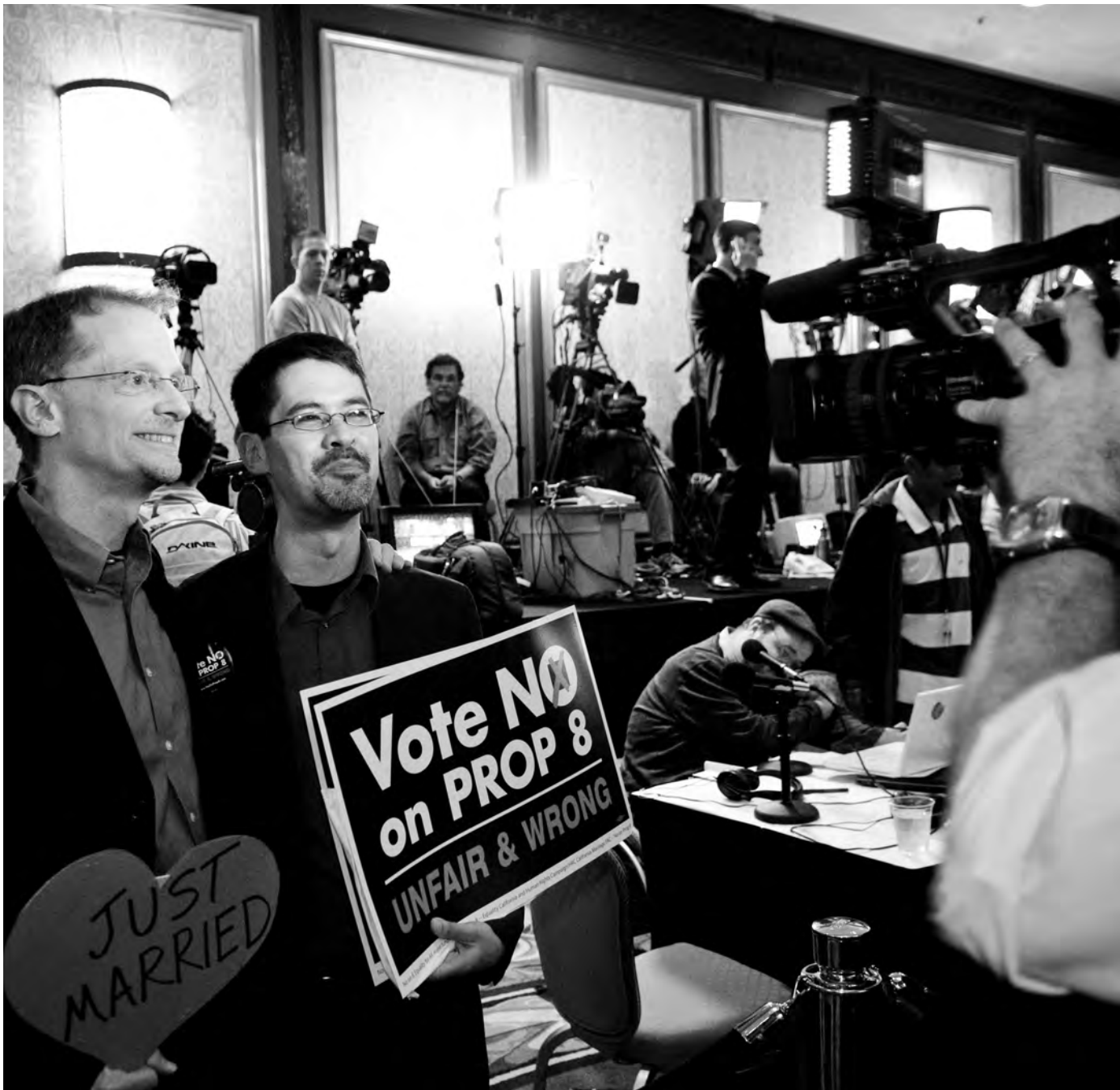



Vote NO
on PROP 8
UNFAIR & WRONG
JUST
MARRIED

The Kids Are Alright
(No Matter What Our Opponents Say)

— CHRIS HAMPTON —

During a meeting of the Ambridge school board, the vice president repeatedly referred to the GSA as a "sex club." When two other members tried to correct his characterization of the club, he replied, "Okay, the faggots."

WHEN A GROUP OF STUDENTS at South Rowan High School in North Carolina first approached school officials about forming a gay-straight alliance club in 2006, they knew they were in for an uphill battle. Rowan County is a very conservative area and home of Operation Save America (formerly and more notoriously known as Operation Rescue). Operation Save America waged a campaign of intimidation against the students, posting photos of students leaving an off-campus GSA meeting on its website and arranging to have as many as 700 people show up at a school board meeting in August of 2006 where the club was to be discussed. At that meeting, the school board voted unanimously to ban "sex-based" student clubs and stated that the gay-straight alliance therefore would not be allowed.

Students trying to start GSAs or just talk about gay rights topics with their classmates often run up against the type of rhetoric seen in Rowan County. The portrayal of GSAs as "sex clubs" and the demonization of the students who want to start the clubs is a longstanding tactic of anti-gay forces.

When students in Ambridge, Pennsylvania, started a GSA at their school a few months later, they got a taste of this treatment as well. During a discussion about the club at meeting of the Ambridge school board, the board's vice president repeatedly referred to the GSA as a "sex club." When two other board members tried to correct his characterization of the club, he replied, "Okay, the faggots."

In early 2008, Ken Hutcherson, an evangelical minister in Snoqualmie, Washington, raised the alarm in the local media about the gay-straight alliance at Mount Si High School. Leading about 100 people in a protest against the school's GSA, Hutcherson complained vociferously about a poster advertising the weekly meetings of the GSA that featured silhouettes of three couples (one straight, one that was two boys, and one that was two girls) hugging in front of a rainbow.

"Why are we promoting a sex club?" proclaimed Hutcherson. "I mean, that's what it is."

Then in May, Eddie Walker, the principal of Irmo High School in South Carolina, announced his resignation after the superintendent told Walker, who had been stonewalling on the GSA's application all year, that he must comply with federal law and allow the club to start meeting. "The formation of this club conflicts with my professional beliefs in that we do not have other clubs at Irmo High School based on sexual orientation, sexual preference, or sexual activity," wrote Walker in a letter he sent out to hundreds of students, parents, and staff. "In fact our sex education curriculum is abstinence based. I feel the formation of a Gay-Straight Alliance Club at Irmo High school implies that students joining the club will have chosen to or will choose to engage in sexual activity with members of the same sex, opposite sex, or members of both sexes." Walker went on to say that he would leave the district at the end of his contract after the 2008-2009 school year.

Local LGBT activists and the members of the Irmo High School GSA felt it was a disingenuous move on Walker's part, calculated to paint himself as a victim and whip up resentment and anger towards the GSA, and they say it worked. Dozens of pro-Walker protestors showed up at the next school board meeting, and local papers were flooded with letters to the editor defending Walker's actions and blasting the GSA. GSA members reported being harassed by other students who were angry about Walker's resignation. Fortunately, this school year things have calmed down, according to GSA members. The club is still meeting. Interestingly, Walker's "principled" stand didn't last much longer than the public outcry—in December, a district spokesman told a reporter that Walker had sent a letter to the interim superindendent saying that he wants to stay.

At the ACLU, we're old hands at defending the right of students to form GSA clubs under the Equal Access Act. With three recent victories in Florida, we're sharpening our skills at dealing with the overly-sexualized portrayal of GSAs by antigay opposition forces.

In Ponce de Leon, Florida, school officials responded to a lesbian student's harassment complaint not by addressing the harassment but instead by intimidating and censoring students for things like writing "gay pride" on their notebooks or wearing rainbow-themed clothing. Representing Heather Gillman, a straight student who wanted to stand up for her LGBT friends, we sued. After a two-day trial in which the principal testified that he believed clothing or stickers featuring rainbows would make students automatically picture gay people having sex, a federal judge ruled that the school had violated students' First Amendment rights.

The ACLU also handled two gay-straight alliance club cases, both also in Florida, where school officials tried to paint innocent club activities as inappropriately sexual.

In Okeechobee, Florida, attorneys for the school board claimed that the club was denied access because it is a "sex-based" club, and that allowing it to meet would be disruptive and harmful to children at the school. The school also claimed that allowing a "sex-based" club to meet would violate the school's abstinence-only education policy. Fortunately, the court disagreed, granting a preliminary injunction ordering the school board to grant access to the GSA on equal terms with all other clubs. The judge, in a first of its kind decision, ruled that a GSA is not, by definition, a "sex-based club" and that it does nothing to interfere with the district's abstinence education policy.

And in Yulee, the school's legal team argued that using the word "gay" in the name of the club would violate the district's abstinence only policy. A federal judge dismissed this claim, noting that the district's argument "strains logic," and said the school can't require the students to change the name of the group as a condition to recognition.

It's clear that portraying LGBT teenagers as somehow more promiscuous or sexually inappropriate than heterosexual youth is a tactic our opponents are still testing. We at the ACLU stand ready to prove their dirty minds wrong when they do.

RECOGNITION OF GAY STRAIGHT ALLIANCES (GSA)

Florida: Successfully represented students seeking to form GSA at Okeechobee High School; ending fiercely-fought litigation, federal district judge disagreed with school's contention that GSAs interfere with "abstinence-only" policies and, in a legal first, ordered schools to provide for well-being of gay students

Illinois: Persuaded school board to recognize GSA at Hononegah High School in Rockton

Minnesota: Won ruling from federal appeals court ordering Maple Grove High School in Osseo to give its LGBT student club the same access to school facilities and resources as other clubs; used case to persuade Anoka Hennepin School District, the largest in the state, to treat all student clubs equally

Nebraska: Successfully represented students at Bellevue East High School in Bellevue who were denied permission to form GSA

New Mexico: Successfully advocated before Farmington Municipal School Board against ban on all extracurricular school clubs, proposed in order to prevent GSA from forming

North Carolina: Persuaded principal of Southwest Edgecombe High School in Pinetops to allow GSA; also got same principal to remove from lesbian student's record a disciplinary write-up for kissing another girl at a football game

Oklahoma: Got school board to allow GSA to form over principal's objections

Pennsylvania: With youth and LGBT groups, formed Youth Advocacy and Rights Project to empower and support Philadelphia-area GSAs

South Carolina: Persuaded high school in Irmo to recognize GSA

West Virginia: Challenged decision of Musselman High School in Inwood not to allow GSA (unsuccessful)

DISCRIMINATION/HARASSMENT OF LGBT STUDENTS

CHALLENGING AND PREVENTING DISCRIMINATION AND HARASSMENT

Alaska: Helped transgender student get permission to use faculty unisex bathroom on ongoing basis

California: Filed friend-of-the-court brief in opposition to school district's appeal of $300,000 jury verdict awarded to two LGBT students at Poway High School, near San Diego, for prolonged harassment they suffered from other students (pending)

California: Represented Lake County School District student challenging years of harassment based on his sexual orientation and gender identity; resulted in district-wide policies against discrimination and programs to implement them

Illinois: Negotiated agreement allowing transgender girl to follow girl's dress code at school; student had previously been forced to remove make-up and banned from wearing "too feminine" clothes

Kentucky: After school officials ignored intimidation of GSA meetings at Ohio County High School in Hartford, demanded and got improved security measures

Kentucky: In aftermath to successful suit to protect LGBT students at Boyd County High School, participated in federal appellate case balancing school safety concerns with First Amendment rights

Louisiana: Worked with Shreveport mother to persuade high school officials to allow her transgender son to use male faculty restroom

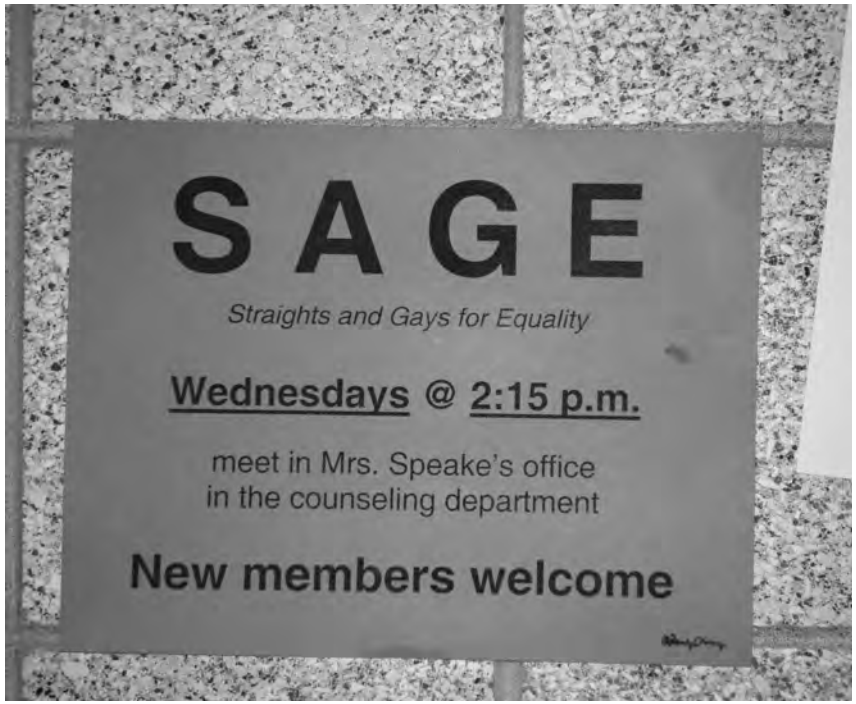
Montana: Did Making Montana Schools Safer trainings for over 200 teachers, parents and community members across the state

New York: Assisted transgender freshman and his parent win permission to use boys' restroom facilities at school

Pennsylvania: Represented Franklin High School ninth grader harassed by classmates because of his perceived sexual orientation; district agreed to pay monetary damages and conduct anti-harassment training for staff and students

South Dakota: Challenged principal for interrogating student and her parents about her sexual orientation, ostensibly to manage her participation in overnight school activity; school agreed not to so violate student's privacy in the future

Tennessee: Advocated for Memphis students "outed" to their parents by their principal (ended when students declined to participate in formal litigation)



Poster for Minnesota student club that sued to win the same access to school resources and facilities as other clubs.

WORKING FOR PASSAGE OF SAFE SCHOOLS LEGISLATION AND POLICIES

California: Helped enact law requiring Department of Education to monitor school compliance with state laws banning harassment of LGBT students

Florida: Helped pass statewide anti-bullying law

Illinois: With Safe Schools Alliance, produced safe schools forums in Peoria and Bloomington/Normal areas; created brochure explaining laws that protect youth and encouraging students to take action to protect their rights

Massachusetts: Worked on anti-bullying legislation (pending)

Michigan: Worked on anti-bullying legislation (pending)

Missouri: Supported efforts to pass statewide anti-bullying bill

Nebraska: Helped pass law requiring every public school to create anti-bullying policy

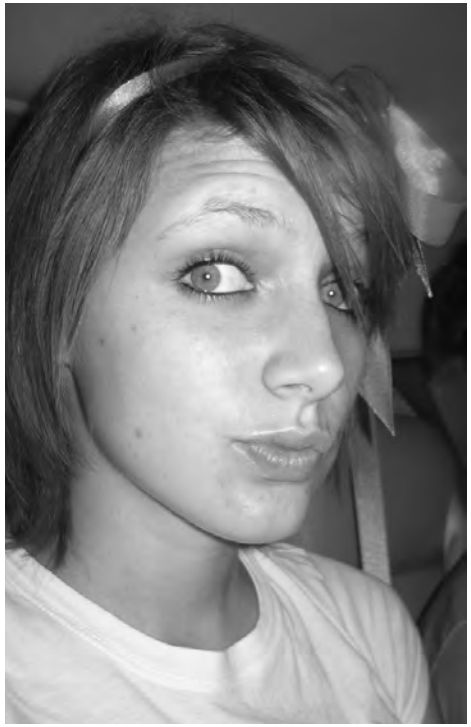
New York: Pushed for passage of statewide Dignity for All Students Act (DASA) to protect LGBT students from bullying in schools (passed Assembly but stalled in Senate); pressed for full implementation of New York City's DASA

New York: Worked with Office of Children and Family Services to develop good policies for LGBT youth in juvenile detention programs

Pennsylvania: Lobbied unsuccessfully for bill giving protections to LGBT youth in foster care

Tennessee: Worked with Nashville students to successfully persuade Davidson County school board to adopt anti-harassment policy including protections for LGBT youth

Tennessee: Gave presentation at School Boards Association's conference to hundreds of school board members on their legal responsibilities to LGBT students



Heather Gillman, lead plaintiff in a lawsuit suing her school for violating students' First Amendment right to wear rainbow stickers in support of a classmate who was harassed for being a lesbian.

LGBT PRIDE, VISIBILITY & EXPRESSION IN SCHOOLS

RAINBOWS AND T-SHIRTS

Florida: Won federal lawsuit on First Amendment grounds on behalf of students at Ponce de Leon High School banned from wearing rainbow stickers in support of classmate harassed for being a lesbian; lead plaintiff Heather Gillman subsequently awarded ACLU scholarship and Playboy Foundation award for her advocacy

Illinois: Submitted friend-of-the-court brief in federal appellate case (*Nuxoll v. Indian Prairie School District*) balancing student speech rights against school's interest in student safety

New York: Represented sophomore at Spencer-Van Etten High School in Spencer who was sent home for wearing t-shirt that said, "Gay? Fine by me;" school officials relented, assuring all students that they may wear t-shirts with controversial messages

Pennsylvania: Successfully advocated for two students in Oil City School District sent home for refusing to remove t-shirts about Day of Silence

Virginia: Advocated for Norcom High (Portsmouth) senior disciplined for wearing t-shirt with image of two overlapping female gender symbols; school relented and agreed not to censor students

PROMS

Alabama: Assisted attorney for two girls to win state court ruling ordering Scottsboro City Board of Education to allow them to attend their prom together

Arkansas: Persuaded Twin Rivers School District to allow students to attend prom with dates of their choice, regardless of gender

California: Assisted gay student couple in successful effort to persuade Simi Valley High School officials to allow them to go to the prom

Illinois: Successfully challenged decision of high school in Spring Valley not to allow student to take a date of the same sex to prom

Oklahoma: Helped students resolve favorably prom dispute at Eisenhower High School in Lawton

Texas: Helped student in Pflugerville persuade principal to change school's policy of only opposite-sex dates for prom

Wisconsin: Advocated unsuccessfully on behalf of gay male senior at Racine Park High School whom school officials prevented from running for Prom Queen

CLASSROOMS AND CURRICULUM

Idaho: Worked with high school teacher to ensure Day of Silence participation, despite principal's opposition

Massachusetts: Filed friend-of-the-court brief in *Parker v. Hurley* to support Lexington School District's decision to include books in the curriculum depicting diverse families, including families headed by gay couples; 1st Circuit Court of Appeals ruled in favor of school district

New Jersey: Challenged Board of Education of Evesham's decision to pull the film *That's a Family* from elementary school curriculum because it showed families headed by same-sex couples (pending)

Tennessee: Intervened on behalf of Washington County student punished for organizing Day of Silence activities; school apologized and agreed to support student free speech rights

Tennessee: Successfully lobbied against bill to ban discussion about sexual orientation (other than heterosexuality) in public schools

Texas: Prepared and publicized know-your-rights guide on student expression in public schools to support student participation in Day of Silence

Coalition Building: What's It All About?

— NORA RANNEY —

Legislative campaigns live or die by the ability to bring together a coalition of diverse and organized supporters representing a variety of constituencies and perspectives.

OUR WORK TO PASS a non-discrimination bill in West Virginia and marriage in Maine demonstrates the value of building diverse coalitions of supporters. In West Virginia, we faced an uphill battle in a conservative state where the only LGBT protections could be found in the university town of Morgantown. But after logging many hours in phone calls to activists and advocates throughout West Virginia, followed by a nearly two-week road trip across the state, I felt convinced we could bring together an impressive array of individuals and organizations with the collective voice to pass a nondiscrimination bill.

In West Virginia and throughout the country, coalitions are the very lifeblood of our legislative work for LGBT equality. Legislative campaigns live or die by the ability to bring together a coalition of diverse and organized supporters representing a variety of constituencies and perspectives. Coalitions in their very best form represent power in numbers sharing a unified voice. The benefit to working within a coalition is that they include messengers from a variety of perspectives, representing diversity in the demand for equality. Coalitions in their very worst form can be a laboratory for infighting, extreme inefficiency, and insecure egos—and coalitions in the LGBT movement are no different.

In West Virginia, we were able to make considerable headway on our legislative agenda by bringing together professional groups like the National Association of Social Workers, advocacy groups including the Coalition Against Domestic Violence and Citizen Action Group, respected civil rights organizations including the NAACP, labor groups including Service Employees Industrial Union local 1199 (SEIU), and civic groups such as the League of Women Voters.

But as anyone who has ever worked on a legislative campaign will tell you, this doesn't necessarily mean that building and maintaining coalitions is easy or that the people involved will see eye to eye on every issue. With successful coalitions, the members find a way look beyond their differences and set their sights on a common agenda. This

requires strong leadership, effective communication, and a clearly stated mission.

When a coalition comes together and truly focuses around its core mission, it feels like magic. Important to this structure is having achievable goals that are attainable by those in the coalition. For example, if membership includes active local unions, coalition leaders could consider asking union representatives to call their members to a rally at the capitol. But this would not be a good tactic if the members of your coalition were spread throughout the state, with no critical mass in the state capitol. In this instance, a coordinated letter writing and phone campaign could be a good idea.

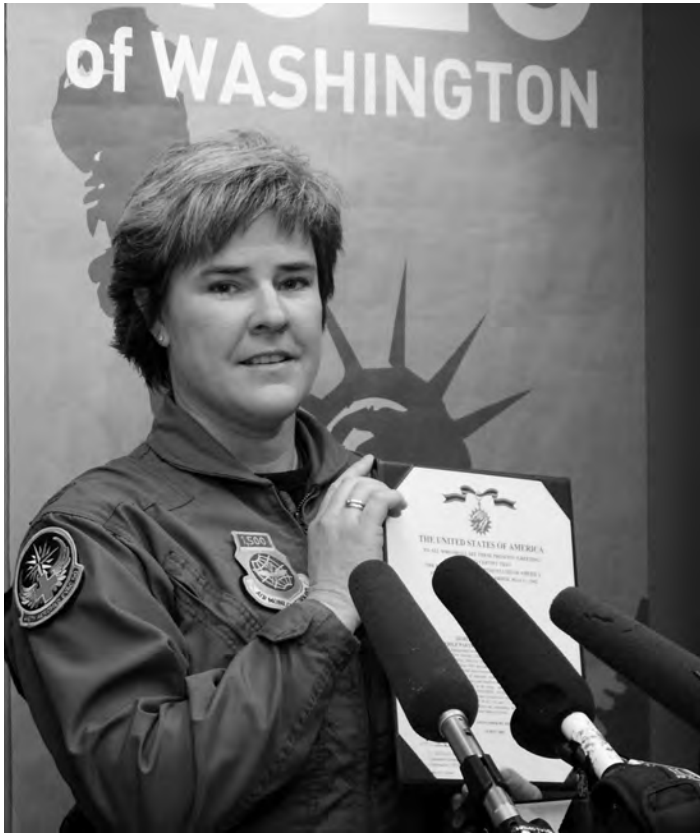
Bringing a broad array of disparate voices together around a cause can wield great power when used within a legislative strategy. Coalitions also represent the opportunity to share resources. While one member group may have a long membership list to bring to the table, another may have an active base of volunteers, while another may have lobbying or communications expertise to contribute.

In West Virginia, labor groups served as a strong voice on the coalition and in the legislature. With a powerful voice representing workers from coal miners to health care professionals, the labor movement is a critical partner in our effort to prohibit discrimination in the workplace. As the AFL-CIO's Pride at Work points out, representing all workers—including those in the LGBT community—is in the spirit of the union movement's historic motto, "An Injury to One is An Injury to All."

ACLU affiliates are an important part of coalitions that advance LGBT equality. As one of the nation's oldest and largest civil rights organizations, the ACLU contributes a long-standing voice for upholding the constitution's promises of autonomy, freedom of expression and equality. To have a voice at the table that represents civil rights for all—with a proven track record of standing up for religious freedom, racial equality, and gender parity to name but a few—helps drive home the point that laws barring discrimination based on sexual orientation are not only necessary for the LGBT community, but for the principles on which this country stands.

Because the ACLU works on so many different issues, we often have the ability to persuade groups and individuals who work with us on other issues to support our efforts to fight discrimination against LGBT people.

Other organizations that are often represented in our coalitions include faith-based, advocacy and business groups. All have a unique voice to bring to the table. All can bring their own membership/constituency to bear on an issue by sharing their perspective.



Major Margaret Witt, a decorated flight and operating nurse and Gulf War veteran, who is challenging her dismissal under "Don't Ask, Don't Tell."

While we did not succeed in West Virginia this year, we did build grassroots power and lay the groundwork to further LGBT issues in the future. Primary to this work was helping to build a statewide LGBT advocacy group, Fairness West Virginia. Our work putting together the coalition helped identify individuals who can support and lead Fairness West Virginia.

In Maine, the ACLU affiliate participated in the Maine Freedom to Marry Coalition that culminated in a joint legislative hearing on marriage. Leading up to the hearing, coalition members participated in a postcard drive (delivering 10,000 signed cards to the governor), public speaking engagements, op-eds, rallies and phone banks. Drawing on this momentum, the coalition was able to draw upon its membership and allies to line up testimony from a range of perspectives to have LGBT couples, parents and family of LGBT individuals, veterans, clergy members, mental health professionals, civil rights leaders, elected officials, school administrators and teachers present and testifying before the legislative committee. Supporters in the 4,000 seat auditorium wore red, making it clear that pro-marriage turnout was at least five times higher than the other side.

Because the coalition was thoughtfully conceived, faith-based leaders had a strong presence at the hearing. Wearing their liturgical robes and lining the entrance to the auditorium, these members of the clergy made a big visual impact for hearing participants, observers, and the media. Testifying as one voice for fairness, the faith-based contingent was an integral and necessary voice among the coalition.

When we talk about diverse coalitions, we mean to say that the coalition includes organizations/representatives that are closely associated with the mission, as well as other groups and individuals who may have something—however indirectly—at stake. Two such examples from the legislative hearing in Maine include:

A once-divorced Catholic lawyer married 24 years spoke about her marriage to her Unitarian husband. Her marriage not recognized by the Catholic Church, she spoke of the necessary separation between civil law and religious doctrine. "This restraint your legislative predecessors enshrined in the Establishment and Free Exercise clauses of the First Amendment."

A straight veteran testified before the legislative committee in Maine. As a man in a mixed-race marriage, his perspective was powerful, "It was wrong 40 years ago about interracial marriage and it is just as wrong now about same-sex marriage. The heart does not care about race, color or sexual orientation."

While we didn't meet our goal in West Virginia, we did walk away with marriage legislatively in Maine. We aim to keep this status. However, as I write this, our opponents are collecting signatures to repeal the law. Fortunately, a foundation for a ground campaign has already been laid. The extensive, tried and true legislative coalition will now shift to campaign mode.

EQUALITY AND RELIGIOUS FREEDOM

California: Filed friend-of-the-court brief in successful appeal to state high court on issue of whether a doctor's religious beliefs justify withholding medical treatment from lesbian or gay patients

California: Filed friend-of-the-court brief in case of Christian student groups suing two state colleges, seeking official recognition despite maintaining their right to discriminate against gay students in contravention of official college policies (pending)

Kentucky: Appealed decision by federal district court dismissing our lawsuit against state-supported Kentucky Baptist Homes for Children for firing a lesbian counselor because her religious beliefs did not conform to those of the agency

Michigan: Working to persuade the Detroit Rescue Mission, a faith-based homeless services group that receives city funding, that its religious beliefs don't trump the city's law banning discrimination based on sexual orientation (pending)

New York: Helped table proposed State Religious Freedom Restoration Act because of threat it posed to existing LGBT nondiscrimination protections

Pennsylvania: Filed friend-of-the-court brief in federal appeals court challenging dismissal of employment discrimination case marked by co-workers' relentless harassment of employee of private business with anti-gay religious messages and taunts about his effeminate appearance; brief argues that harassment by coworkers based on their religious views about gay people is illegal religious discrimination (pending)

NON-DISCRIMINATION LAWS

Federal: Stepped up lobbying efforts to pass Employment Non-Discrimination Act (ENDA) and to keep it trans-inclusive (narrowed version of ENDA passed House of Representatives)

Federal: Efforts to enact trans-inclusive hate crimes statute failed

Southeast region: Put together and sponsored comprehensive training for LGBT activists in southeastern states on how to pass LGBT non-discrimination laws

Colorado: Lobbied successfully for bill banning discrimination based on sexual orientation and gender identity in housing, family planning services, public accommodations, and other public spheres

Delaware: Lobbied unsuccessfully to add sexual orientation to categories of people protected by the state's civil rights law prohibiting discrimination in housing and public accommodations

Florida: Began multi-year effort to add sexual orientation and gender identity to state civil rights law

Idaho: Worked to amend the state's non-discrimination law to include protections for LGBT people

Illinois: Advocated for further protections for LGBT people against discrimination in public accommodations (unsuccessful)

Kentucky: Worked to add sexual orientation and gender identity to categories protected by state civil rights law (unsuccessful)

Alicia Pedreira, is suing her faith-based, state-funded former employer for wrongful termination after they fired her because her religious beliefs did not conform to those of the agency.

Maine: Worked in coalition to successfully thwart signature-gathering effort to put on the ballot an initiative to repeal existing LGBT non-discrimination protections, eliminate funding for civil rights teams in schools, prohibit adoption by unmarried couples and restate the ban on same-sex marriage

Michigan: Worked in coalition to successfully persuade the cities of Lansing and Hamtramck to adopt ordinances that prohibit discrimination based on sexual orientation and gender identity

Missouri: Advocated for inclusion of sexual orientation and gender identity in Missouri Non-Discrimination Act

Ohio: Advocated for statewide measure to prohibit discrimination based on sexual orientation and gender identity in employment, housing, and public accommodations (pending)

Pennsylvania: Led field and lobbying efforts in support of measure to amend Pennsylvania's non-discrimination law to include sexual orientation and gender identity (pending)

Tennessee: Helped advocate for measure adding sexual orientation and gender identity to Nashville's employment non-discrimination policy (pending)

Tennessee: Assisted grassroots effort that successfully advocated for comprehensive non-discrimination policies for all public university employees

West Virginia: Led successful effort to get the city of Charleston to enact the state's first comprehensive LGBT non-discrimination municipal ordinance

West Virginia: Led lobbying effort in support of statewide bill to make LGBT discrimination in employment, housing, and public accommodations illegal (pending)

"DON'T ASK, DON'T TELL" AND OTHER CHALLENGES TO DISCRIMINATION

Massachusetts: Received unfavorable ruling from 1st Circuit Court of Appeals in challenge to "Don't Ask, Don't Tell" in which we filed friend-of-the-court brief

Missouri: Leveraged incident in which lesbian residents were ejected from county campground to get better protections for Jackson County lesbian and gay residents and workers.

Washington: Continued challenge to "Don't Ask, Don't Tell" on behalf of decorated flight nurse discharged by Air Force; federal appeals court partially ruled in our favor and sent the case back to federal district court (pending)

FREE EXPRESSION AND OTHER BASIC HUMAN RIGHTS

California: Helped persuade federal appeals court to rule that a roommate-finding website cannot require users to disclose their sexual orientation

Minnesota: Filed friend-of-the-court brief in defense of Larry Craig, arguing that the prosecution of the senator for solicitation violated his right to privacy and sought to punish him under a law struck down as unconstitutional decades earlier (unsuccessful)

Minnesota: Filed friend-of-the-court brief in federal appeals court to challenge immigration judge's ruling denying gay Pakistani's petition for asylum; in Pakistan, homosexuality is punishable by death (pending)

New York: Persuaded St. Lawrence County Board of Legislators to adopt more speech-friendly policies after poster advertising a regional LGBT film festival was removed from a county bulletin board

Pennsylvania: Filed friend-of-the-court brief in case brought by a Boy Scout chapter in Philadelphia, supporting city's decision to revoke the Boy Scout's "free-rent" privileges (pending)

Puerto Rico: Persuaded law enforcement officials to establish no-tolerance policy for discriminatory behavior against LGBT people by police

Tennessee: Persuaded Tennessee Bureau of Investigation to classify and investigate acts against a local citizen that included vandalizing his home with anti-gay slurs as hate crimes

Wisconsin: Challenged police department's closing of Milwaukee Gay Arts Center's production of *Naked Boys Singing* (pending)

Twenty-Eight Years Later: Ignorance and Ideology Still Stalk AIDS Policy

— ROBERT NAKATANI —

> While we do not know how many HIV positive people have been unlawfully refused jobs because of government contracts ... we do know that Doe is not the only person refused a job with a federal contractor because of HIV.

IN SEPTEMBER 2006, Jeremiah Johnson, a serious, lanky 23-year-old Denver gay man, found himself at the Educational Complex Gymnasium No. 1, a secondary school in the small town of Rozdilna, Ukraine. After volunteering to serve in the Peace Corps, Jeremiah was sent there to teach English. He was also assigned to Rozdilna to teach AIDS prevention, an urgent concern in a country with the highest rate of new infections outside Africa. It was an assignment Jeremiah soon grew to love, as did his students who appreciated his novel and engaging teaching methods.

In January 2008, after receiving a routine medical exam, Jeremiah was told that he had tested positive for HIV. At the time, Jeremiah said, "the biggest thing on my mind was not necessarily my health. I knew I could still have a healthy life if positive. My biggest concern was whether I could still serve in the Peace Corps and teach my kids."

Despite all the public health evidence at their fingertips, the Peace Corps concluded, "we do not feel that you can safely continue to serve as a PCV in the Ukraine. . ." They made no analysis of Jeremiah's particular situation to determine whether his health could have been adequately protected while continuing to serve in the Peace Corps. They made no offer to Jeremiah to be reassigned to a place they thought would be more suitable for an HIV+ volunteer. They simply terminated him. Many of the HIV programs he started in Rozdilna came to an abrupt halt and his students were left feeling confused and abandoned.

John Doe (who is using a pseudonym to protect his family's privacy), a decorated Special Forces veteran, retired from the Army in 2001. A year before, he had been diagnosed with HIV. After retirement, John worked for government contractors in security-related posts. In 2004-2005, for example, he worked for Defense Department contractors in Iraq, where he led security teams on military bases. John's HIV status was not an issue for the Department which knew about it.

In October 2005, healthy with an undetectable viral load, John applied, and was accepted, to work

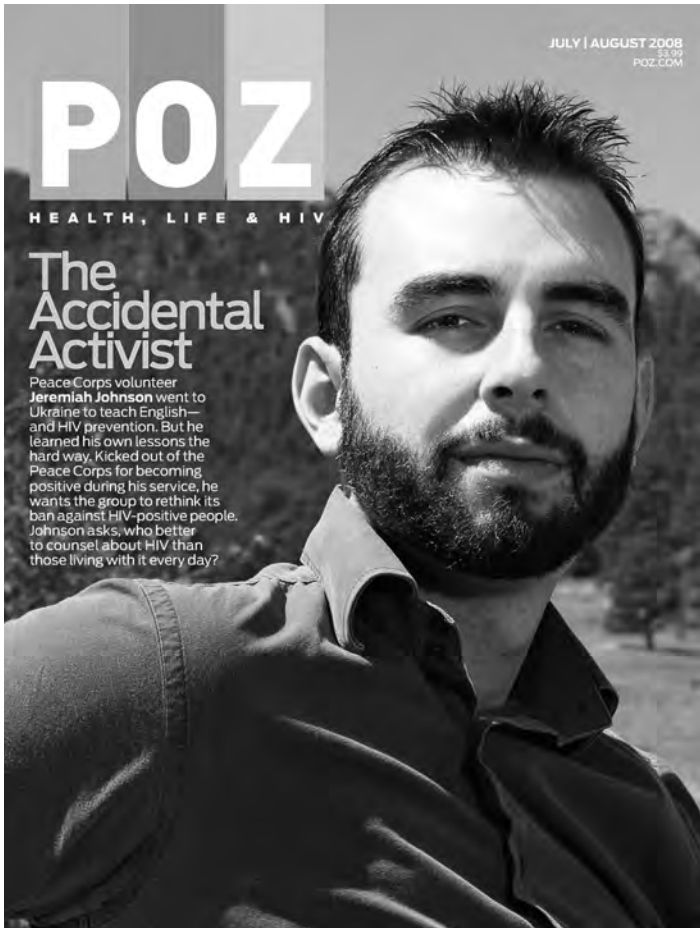
for Triple Canopy to provide security for the U.S. embassy in Haiti under a contract with the State Department. Triple Canopy's contract with the State Department, however, barred it from hiring people with HIV. So just before completing the training program, Triple Canopy let him go. John is currently working in construction, earning far less than his promised salary with Triple Canopy and barely making ends meet. While we do not know how many HIV positive people have been unlawfully refused jobs because of government contracts such as the one between Triple Canopy and the State Department, we do know that John is not the only person refused a job with a federal contractor because of HIV.

A couple of years ago, encouraged by his father to follow in his footsteps, Frank Miller (we're altering identifying details of this story to ensure confidentiality and to protect this individual from workplace harassment and intimidation) applied for a job in a small-town police department. Despite passing all the preliminary tests for the position, he was turned down because in the medical exam he disclosed that he was HIV positive. Frank was devastated.

What connects the stories of these three men other than the fact that each received representation during the past year from the ACLU AIDS Project? The government. In each case, the perpetrator of the discrimination was the government. This is what motivated us to take these cases. It was the government that passed laws protecting people with disabilities, including HIV, from discrimination. Through these laws, it was the government that set the standard that people doing their best to live with their disabilities should not have to bear the additional burden of job discrimination. It is the government that we look to for fair and rigorous enforcement of civil rights laws. But it is the government now that is shown to be wanting in its commitment to fairness and equality.

The government, at times, shows remarkable ignorance in dealing with people with HIV. In law enforcement situations, for example, the government sometimes defends discrimination by contending that an HIV positive officer, when injured, poses a threat to fellow officers coming to the rescue. There have been, however, no documented cases of HIV being spread through mouth-to-mouth resuscitation, and even in cases where an HIV positive officer is shot or badly cut, the likelihood of an officer getting infected by contact with his or her blood are virtually nil.

Stories of the government's ignorance about HIV sometimes approach the laughable. Recently, for example, the ACLU AIDS Project got drawn into a case to try and correct a federal district court's lamentable opinion in an HIV discrimination case. A Wisconsin woman applied for a job as a waitress at Lee's Log Cabin but was turned down when her employer discovered that she was HIV positive. The woman sued in federal court invoking the Americans with Disabilities Act (ADA), claiming that she was discriminated against because



Jeremiah Johnson was dismissed from the Peace Corps in January 2008, after testing positive for HIV. After the ACLU advocated on his behalf, the Peace Corps agreed that it will no longer terminate volunteers solely for having HIV.

of her disability (HIV). The federal district court dismissed her case, reasoning that although she had provided evidence showing she wasn't hired because she had HIV (In fact, the employer had even written "HIV" on the top of her application), the medical evidence she submitted suggested that she was disabled because of AIDS. This, the court said, wasn't enough to show that she was discriminated against because of her disability, because HIV and AIDS are different. This legal distinction between HIV and AIDS we found hard to fathom; it should not determine whether someone is disabled or not under the ADA since many persons with HIV are disabled well before they meet the criteria for an AIDS diagnosis, and HIV remains the underlying disease even after an AIDS diagnosis. Remarkably, the court of appeals agreed with this "reasoning," making it harder for people with HIV to prove claims of discrimination.

Then there are instances where the government acts against people with HIV not out of ignorance but to further ideological goals. The government's administration of Trafficking Victims Protection Act (TVPA) funds is the most recent example. It's admirable that the federal government provides money to help victims of human trafficking get their lives back. Many of these victims have been raped or forced into prostitution, and are thus at increased risk for HIV disease. Unfortunately, the federal government has tapped the U.S. Conference of Catholic Bishops to distribute TVPA funds to organizations helping trafficking victims and, even more unfortunately, has allowed the bishops to use their religious beliefs in deciding which services are eligible for reimbursement. And, no surprise, this has led to the bishops denying taxpayer dollars to groups working with trafficking victims for critical HIV prevention services like condoms. And this has prompted the ACLU AIDS Project, together with ACLU's Reproductive Freedom Project and the ACLU's Program on Religion and Belief, to file suit to stop the government from promoting one set of religious beliefs over critical HIV prevention needs.

And what's going on now with Jeremiah Johnson, "John Doe", and "Frank Miller?" After several months of advocacy involving Jeremiah, Peace Corps officials, key Senate staff, and returned Peace Corps Volunteers, we were able to persuade the Peace Corps to have a change of heart. They agreed that they would no longer automatically terminate volunteers with HIV. As for John, we're still in litigation with the State Department over its contracts that exclude people with HIV. And building on Frank Miller's courage, we were able to persuade his department to settle his case on very favorable terms, including a great change of policy on HIV positive candidates and officers. Frank did extremely well in the police academy and is now happily serving as a police officer.

Emily Cain, one of hundreds of Alabama prisoners who won access to educational programs, substance abuse treatment and other services previously denied to HIV-positive inmates.

DISCRIMINATION

Peace Corps: Advocated for Peace Corps Volunteer Jeremiah Johnson, terminated when found to have HIV; no effort was made to accommodate his disability; our representation led to new policy guaranteeing that volunteers with HIV will not be automatically terminated

State Department: Represented man slated to supervise security for embassy overseas through contractor retained by State Department; his employment was terminated because of his HIV status (pending)

Alabama: With ACLU's National Prison Project, advocated for equal access of all inmates to work release programs, prison jobs, sports and recreational opportunities, and all other programs

Arkansas: Represented inmate with HIV in his suit against prison for repeated sexual assaults; prison didn't believe his claims because of his HIV status

Arkansas: Assisted person living with HIV after he received substandard medical care

Maryland: Filed friend-of-the-court brief on behalf of father with HIV who was determined by family court to be an unfit parent because he experiences periods of illness and has sporadic lapses in taking his medication; appellate court upheld unfit parent determination

Michigan: Represented woman denied enrollment at a medical weight loss clinic when she disclosed that she has HIV; reached settlement that included monetary damages and revision of clinic's policies

Michigan: Advocated for woman with HIV hired to provide in-home respite care services, whose employer stopped placing her with clients citing concerns about HIV transmission; agency agreed to start placing her and to do staff training about HIV transmission

Missouri: Represented individual with HIV who was denied law enforcement job because of HIV status; settlement included monetary damages, reinstatement, and good change in employer's policies

Ohio: Successfully advocated for inmate with HIV denied proper medication

Rhode Island: Favorably settled case involving worker fired from a food service job because of HIV status

Wisconsin: Filed friend-of-the-court appellate brief on behalf of woman with HIV who was denied waitressing job; a federal appeals court upheld the district court's dismissal of her case based on the Americans with Disabilities Act, reasoning (incredibly) that the employer had discriminated against her because she had HIV but that she was disabled not by HIV but by AIDS

PRIVACY & AUTONOMY

California: Unsuccessfully opposed bill to eliminate the requirement of informed consent for HIV testing

Idaho: Assisted in case on behalf of Idaho AIDS Foundation which lost funding when it refused federal authorities unfettered access to their records containing client personal information; federal district court ruled that government's actions violated privacy rights

Illinois: Lobbied unsuccessfully to end the requirement that school principals be notified when a student tests positive for HIV

Mississippi: Helped form grassroots advocacy effort aimed at persuading the Mississippi Health Department to tighten privacy protections and to improve its services for African American men with HIV

Nebraska: Lobbied against bill that provides that if an individual consents to have blood drawn for any reason, he or she is assumed to have consented to an HIV test; bill was enacted

New Jersey: Lobbied unsuccessfully against bill providing for routine HIV testing of pregnant women without written consent and for mandatory testing of all newborns

New Mexico: Assisted inmate whose HIV status was disclosed without his consent to other inmates; helped facilitate his parole after he was compelled to go into protective custody

New York: Worked with the governor's office and legislative leaders against HIV testing bills that jeopardize informed consent principles; managed to remove harshest constitutional problems

Rhode Island: Helped defeat proposed legislation that would have greatly expanded HIV testing while reducing confidentiality protections and limiting counseling

South Dakota: Testified against state legislation to force individuals with HIV who are convicted for "intentionally exposing" others to the virus to register as sex offenders; despite its potential for abuse the bill passed

Vermont: Worked in coalition to turn back measure that would enable involuntary testing of accident victims for blood-borne illnesses; under amended bill that passed, the only testing allowed without consent is the testing of deceased victims

PREVENTION & HARM REDUCTION

Federal government: With ACLU Reproductive Freedom Project and Program on Freedom of Religion and Belief, filed case against the government for having Trafficking Victims Protection Act funds be distributed by the U.S. Conference of Catholic Bishops; USCCB does not permit subgrantees to provide trafficking victims with the full range of reproductive health services including emergency contraception and condoms

Illinois: Fought for measure that would have allowed doctors to give medication and informational material to patients with STDs for their partner(s) without examining their partner(s); failed to pass Senate Public Health Committee

ABOUT US

THE ACLU

The American Civil Liberties Union is headquartered in New York City and coordinates with independent affiliate offices in 47 states and the District of Columbia (California has three affiliates in San Francisco, Los Angeles, and San Diego/Imperial Counties). The national office maintains chapters in North and South Dakota, Wyoming and Puerto Rico. Most of the direct legal, legislative and public education work is handled by the affiliates. As experts in their own backyards, this report illustrates the breadth of affiliates' efforts in lobbying, litigating and advocating on behalf of the LGBT and HIV/AIDS issues.

The affiliates and the national ACLU share the same commitment to defend the basic rights guaranteed to all by the federal constitution, especially the Bill of Rights. National staff members consult with affiliates in setting priorities and developing strategies, managing cases and campaigns, and taking the lead on important national lawsuits. The state affiliates are linked to the national by electing the governing board of the national ACLU and sharing financial support with headquarters. People who join the national ACLU automatically become members of a state affiliate. Donations are shared between the local affiliate and national.

THE PROJECT

The Lesbian Gay Bisexual Transgender & AIDS Project is part of the ACLU's Legal Department. Our staff are specialists in constitutional law and civil rights who undertake impact litigation to change the law, advocacy to improve public policy, and outreach to move public opinion on the rights of LGBT people and persons living with HIV and AIDS. Nine staff lawyers monitor legal work regionally. The public education team ensures that our litigation informs and impacts the general public, and the development team helps raise the necessary funds to make our work possible. A federal legislation director manages relevant bills and lobbying in Washington, D.C. The senior strategist coordinates long range development and public education plans.

Five affiliates (Illinois, Florida, Michigan, Northern California and Tennessee) have staff and attorneys focused on LGBT rights, and several others have activist member/volunteer groups working on LGBT rights and AIDS concerns (Delaware, Eastern Missouri, Kansas and Western Missouri, Ohio, Pennsylvania, Nevada, Southern and Northern California and Washington).

YOUR SUPPORT

The LGBT & AIDS Project works in your state and across the country, and we rely on you to ensure our success. If you would like to contribute, please send a check to:

ACLU Foundation - LGBT
125 Broad Street, 18th Floor
New York, NY 10004
212-549-2627
aclu.org/lgbtdonate

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Third Row: Robert Nakatani, Nora Ranney, Anna Mumford, Sam Ritchie, Leslie Cooper, Christine Sun;

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LESLIE COOPER, senior staff attorney, joined the Project in 1998. She was an attorney at Robinson Silverman Pearce Aronsohn & Berman LLP in New York.

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