

## 2004 Case Table

A.B., *In re the Parentage of; King v. S.B.*, 818 N.E.2d 126 (Ind. Ct. App., Nov. 24, 2004) (Lesbian co-parent can assert parental rights to child born to her partner through donor insemination during their relationship).

*Abdul-Karim v. Ashcroft*, 2004 WL 1435149 (9<sup>th</sup> Cir., June 24, 2004) (not selected for publication) (A 1998 advisory opinion by the State Department that “prohibitions on homosexual behavior went unenforced” in Lebanon helped to sink an asylum petition by Mohamad Abdul-Karim, a gay man who had appealed a negative determination by the Board of Immigration Appeals to the U.S. Court of Appeals for the 9<sup>th</sup> Circuit in San Francisco. The brief per curiam opinion did not relate how Abdul-Karim came to be present in the United States).

*Abdul-Rahman, United States v.*, 2004 WL 1078122 (U.S. Coast Guard Court of Criminal Appeals, May 14, 2004) (affirming the conviction of Shams Abdul-Rahman, a male sailor, on a variety of charges of misconduct while on board a Coast Guard vessel, including one count of sodomy with a female cadet).

*Abril v. Department of Corrections*, 2004 WL 1698066 (Fl.Ct.Apps., 2<sup>nd</sup> Dist., July 30, 2004) (ruling on questions of first impression, held that the state’s AIDS confidentiality law could provide the policy basis for allowing a private action in tort for its violation, and that the “impact rule” usually applied in Florida for emotional distress claims should not be applied in such a case).

*Adoption of Carolyn B., Matter of* 774 N.Y.S.2d 227 (N.Y. App.Div., 4<sup>th</sup> Dept, March 19, 2004) (in a case of first impression for N.Y., ruled that the adoption law can be interpreted to allow a same-sex couple to jointly adopt a child).

*Albright v. Morton*, 321 F.Supp.2d 130 (May 28, 2004) (ruling that it is not automatically defamatory to falsely call somebody gay).

*Alexander v. City of New York*, 2004 WL 1907432 (S.D.N.Y., Aug. 25, 2004) (a gay African-American police officer’s claims of sex and sexual orientation discrimination and retaliation in violation of his constitutional rights as well as state and local employment discrimination law failed to survive the city’s motion for summary judgment).

*Andreasian v. Ashcroft*, 2004 WL 785064 (9<sup>th</sup> Cir., April 12, 2004) (not selected for publication in the Federal Reporter) (dismissing an asylum claim on behalf of an Armenian who claimed she was being persecuted because of her sexual orientation).

*Allen v. Mineral Fiber Specialists, Inc.* (E.D. Pa., Jan. 30, 2004) (not reported anywhere) (granting summary judgment to defendant in a same-sex harassment case brought under Title VII by employee, Allen)

American Family Association Center for Law & Policy and Liberty Counsel of Longwood v. Nickels (Wash. State, King County Super. Ct., May 2004) (granting defendant, Seattle Mayor Greg Nickels motion to dismiss a lawsuit that had been filed by two out-of-state litigation groups, challenging the city's action in determining that those of its employees who enter into lawful same-sex marriages in other jurisdictions will be treated as married for purposes of their employee benefits in Seattle).

Anderson v. King County, 2004 WL 1738447 (Wash. Super.Ct., King County, August 4, 2004) (ruling that the Washington state marriage law, which specifies that a valid marriage may take place only between one man and one woman, violates the rights of same-sex couples under two provisions of the state's constitution, the Due Process clause and the Privileges and Immunities clause).

Annette F. v. Sharon S., 2004 WL 1433945 (Cal.Ct.Apps., 4<sup>th</sup> Dist., June 28, 2004) (dismissing Annette's libel complaint on the grounds that allegedly defamatory statements made by Sharon were protected by the state's anti-SLAPP statute, and that Annette could not prove that Sharon had made false statements with the requisite level of malice to justify a finding of liability).

Anonymous v. Anonymous, NYLJ, Feb. 27, 2004, p. 18, col. 3.(N.Y. County) (ruling that a written agreement between a gay male couple governing their ownership interest in a co-op loft apartment was an enforceable contract).

Ashby v. Hesperia Union School District, 2004 WL 2699940 (Calif. Co. App., 4<sup>th</sup> Dist., Nov. 29, 2004) (unpublished disposition) (perceived sexual orientation hostile environment harassment case by student against school district; summary judgment for defendants).

Ashcroft v. ACLU, 124 S. Ct. 2783 (June 29, 2004) (ruling that a federal district court in Philadelphia had properly issued a preliminary injunction to stop the Child Online Protection Act (COPA) from going into effect).

Ashmore v. J.P. Thayer Co., Inc., 303 F.Supp.2d 1359 (M.D. Ga., Feb. 20, 2004) (finding something unusual: a same-sex harassment case that seemed, on the merits, to be actionable under Title VII except...because the employer had responded reasonably promptly when the plaintiffs finally complained about the harassment after enduring it for several months, and eventually discharged the harasser, and the plaintiffs suffered no tangible workplace injury or retaliation, the court found that the employer could not be held vicariously liable for a male supervisor's creation of a hostile work environment for the two male plaintiffs).

A.W. v. I.B. Corp., 2004 WL 1516829 (D. Maine, July 2, 2004) (ruling on the permissibility of questions about the sexual practices of A.W., a gay man who had brought a same-sex workplace harassment suit under the federal civil rights act).

Baehr v. Lewin, 852 P.2d 44 (Haw., May 5, 1993) (finding that the state's Equal Rights Amendment was potentially violated).

Bailey, State v., 2004 WL 2049762 (Minn. Ct. App., Sept. 14, 2004) (considering Bailey's appeal of the upward departure on his sentence for second-degree manslaughter in the death of his partner during an "erotic knockout session").

Baker v. Nelson v. Internal Revenue Service, (Dist. Minn May 19, 2004) (claiming that they should be entitled to file an amended tax return for 2000 as a married couple. See previous suits *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971), app. dismissed, 409 U.S. 810 (1972)).

Bantum v. American Stock Exchange, 777 N.Y.S.2d 137 (N.Y. App. Div., 2<sup>nd</sup> Dept., May 10, 2004) (ruling that a stock broker's attempt to assert a racial and sexual harassment discrimination claim against another broker under the New York State and City Human Rights Laws is preempted by the federal laws regulating the operation of the securities markets).

Barnes v. CCH Corporate System, 2004 WL 1516791 (S.D.N.Y., July 7, 2004) (granting summary judgment to the employer on an HIV-related employment discrimination complaint. Plaintiff, an African-American man who has been diagnosed HIV+ and suffering from Kaposi's sarcoma, an opportunistic condition associated with AIDS, asserted race, sex and disability discrimination claims stemming from his apparent abandonment of his job after the employer refused to transfer him).

Barnes-Wallace v. Boy Scouts of America (U.S. Dist. Ct., S.D. Cal., April 14, 2004) (ruling that the city of San Diego must terminate a sweetheart lease for the Boy Scouts' free use of the aquatic parkland on city-owned Fiesta Island in order to avoid potential constitutional liability for leasing to a discriminatory organization).

Batey, People v. , 2004 WL 2137828, \_\_\_ N.W.2d \_\_\_ (Mich., Sept. 24, 2004) (denying a motion for leave to appeal by Michael D. Batey, who was convicted of criminal sexual assault of his teenaged nephew).

Beaumont v. Castator, Executor of the Estate of Earl Wayne Meadows, No. 04-271 (Sept. 25, 2004) (opinion below, In the Matter of the Estate of Earl Wayne Meadows, Deceased, No. 98,379 (Okla. Ct. Civ. App., February 13, 2004), rev. denied by Oklahoma S.Ct., June 1, 2004.) (counsel for plaintiff filed a petition for certiorari with the U.S. Supreme Court, seeking review of an unpublished decision by the Oklahoma Court of Civil Appeals which had rejected all the legal theories Beaumont had asserted in attempting to keep the ranch that his late partner, Earl Meadows, had intended for his inheritance).

Benford v. Cahill-Masching, 2004 WL 1510022 (U.S. Dist. Ct., N.D. Ill., July 2, 2004) (rejecting a habeas corpus petition from Willette Benford, an Illinois woman who is serving a 50-year term for the first-degree murder of her lesbian partner).

Benjamin G., *In re*, 2004 WL 1925708 (Cal.App., 6<sup>th</sup> Dist., Aug. 30, 2004) (not officially reported) (upholding HIV testing where the defendant, a teenager, had rubbed his penis against the anus of his five-year old brother and attempted to insert it, without a condom).

Blanco, *State of Florida v.*, 2004 WL 86646 (Fla. App. 4th Dist., Jan. 21, 2004) (made a judicial finding that a drug agent was a “very attractive man,” and that the defendant was a lonely gay man in a gay bar looking for attention, leading the appeals court to uphold the trial court’s dismissal of the drug sale prosecution on entrapment grounds).

Blas, *U.S. v.*, 360 F.3d 1268 (11<sup>th</sup> Cir., Feb. 19, 2004) (unanimously affirming a 15-year prison term for an HIV+ man found guilty of using the internet to entice two teenage girls to meet him for sex and of actually having had sex with one of them).

Bodett *v. Coxcom, Inc.*, 366 F.3d 736 (9th Cir., April 26, 2004) (rejecting a religious discrimination complaint under Title VII by a Christian supervisor who was disciplined for harassing a lesbian employee with constant negative remarks about her lifestyle - raises the increasingly significant issue of religious freedom vs. non-discrimination in the workplace).

Bowen *v. NYC Gay & Lesbian Anti-Violence Project*, N.Y.L.J., 4/20/04, p. 18, col.1 (Sup.Ct., N.Y. Co.) (The New York City Gay & Lesbian Anti-Violence Project has won dismissal of various claims filed against it by Billy Bowen, who asserted that the AVP posted flyers in the Chelsea area defaming him and leading to false criminal charges against him).

Boy Scouts of America *v. Dale*, 530 U.S. 640 (2000) (Upholding freedom of association claim by Boy Scouts in support of its policy of excluding gay people from membership).

Boy Scouts of America *v. Wyman*, (March 8, 2004) (denial of certiorari in *Boy Scouts of America v. Wyman*, 335 F3d 80 (2<sup>nd</sup> Cir. 2003) in which the court of appeals affirmed a ruling by the U.S. District Court in Connecticut, upholding the decision of Connecticut officials to exclude the Boy Scouts of America from the State Employee Charitable Campaign because the BSA’s membership rules discriminate on the basis of sexual orientation, in violation of Connecticut public policy).

Boy Scouts of America *v. Wyman*, 2004 WL 1730346 (D. Conn. July 20, 2004) (rejecting a request by the Boy Scouts of America that upon termination of an escrow account containing funds intended for the Scouts by state employees who participated in past years in a charitable campaign from which the Scouts are now barred due to their anti-gay policies).

Brown *v. Johnson*, 387 F.3d 1344 (11<sup>th</sup> Cir., Oct. 18, 2004) (Prisoner sued over denial of HIV medication for prolonged periods, and won a reversal of trial court’s dismissal. Court held that plaintiff made out p.f. case under 8<sup>th</sup> Amendment by showing deliberate indifference to his medical condition.)

Buell v. Clara Maas Medical Center, Esx-L-5144-03 (Essex County Super. Ct., April 13, 2004) (an amended complaint filed adding a loss of consortium claim on behalf of Judith Peterson, the same-sex domestic partner of co-plaintiff Linda Henry who suffered a heart attack attributable to stress generated by sexual harassment in the workplace).

Buie v. Quad/Graphics, Inc., 366 F.3d 496 (7<sup>th</sup> Cir., April 27, 2004) (coincidence of a suspension imposed immediately after an employee revealed he had AIDS was not in itself enough to sustain a prima facie case of discrimination under the ADA and upholding a summary judgment for the employer granted by the Eastern District Court of Wisconsin).

Buonanno v. AT&T Broadband, 313 F.Supp.2d 1069 (D.Colo., Apr. 2, 2004) (awarding \$146,000 in compensatory damages to a former employee of AT&T Broadband who was fired after refusing to sign a form agreeing to abide by the company's diversity policy).

Burbank v. Rumsfeld, 2004 WL 1925532 (E.D. Pa., Aug. 26, 2004) (ruling that a lawsuit by some faculty, students, and a student organization from the University of Pennsylvania Law School may proceed on First Amendment and Administrative Procedure Act claims against the U.S. Defense Department over the application of the Solomon Amendment, a federal provision that authorizes suspension of certain kinds of federal financial assistance to institutions of higher education that do not allow military recruiters access to students on campus).

Burog-Perez v. Immigration and Naturalization Service, 2004 WL 856766 (9<sup>th</sup> Cir., April 21, 2004) (not selected for publication in the Federal Reporter) (rejecting an asylum claim by Belinda Burog-Perez, a lesbian dentist from the Philippines whose patients all deserted her when they found out she was gay).

Burt v. Rumsfeld, 322 F.Supp.2d 189 (D. Conn. June 9, 2004) (granting standing to members of Yale Law School faculty); Student Members of Student/Faculty Alliance for Military Equality (SAME) v. Rumsfeld, 321 F.Supp.2d 388 (D. Conn. June 9, 2004) (granting standing [although denying it on some issues] to members of YLS gay student organization) (granting standing to two groups at Yale Law School (YLS) to challenge the anti-gay Solomon amendment, which denies certain funding to educational institutions that fail to give military recruiters access to students).

Butler v. Adoption.com (N.D.Cal., May 3, 2004) (ruling in a case filed by National Center for Lesbian Rights that Adoption.com, a website that facilitates adoptions, is subject to the jurisdiction of California law. Plaintiffs are arguing that defendants policy which does not allow gay and lesbian couples to use their services violates California law, forbidding businesses that provide goods and services to the public from discrimination on the basis of sexual orientation).

Caggiano v. Essex County Sheriff's Department (N.J. Super. Ct., Union County, Jury Verdict, Nov. 15, 2004) (awarding damages to lesbian employee for hostile environment harassment).

Cain, *United States v.*, 59 M.J. 285, 2004 WL 547549 (U.S.Ct.App. Armed Forces, March 19, 2004) (voting 4-1 that Sergeant Billy E. Cain was deprived of effective assistance of counsel when he was being court-martialed on charges of forcible sodomy, as his lead counsel, identified in the opinion as Major S, had initiated a sexual relationship with Cain during the representation).

California v. Caldwell, 2004 WL 226198 (Cal.App. 2 Dist. Feb. 6, 2004) (not officially published) (affirming a judgment after jury trial of second degree murder against Charles Caldwell, who hacked Richard Sconiers to death after the two of them had sex several times over the course of a weekend).

Cass, *People of the State of N.Y. v.*, 2004 WL 2147007 (N.Y. Supreme Ct., Kings Co., Sept. 22, 2004) (ruling in favor of a motion by prosecutors to admit at trial statements made by the defendant about a murder he committed in Buffalo, New York, a year earlier than the one for which he is being tried in Brooklyn).

Castle v. State of Washington (Wash. Super. Ct., Thurston County, April 1, 2004) (the ACLU of Washington filed suit on behalf of eleven same-sex couples seeking marriage licenses claiming that state laws regarding marriage must apply without regard to gender, and the failure to issue licenses to same-sex couples violates the equality guarantees of the state constitution).

Castle v. State of Washington, 2004 WL 198215, 30 Fam. L. Rep. (BNA) 1507 (Wash. Super. Sept. 7, 2004) (ruling that the state's marriage law, which specifies a valid marriage can only take place between one man and one woman, violates the state's Constitution).

Carter v. Lowndes County, 27 NDLR P. 148, 2004 WL 393333 (5<sup>th</sup> Cir., Jan. 23, 2004) (not officially published), (per curiam opinion ruling that segregation of prisoners with AIDS was penologically appropriate, as was barring them from attending religious services with general population prisoners).

Catholic Charities of Maine, Inc. V. City of Portland, Civil No. 03-55-P-H (U.S.Dist.Ct., D. Maine, Feb. 6, 2004) (rejecting a 1st Amendment challenge to a Portland, Maine, ordinance requiring certain city contractors to provide domestic partnership benefits, but found that the ordinance was partly preempted by federal law, thus cutting down the range of benefits it could require).

Caudillo v. Lubbock Independent School District, 311 F.Supp.2d 550 (March 3, 2004) (Pursuant to the federal Equal Access Act, a public school that receives federal funds and allows any non-curricular student group to meet on campus during non-instructional time must make its facilities available on an equal basis to all such clubs irrespective of their viewpoint. Ignoring the numerous federal court decisions that have interpreted the EAA as supporting the right of students to form gay-straight alliances (GSAs), U.S. District Judge Sam R. Cummings (N.D. Tex.) threw out the claims of a GSA that was prevented

from meeting on school grounds, posting flyers and announcing group meetings over the loudspeaker).

C.E.W. v. D.E.W., 845 A.2d 1146 (Maine Supreme Judicial Court, April 6, 2004) (ruling that a de facto parent who is the same-sex partner of a child's natural parent may seek custody without having to show that the natural parent is unfit - creative interpretation of state custody statutes).

Center for Democracy & Technology v. Pappert, 2004 WL 2005938 (E.D.Pa., Sept. 10, 2004) (ruling that Pennsylvania's attempt to block any of its residents from accessing child pornography on the Internet is unconstitutional, because it has had the incidental effect of blocking access to thousands of "innocent" websites worldwide).

Cerqueira v. Corning Net Optix, 2004 WL 1932758 (D. Mass., Aug. 13, 2004) (granting the employer's motion to dismiss a hostile environment sexual harassment claim brought by the survivors of a straight male employee who became so depressed and distraught at being subjected to homophobic slurs and ridicule that he committed suicide).

Chaires, People v., 2004 WL 1283275 (Cal.App., 6<sup>th</sup> Dist., June 10, 2004) (not officially published) (modifying a carjacking verdict against one defendant and a carjacking and use of a deadly weapon verdict against a co-defendant to remove a requirement by the Santa Clara County Superior Court that the defendants submit to HIV testing and noting that the state conceded that the trial judge erred in ordering the testing because the crimes charged did not involve circumstances where body fluids could be transmitted to the complainant).

Charron and Kalish v. Fallon Clinic (Worcester, Mass., May 21, 2004) (first lawsuit attempting to vindicate the rights of recently married same-sex couples, filed by plaintiffs who were married earlier in the week, asserting a claim for damages for "loss of consortium" arising from alleged medical malpractice by defendant doctors at the Fallon Clinic, who it is claimed failed to order a biopsy for a lump in Charron's breast when she brought the symptom to their attention in December 2002, resulting in a delay in diagnosing cancer that has metastasized and threatens to substantially shorten her lifespan).

Christiana v. Southern Baptist Hospital, 867 So.2d 809 (La. Ct. App., 4<sup>th</sup> Cir., Feb. 4, 2004) (vacating a grant of partial summary judgment by the Civil District Court of Orleans Parish and holding that defendant was not subject to strict liability for distributing HIV-tainted blood to the plaintiff in the course of medical treatment in 1984).

Christopher C., In re; People v. Christopher C., 2004 WL 1234081 (Cal.App. 5<sup>th</sup> Dist June 4, 2004) (not officially published) (vacating an order that a juvenile submit to HIV testing in connection with a conviction of lewd or lascivious act against a child under age 14).

Citizens for Protection of Marriage v. Board of State Canvassers, 2004 WL 196332` (Mich. Ct. App., Sept. 3, 2004) (Michigan the proposed amendment that was the subject of this case was put on the ballot through petitioning by a private group, CPM, which had collected about 500,000 signatures, of which it was estimated that more than 400,000 were valid based on a sampling review, and only 317,757 were needed to meet the constitutionally mandated percentage of the electorate).

City of New York v. Wall Street Sauna, 778 N.Y.S.2d 883 (NY. App Div., 1<sup>st</sup> Dept., July 8, 2004) (reversing a ruling by Acting Supreme Court Justice Louis B. York, has ordered the closure of the Wall Street Sauna, a gay bathhouse in the lower Manhattan financial district, on grounds that the proprietors were allowing high risk sexual activity to take place on the premises).

City of New York v. City Council of New York (?) (N.Y.Sup.Ct., N.Y. Co., Soto, J., Nov. 8, 2004) (rejecting Mayor Bloomberg's attempt to enjoin the Equal Benefits Act from going into effect; Act requires major city contractors to have domestic partnership benefits plans).

C.N. v. Ridgewood Board of Education, 319 F.Supp.2d 483 (D.N.J., June 3, 2004) (ruling that a wide-ranging survey on attitudes and experienced administered on a voluntary and anonymous basis to students in the Ridgewood public schools did not violate any constitutional rights of the parents and students).

Cote-Whitacre et al. (Fn#1) v. Department of Public Health et al. (Fn#2), 18 Mass.L.Rptr. 190, 2004 WL 2075557 (Mass.Super., Aug. 18, 2004) (Fn#1: Amy Zimmerman and Tanya Wexler, Mark Pearsall and Paul Trubey, Katrina and Kristin Gossman, Judith and Lee McNeil-Beckwith, Wendy Becker and Mary Norton, Michael Thorne and James Theberge, and Edward Butler and Leslie Schoof); (Fn#2: Christine C. Ferguson, in her capacity as Commissioner of the Department of Public Health; Registry of Vital Records and Statistics, and Stanley E. Nyberg, in his capacity as Registrar of Vital Records and Statistics) (rejecting a constitutional attack on that old 1913 law that is being used to bar out-of-state couples from marrying there).

Coleman v. Commonwealth of Pennsylvania, 854 A.2d 978 (Pa. Super. Ct., June 15, 2004) (A military court martial prosecution of indecent acts is sufficiently distinct and different from Pennsylvania's sex crimes laws, according to a Superior Court panel, that a court martial conviction for that offense should not be counted as "one strike" for purposes of criminal sentencing under state law).

Commonwealth of Massachusetts v. Maxwell, 808 N.E.2d 806 (Mass. Sup. Ct., May 25, 2004) (ruling that a criminal defendant would be entitled to discovery of the medical records of his victim, despite an apparently absolute confidentiality right for all HIV-related medical records, where those records are necessary to the defense case).

Conner v. Atlantic Mutual Insurance Co., 802 N.E.2d 129 (Table) (Mass. App.Ct. Jan. 16, 2004) (holding a lack of evidence of legal adoption, the court agreed with an insurance company and refused to recognize natural rights regarding a claim by three

sisters who sought damages from the estate of Matthew Richmond, who had died from complications arising from AIDS after they cared for him during his illness).

Connor, *People v.*, 2004 WL 60763 (Cal.Ct.App., 2<sup>nd</sup> Dist., Jan. 14, 2004) (not official published) (affirming the conviction of Eddie Boyd Connor for the torture and murder of Donald Randall).

Cornejo-Merida v. Ashcroft, 2004 WL 2712643 (U.S.Ct.App., 9<sup>th</sup> Cir. Nov. 30, 2004) (unpublished disposition) (denying asylum to gay man from Peru).

Cowdery v. City of Seattle, 2004 WL 49851 (Wash. Ct.App., Jan. 12, 2004) (unpublished decision) (upholding a jury verdict against a Seattle police officer who sued over emotional distress after aiding victims of a bus accident, one of whom tested positive for HIV. The plaintiff, Daniel Cowdery, has not tested positive).

Critchlow v. First Unum Life Insurance Company of N.Y., 2004 WL 1773550 (2<sup>nd</sup> Cir. August 9, 2004) (ruling that the mother of a man who accidentally killed himself while performing autoerotic asphyxiation was entitled to death benefits under an accidental death insurance policy provided by the deceased man's employer).

Cruz v. McAnaney, NYLJ, 7/16/2004, p. 18, col. 3 (N.Y.Sup.Ct., Kings Co., July 2, 2004) (ruling that the surviving lesbian partner of a victim of the World Trade Center disaster on September 11, 2001, should probably receive at least a portion of the \$531,541.42 awarded by Special Master Kenneth Feinberg to her partner's sole surviving relative, a brother).

Cusick v. Cirque du Soleil, Lambda Legal Press, April 22, 2004 (defendant agreed to settle an employment discrimination claim under the Americans With Disabilities Act that was filed by Lambda Legal Defense on behalf of Matthew Cusick, an acrobatic performer who accepted a job with the circus, only to be told that he could not perform because he is HIV+. The complaint was filed with the Equal Employment Opportunity Commission (EEOC), which ordered a mediation process through which the matter has been settled. The total amount of the settlement, according to news reports, is \$600,000, which was claimed to be the largest such settlement yet attained in an ADA case involving a single claimant).

Daniels, Application of Gena Michele, 2003 WL 23204297, 2003 N.Y. Slip Op. 23954 (N.Y. City Civ. Ct., Dec. 31, 2003) (J. Feinman approving a change of surname for the applicant so she would have the same surname as her same-sex domestic partner).

Darius Chambers and Jonathan Jones v. State of Alabama, (Montgomery Circuit Court, April 9, 2004) (two State prison inmates filed suit seeking a marriage license but on April 13, Circuit Judge Truman Hobbs, Jr., dismissed their suit, but ruled that it could be re-filed once they had served their sentences).

De'lonta v. Angelone, No. CA-99-642-7 (4<sup>th</sup> Cir., May 27, 2003) (Responding to ongoing litigation in the 4<sup>th</sup> Circuit over transgender prisoner rights, the state of Virginia has settled a lawsuit by Phelia De'lonta (represented by the ACLU) by agreeing to make hormone treatments available to properly diagnosed gender dysphoric inmates in the state prison system).

Dier v. City of Hillsboro, 2004 WL 1243845 (Ore., March 18, 2004) (finding that lesbian probationary police officer Amy Dier had stated potentially valid claims of common law wrongful discharge and intentional infliction of emotional distress against the city, stemming from her discharge allegedly as a result of her complaints about the repeated homophobic acts of a superior officer, one Sergeant Hess, professedly anti-gay, whose attitudes towards gay people and women were amply documented in an investigative report commissioned by the police chief after he had approved the termination of Dier's employment).

DiMarco v. Wyoming Department of Corrections, 300 F.Supp.2d 1183 (D. Wyoming Feb. 18, 2004) (ruling that state prison officials violated the 14<sup>th</sup> Amendment Due Process rights of plaintiff when they consigned her to 14 months in a dungeon-like high security lock-up without affording any kind of hearing process for her to challenge that decision).

D.L.S. v. State, 374 F.3d 971 (10<sup>th</sup> Cir., July 7, 2004) (unanimously affirming a Utah federal district court decision that a man, identified in court papers as D.L.S., lacks standing to seek a declaratory judgment invalidating the Utah sodomy law).

Doe v. Baxter Healthcare Corp., 2004 WL 1878588 (8<sup>th</sup> Cir., Aug. 24, 2004) (sitting on a diversity case in which Iowa law is applicable, ruling that an "alternative liability" claim against several manufacturers of Factor VIII blood-clotting medication must be dismissed because the plaintiffs had failed to present evidence ruling out the cryoprecipitate as a possible cause of the plaintiff's HIV infection).

Doe v. City of Lafayette, 377 F.3d 757 (7<sup>th</sup> Cir., July 30, 2004) (voting 8-3 to reject a constitutional challenge to a lifetime ban on entering recreational facilities of the city of Lafayette, Indiana, imposed unilaterally by the city's Chief of Police on a pedophile who had followed his urge to watch teens playing in the park while under treatment for his pedophilia).

Doe v. Dilling, No.00L5079 (Cook Co. Ill. Cir.Ct., March 15, 2004) (National Law Journal reported that a Chicago jury awarded \$2 million to an HIV+ woman, identified in court papers as Jane Doe, on her fraud claim against the parents of her late fiancé, Albert Dilling, who died from AIDS in 1999 and did not disclose his HIV status to her at the start of their relationship).

Doe v. Kelly, NYLJ, 7/23/2004, pg. 18, col. 1 (Sup.Ct., N.Y. County) (ruling that the Medical Board's refusal of an accidental disability retirement to a police officer with full-blown AIDS and numerous other medical complications was "irrational, arbitrary, and

capricious,” especially since the Board had previously approved a disability retirement application from another police officer who presented a similar medical profile).

*Doe v. Perry Community School District*, 316 F.Supp.2d 809 (S.D. Iowa, Apr. 29) (refusing to issue a preliminary injunction against a local Iowa school district and a police officer sued by a senior high school student for alleged violations of the student’s rights under the First Amendment, the Equal Protection and Due Process Clauses of the Fourteenth Amendment, and Title IX of the Education Amendments of 1972).

*Doe, Estate of v. Department of Correction*, 268 Conn. 753, 848 A.2d 3778 (Conn. Supreme Ct., May 11, 2004) (ruling on when HIV infection qualifies as an occupational illness for purposes of the law governing occupational disability benefits for public employees)

*Doerr v. Colorado Div. Of Youth Servs.*, 2004 WL 838197 (10<sup>th</sup> Cir., April 20, 2004) (not selected for publication in F.3d) (unanimously rejecting constitutional and statutory employment discrimination claims brought by Robert Doerr against the Colorado Division of Youth Services and several of that agency’s senior staff members where Doerr claimed that he was subjected to hostile environment sexual harassment by co-workers based on their perception of him as being gay).

*Dorr v. First Kentucky National Corp.*, 1986 U.S. App. LEXIS 33065 (6<sup>th</sup> Cir., 1986) (ruling that a gay man could pursue a religious discrimination claim under Title VII when his employer fired him because he became president of the local chapter of Dignity, the gay Catholic group).

*Downey v. Schneider*, NYLJ, 2/18/2004, p. 24, col. 1, (Nassau County Supreme Court Feb. 9, 2004) (ruling a Catholic seminary’s decision to dismiss a homophobic student who had threatened to go public with his criticism of what he considered the pro-gay slant of the school’s teachings did not violate the school’s contract with the student).

*Duncan v. Secretary of Defense*, 2004 WL 1118300 (E.D. La., May 18, 2004) (illustrating the futility of HIV+ service members attempting to vindicate their rights in litigation against the military establishment. Plaintiff, an African-American Army member, filed this lawsuit, alleging a wide array of claims sounding in tort, invoking constitutional rights, and claiming the military did not even follow its own regulations in his case (Plaintiff submitted to HIV testing in December 1999 and January 2000 upon activation of his reserve unit but was not informed that he had tested positive until diagnosed April 2002). Judge Vance determined, probably correctly in light of the extraordinary barriers that Congress and the Supreme Court have erected in such cases, that all defendants enjoyed immunity from suit and dismissed the case).

*Dunbar and Edge v. Government of the Yukon Territory*, 2004 YKSC 54 (Yukon Territory Sup.Ct., July 14, 2004) (ordering that a marriage license be issued to plaintiffs and in effect, declaring the common law definition of marriage in Canada has changed

for the whole country, not just for the provinces of British Columbia, Ontario and Quebec, where the appeals courts had ruled).

Duntley, *People v.*, 2004 WL 810003 (Cal. App., 4<sup>th</sup> Dist., April 15, 2004) (not officially published) (upholding a voluntary manslaughter conviction and eleven-year prison sentence for the unfortunately-named Aryan Duntley, who was convicted for killing his employer, a gay crackhead porn website entrepreneur).

*D.W. v. Bliss*, 2004 WL 1716441 (Kans. App., July 30, 2004) (unpublished disposition) (the court reversed a grant of summary judgment and allowed a negligence action, based on premises liability, to continue on behalf of a young man who claims that at age 16 he was seduced into a homosexual relationship with a man for whom he was doing lawn-mowing chores, and that the man's wife should be liable to him for failing to prevent this from happening).

*E.B., In re Parentage of; Carvin and Britain*, 89 P.3d 271 (Wash. Ct. App., May 3, 2004) (rejected an argument that a lesbian co-parent should be able to assert parental rights under the Uniform Parentage Act (UPA), ruling that under Washington's common law, the lesbian co-parent can be treated as a de facto parent and seek rights of parental recognition, including a right to visitation)

*E.L.M.C., a Child, In the Interest of*, 2004 WL 1469410, 100 P.3d 546 (Colorado Ct. App. July 1, 2004) (ruling that Elsey Maxwell McLeod, the former domestic partner of Cheryl Ann Clark, was entitled to an award of parenting time and responsibility toward the child whom Clark had adopted, but that the trial court's order restricting Clark from exposing the child to homophobic religious teachings required reconsideration due to constitutional concerns about freedom of religion).

*Egan v. Hamline United Methodist Church*, 679 N.W.2d 350 (Minn.App. April 13, 2004) (refusing to extend the protections of the equal employment provisions of the Minnesota Human Rights Act to a bisexual choirmaster of a church who alleged discrimination based on sexual orientation, because the religious staff of religious organizations are exempted unless the exemption is specifically waived and finding no waiver by the defendant church, despite the church's prior voluntary adoption of a non-discrimination policy that includes sexual orientation).

*El-Al Israel Airlines v. Danilowitz*, H.C.J. 721/94 (1994) (airline must extend spousal benefits to same-sex partner of flight attendant)

*Elisa Maria B. v. The Superior Court of El Dorado County*, 2004 WL 1119615, 2004 Cal. App. LEXIS 761 (Cal. Ct. Apps, 3<sup>rd</sup> App. Dist., May 20, 2004) (unanimous three-judge panel has rejected an attempt by child welfare officials of El Dorado County to force a lesbian co-parent to provide child support for the children of her former partner).

*Elkin v. State*, 2004 WL 1472624 (Tx.Ct.Apps., July 1, 2004) (not reported in S.W.2d) (unanimous per curiam ruling rejecting Vann Dean Elkin's appeal of the jury verdict in

an indecent exposure case involve a plainclothes police officer in a Tarrant County public park).

English and Office of Financial and Insurance Services Commissioner v. Blue Cross Blue Shield of Michigan, 2004 WL 1906853 (Mich. Ct.App., Aug. 26, 2004) (upholding an external review that determined that Blue Cross Blue Shield of Michigan must pay for a physician's HIV-test under a contract of insurance that rules out coverage for "screening tests" but provides coverage for tests used for diagnostic purposes).

Farrar v. Hobby, 506 U.S. 103 ( ) (when jury awards nominal damages in civil rights action, no attorneys fees should be awarded to prevailing party unless the case established a significant point of law).

Feingold v. State of New York, 366 F.3d 138 (2<sup>nd</sup> Cir., April 30, 2004) (An administrative law judge in the Harlem office of the New York State Department of Motor Vehicles, described by the court as "a white, Jewish gay male," presented a prima facie case of illegal employment discrimination, so defendant-employers, supervisors, and the DMV should not have been granted summary judgment).

Firestine v. Parkview Health System, Inc., 2004 WL 1303405, \_\_F.3d\_\_ (7<sup>th</sup> Cir., June 10, 2004) (not selected for publication in the Federal Reporter) Usually, federal courts are quick to find a basis for dismissing discrimination claims, or granting summary judgment to employers, but that is not the case when the plaintiff is claiming religious discrimination by a gay or lesbian supervisor).

Fischer v. City of Portland, 2003 WL 23537982 (Ore., Nov. 18, 2003) (ruling that plaintiff Loraine Fischer, who alleged that she encountered hostile environment harassment in a public workplace after disclosing that she had a female domestic partner, had stated an equal protection claim under 42 U.S.C. sec. 1983, and should be allowed to amend her Title VII sexual harassment claim to that effect).

Forum for Academic and Institutional Rights v. Rumsfeld, 390 F.3d 219 (3<sup>rd</sup> Cir., Nov. 29, 2004) (Solomon Amendment, barring federal financial assistance to schools that bar military recruiters, violates rights of expressive association and is preliminarily enjoined).

Forum for Equality PAC v. City of New Orleans, 2004 WL 1950492 (La. Sup. Ct., Sept. 2, 2004) (rejecting attempts to keep issues off the ballot where voters were being asked to amend their state constitution to ban any legal recognition of same-sex relationships).

Fourie v. Minister of Home Affairs, Case No. 232-2004 (South Africa Supreme Court of Appeal, Nov. 30, 2004) (Sexual Orientation Discrimination ban in S.A. Constitution requires opening up marriage to same-sex couples).

Galland v. Meridia Health System, Inc., 2004 WL 573831 (Ohio. App., 9<sup>th</sup> Dist., March 24, 2004) (not reported in N.E.2d) (unanimous three-judge panel reversing the grant of

summary judgment in an AIDS phobia case and holding that plaintiff had an actual physical injury which could be the predicate for an emotional distress claim after sustaining a puncture wound from a suture needle, regardless of whether plaintiff was infected with HIV).

Galvin v. Hinkle, NYLJ, 7/6/04 (N.Y. Supreme Ct., N.Y. Co.) (ruling that the normal psychologist-client privilege applied to a situation where one member of a male domestic-partnership sought to depose a psychologist who had provided counseling to the couple, in order to elicit contradictions between statements made by his former partner to the psychologists and statements he made during his deposition concerning the terms of the parties' understanding concerning real property ownership rights now in dispute due to the break-up).

Gamwell v. James B. Hunt High School and Wilson County, North Carolina (Raleigh News & Observer, April 28 & 29) (rejecting a 1<sup>st</sup> amendment rights lawsuit (without a written opinion) by an out high school student whose campaign for student body president used signs that were removed by the principal stating "Queer Eye for Hunt High").

Gardiner, Estate of Marshall, 42 P.3d 120 (Kans. 2002) (transsexual marriage is contrary to public policy of Kansas).

Garnelis v. Indiana State Dept Of Health, 806 N.E.2d 365 (Ind. Ct. App, April 20, 2004) (reversing the Marion Superior Court's grant of summary judgment to the defendant state health department, ruling that the time for filing a tort claim based on an HIV misdiagnosis through the negligence of the state lab began to run when the misdiagnosed person discovered eight years later that he was not HIV+).

Gavan, People v., 2004 WL 817178 (Cal.App. 4 Dist. April 14, 2004) (Not Officially Published) (affirming the conviction, rejecting Gavan's claim of insufficient evidence, and an abuse of discretion by the trial court in denying his motion to reduce the conviction from a felony to a misdemeanor for lewd and lascivious act on a 15-year-old boy).

Gebremaria v. Ashcroft, 378 F.3d 734 (8<sup>th</sup> Cir., August 2, 2004) (ruling that the U.S. Board of Immigration Appeals had corrected refused to grant asylum to Kefay Gebremaria, an Ethiopian woman living with AIDS who lawfully entered the U.S. as a visitor in 1995 after suffering imprisonment in her home country for her political acts, because she failed to raise the issue of her health at a hearing held in 1997, just two months after she received her AIDS diagnosis).

Glasco v. Marony, 808 N.E.2d 1107 (Ill.App. 5<sup>th</sup> Dist., April 20, 2004) (rejecting a rather bizarre HIV confidentiality claim in which it was established through the plaintiff's failure to respond to the defendant's request for factual admissions that the plaintiff had apparently altered her HIV test to indicate that it was positive and then sent it to a doctor's office, where it circulated among staff).

Gold v. Duetsche Aktiengesellschaft, 365 F.3d 144 (2<sup>nd</sup> Cir., April 21, 2004) (ruling that a gay man's employment discrimination claim could not be heard in court, because he had signed a mandatory arbitration agreement that was routinely required by employers in the securities and financial industries as a condition of employment when he was hired).

Goodridge v. Department of Public Health, 798 N.E.2d 941 (Mass., Nov 2003). Opinions of the Justices to the Senate, 802 N.E.2d 565 (Mass., Feb. 3, 2004) (four members of the Massachusetts Supreme Judicial Court told the state Senate that its proposed Civil Union Law is unconstitutional because it would bar same-sex partners from marrying, reaffirming their November 2003 decision in Goodridge, which held that the equality requirements imposed by the state constitution mandated that same-sex partners be allowed to marry on the same basis as opposite-sex partners).

Gormley v. Robertson, 83 P.3d 1042 (Wash. Ct. App., 3d Div., Feb. 3, 2004) (holding that a court may apply the "meretricious relationship" doctrine when dividing the assets and liabilities of a same-sex couple whose relationship has ended).

Gould v. Dickens, 143 S.W.3d 639 (Mo. App. E.D. Aug. 3, 2004) (reversing a trial court decision which specified that a lesbian mother could not sleep with her partner during overnight visitation by her minor child and ruling that the trial decision was improper because there was no evidence produced at trial demonstrating that this would be in the best interest of the child, and remanded the matter for a new trial).

Green v. Charleston Area Medical Center, 600 S.E.2d 340 (W.Va. Ct.Apps, June 29, 2004) (A claim by the executrix of the estate of a man who died from AIDS against the doctor who had administered tainted clotting factor to him in March 1983 was revived when the highest court of West Virginia agreed with the plaintiff's argument that the doctor's attorney unfairly prejudiced the case by attempting to throw all the blame on the manufacturer of the clotting factor during opening and closing arguments).

Greene v. Bowles, 361 F.3d 290 (6<sup>th</sup> Cir., March 16, 2004) (reversing the district court and holding that a transsexual prisoner in Ohio has the right to a trial of her claim that the prison warden violated her 8<sup>th</sup> Amendment right to be free of cruel and unusual punishment by knowingly placing her in a position to be physically assaulted by another prisoner).

Greenleaf, People v., 780 N.Y.S.2d 899 (Justice Court, Town of New Paltz, NY, July 13, 2004) (ruling that New York's criminal statute prohibiting individuals from solemnizing marriages without having been presented with a marriage license, as applied to marriages performed for same-sex couples, violates the Equal Protection Clause of the U.S. Constitution).

Harper v. Poway Unified School District, (S.D.Cal., Nov. \_\_ 2004) (student entitled to trial of his 1<sup>st</sup> Amendment claim concerning school's refusal to allow him to wear T-shirts with homophobic slogans).

Harward, People v., 2004 WL 1282850 (Cal.App. 6<sup>th</sup> Dist., June 10, 2004) (not officially published) (ruling where again the charged offense involved touching by hand, with no anal or oral sex involved between the adult male (an educator and official of the Mormon Church in Santa Clara County) and the victims, a group of underage male youths. The appeals court found that the record contained no evidence of probable cause to believe that a situation in which HIV transmission could take place had occurred, but remanded (after removing the HIV testing order) to allow the prosecutors to present any relevant evidence they might have on point in a new hearing).

Hebel v. West, (N.Y. Sup Ct., Ulster County, April 18, 2004) (Justice Michael Kavanagh has ruled that Robert Hebel, a village trustee in New Paltz, New York, had standing to file the civil lawsuit that led to a temporary restraining order against the village's mayor, Jason West, putting an end to his performance of weddings for same-sex partners who had not obtained (unobtainable) marriage licenses from the county clerk).

Hebel v. Village of New Paltz, NYLJ, 9/22/04, p. 21, col. 1 (Supreme Ct., Ulster Co., Feb. 17, 2004) (finding that Hebel did have standing to file the suit requiring all Village officials to comply with the requirements of the state's marriage law, but refusing to void the appointments of Rotzle and Walsh officials authorized to perform marriages for same-sex partners or to declare the marriages invalid).

Hernandez v. Bankers Trust Co., 773 N.Y.S.2d 35 (NY App.Div., 1<sup>st</sup> Dept., March 4, 2004) (unanimously rejecting a sexual orientation discrimination claim by plaintiff, an at-will computer technician, who said anti-gay comments directed against him after he jokingly changed the screen email name of an African-American employee to "White Girl," and mentioned to other employees that he should have changed it to "Ghetto Girl").

Hernandez-Montiel v. Immigration and Naturalization Service, 225 F. 3d 1084 (9<sup>th</sup> Cir. 2000) (asylum case law recognizing the claims of effeminate gay men from Mexico)

Hester v. Rich, 2004 WL 1872296 (S.D.N.Y., Aug. 19, 2004) (not officially published) (openly gay plaintiff alleged sexual orientation discrimination against an employer who has lots of openly-gay employees working for her in prominent positions and lost after being replaced).

Hester v. Rich, 2004 WL 2049271 (S.D.N.Y., Sept. 13, 2004) (not officially published) (rejecting Hester's motion for reconsideration and reargument of unfounded discrimination claims, and rehashing Hester's claims that the court had not allowed sufficient discovery and had engaged in fact-finding that should have been left to trial).

Hester v. Rich - see also, Rich v. Hester

Higgs v. State of Florida (Monroe County) The National Center for Lesbian Rights and Equality Florida filed suit in Monroe County (Key West) seeking marriage licenses on behalf of six same-sex couples on April 15, the date symbolically chosen due to its association with the filing deadline for federal income taxes.

Hislop v. Attorney General of Canada, C41224 (Ontario Ct. App., Nov. 26, 2004) (Pension rights of same-sex partners are retroactive to date of passage of federal pension reform law).

Hobbs, In re Julie Ann, Relator, 2004 WL 2677455 (Tex. Ct. App. – Hous. [1<sup>st</sup> Dist], Nov. 23, 2004) (not officially published) (petition for writ of mandamus was improper method of seeking interlocutory review of temporary decision on custody and visitation for lesbian co-parent).

Hogue v. Hogue, 2004 WL 34510 (Tenn. Ct.App., Jan. 6, 2004) (not officially published) (ruling that a chancery court's order to a gay father in a pending divorce case restraining him from taking the child around or otherwise exposing the child to his gay lover(s) and/or his gay lifestyle was not specific enough to justify sentencing the father to two days in jail for contempt for having told his son that he is gay).

Hogue v. Hogue, 2004 WL 578593 (Tenn. Ct.App., March 24, 2004) (not officially published) (reversing a trial court ruling that Joseph Hogue may not "expose" his son to his "gay lifestyle" pending final resolution of divorce proceedings in which custody and visitation are at stake).

Holguin v. Flores, 2004 WL 2051166 (Cal.Ct.App., 2<sup>nd</sup> Dist., Sept. 15, 2004) (rejecting the contention of a heterosexual man that the state had violated his equal protection rights by extending standing to sue for wrongful death to registered same-sex domestic partners but not to him).

Holian, People v., 2004 WL 171577 (Cal.Ct.App., 1<sup>st</sup> Dist., 2<sup>nd</sup> Div., Jan. 29, 2004) (not officially published) (holding that a threat of AIDS not a deadly weapon without actual proof of AIDS where defendant used his teeth to bite another and then proclaimed he was HIV+ even though it turned out he was not).

Holocaust Victim Assets Litigation, In re, 311 F.Supp.2d 407 (E.D.N.Y. April 2, 2004) (rejecting a cy pres distribution of the trust fund so long as actual needy survivors of the Holocaust a group that may include some who were victimized for homosexuality still live. The Pink Triangle Coalition petitioned a court charged with distributing unclaimed assets looted by Nazis (the result of a class action suit) to reserve a small portion of those funds (1) to help those victimized because of their homosexuality, (2) to support research into the anti-gay crimes of the Nazis, (3) to provide education about Nazi persecution of homosexuals, and (4) to prevent further anti-gay persecution).

Hosseinipour v. State Medical Board of Ohio, 2004 WL 503941 (not officially published)(Ohio Ct.App., 10<sup>th</sup> Dist., March 16, 2004) (denying unanimously a claim for

reinstatement of an HIV+ plaintiff's medical and surgical license after his license was permanently revoked in 1999 by the state medical board after he had begun to act strangely due to encephalopathy ).

Housing Works, Inc. v. Giuliani, 2004 WL 2101900 (S.D.N.Y., Sept. 15, 2004) (filing a report and recommendations after sifting through the city's motion to dismiss that was brought on behalf of itself and numerous former city officials from the Giuliani Administration. Housing Works had alleged violation of its constitutional rights under the First Amendment and the Equal Protection Clause based on the Giuliani Administration's refusal to renew several housing contracts in 1997 and the subsequent withdrawal of a city health department endorsement for a Housing Works application for state contracts to provide education and training to clients).

Howell v. North Central College, 320 F.Supp.2d 717 (N.D. Ill., Eastern Div., June 2, 2004) (rejecting an attempt by Danielle Howell to amend her discrimination claim against the college to add claims of retaliation and breach of contract to already dismissed claims of sex discrimination in violation of Title IX and 42 USC 1983).

Illinois, People of v. Stanbridge, 810 N.E.2d 88 (Ill. App. 4<sup>th</sup> Dist., May 4, 2004) (reversing the conviction and seven year jail sentence imposed on defendant on charges of aggravated criminal sexual abuse involving two incidents of attempting to initiate oral sex with 14-year-old boys, finding that the trial court improperly allowed the state to introduce evidence that a decade prior to the events in question).

In re Legislative Referendum No. 334, State Question 711\_, 2004 OK 75 (Sept. 23, 2004) (announced its unanimous decision to decline to assume jurisdiction over an attempt to get the Oklahoma Supreme Court to strike from the November 2 ballot a proposed constitutional amendment on same-sex marriage was unsuccessful).

Informal Opinion of the Attorney General's Office, No. 2004-1, 2004 WL 551537 (New York, March 3, 2004) (opinion issued by N.Y. Attorney General Elliot Spitzer in response to inquiries from several city attorneys seeking advice on whether New York's Domestic Relations Law allows the issuance of marriage licenses to same-sex partners. Spitzer advised that New York's statute did not contemplate marriage licenses for same-sex partners (although such a denial of equal protection raised serious constitutional concerns), but that New York principles of comity should provide for the state to recognize marriages lawfully performed elsewhere, an issue of some significance in light of marriages being performed just across the border in Canada and soon to be performed in Massachusetts).

In re Opinions of the Justices to the Senate, 802 N.E.2d 565 (Mass. Sup. Jud. Ct., Feb. 3, 2004) (follow up from Goodridge v. Department of Public Health, 798 N.E.2d 941 (Mass. Sup. Jud. Ct., Nov. 18, 2003) in which the court responded negatively to a query

from the State Senate about whether the enactment of a same-sex civil union law would satisfy the constitutional equality requirement).

*Jackson v. Fauver*, 2004 WL 2165842 (US Dist.Ct., NJ, Sept. 27, 2004) (consolidating the claims of numerous state prison inmates with a variety of medical problems, a judge found that some of the plaintiffs, including some with AIDS, had alleged facts sufficient to maintain 8<sup>th</sup> Amendment claims against prison officials for inadequate medical care, while others, including some with AIDS, had not).

*Javanella v. Ashcroft* (C.D.Cal., suit filed Nov. 29, 2004) (alleging unlawful discrimination in denying permanent resident status to a transsexual Filipino national who gained U.S. entry as spouse of U.S. citizen).

*John B. v. Superior Court*, 18 Cal.Rptr.3d 48 (Cal. Ct.Apps., 2<sup>nd</sup> Dist., August 23, 2004) (ruling that a closeted gay man who is being sued for transmitting HIV to his wife may not be required to disclose the identities of the men with whom he previously had sex).

*Jones v. Potter*, 301 F.Supp.2d 1 (D.D.C., Jan. 22, 2004) (finding that summary judgment should be granted to the defendant on the ground that plaintiff had failed to sufficiently allege the elements of a hostile environment claim; however, finding that plaintiff had raised a valid factual issue concerning the sexual orientation of his harasser).

*Jones, State of Ohio v.*, 2004 WL 690419 (Ohio Ct App., 2<sup>nd</sup> Dist., April 2, 2004) (not officially reported) (ruling that the Montgomery County Court of Common Pleas erred when it ordered the release from custody and termination of post-release control over Farris Jones, an HIV+ person who served a prison term for soliciting for sexual activity after a positive HIV test and then after release was charged with re-offending and ultimately convicted of a disorderly conduct misdemeanor).

*Johnson v. Fresh Mark, Inc.*, 2004 U.S. App. LEXIS 9997 (6<sup>th</sup> Cir., May 18, 2004) (unofficially published per curiam opinion) (affirming the dismissal of sex and perceived disability charges brought by a transsexual person under Title VII and the ADA against a private sector employer).

*Johnson v. City of New Orleans*, (La. Civil Dist. Ct., May 17, 2004) (rejecting a challenge to a New Orleans ordinance that allows same-sex partners of municipal employees to be included in family benefits plans provided by the city, granting a pretrial motion filed by the defendants).

*Johnson v. Johnson*, 2004 WL 1985441 (5<sup>th</sup> Cir., Sept. 8, 2004) (unanimously ruling that a gay man who claims he was reduced to sexual slavery in prison will be allowed to sue prison officials for violation of his right to equal protection of the law and to be protected from cruel and unusual punishment)..

*K.Z. & Y.M., In the Matter of [Israel]*, Family Court (Tel Aviv) 6960/03 (Nov. 21, 2004) (finding enforceable living-together contract of same-sex couple).

Kandu, Lee, and Ann C. Kandu, *In re*, 2004 WL 1854112, 315 B.R. 123 (U.S. Bankruptcy Court, W.D. Wash., Aug. 17, 2004) (ruling that principles of comity governing recognition of foreign marriages would not require the court to allow a same-sex couple married in Canada to file a joint bankruptcy petition as spouses).

*Kantaras v. Kantaras*, 884 So.2d 155 (Fla. App. 2d Dist., July 23, 2004; rehearing denied, Sept. 29, 2004) (holding that, for purposes of determining the validity of their marriages, transsexuals are constrained by their sex as determined at birth, at least until the legislature explicitly instructs otherwise).

*Kastl v. Maricopa County Community College*, CIV-02-1531 PHX SRB (June 2, 2004) (not selected for publication) (federal district judge in Arizona upheld a Title VII cause of action for a transsexual plaintiff).

*Katz v. Municipal Parking, Inc.*, 2004 WL 835719 (Minn. App., April 20, 2004) (Not Reported in N.W.2) (contesting the denial of unemployment benefits after a parking attendant's discharge even though he had miserable employment record. On reason Plaintiff was fired was due to his practice of drawing pictures and decorating tennis balls with racist and homophobic illustrations, which he would then leave around in the workplace).

*Kerr v. Bradbury*, 89 P.3d 1227 (Ct. App. Ore., May 5, 2004) (finding that a proposed ballot question intended to establish that "sexual orientation shall not be taught in Oregon public schools in a manner that would express approval of, promote or endorse the behaviors of homosexuality or bisexuality" was defective in that it did not include the text of the state's education statutes as they would read if the proposed amendments were approved by the voters).

*Kerrigan-Mock v. State of Connecticut*, (Ct. Super.Ct., New Haven District, Aug. 25, 2004) (Gay and Lesbian Advocates and Defenders filed suit in New Haven, Connecticut, on behalf of seven same-sex couples seeking marriage license demanding declaratory and injunctive relief premised on Connecticut constitutional guarantees of equal protection, due process, and intimate and expressive association).

*Kluczyk v. Tropicana Products, Inc.*, 847 A.2d 23 (N.J. Super Ct., App.Div., April 28, 2004) (upheld a jury verdict rejecting a same-sex harassment charge but sustaining a charge of retaliation by the company against the individual who had raised the harassment claim).

*K.M. v. E.G.*, 13 Cal. Rptr. 3d 136 (Cal. Ct. App., 1st Dist., May 10, 2004) (donor of egg to be used for in vitro fertilization may not seek to assert rights of a legal parent where at time of donation there was no intent for her to have legal parental rights).

*Knight v. Norton*, 2004 WL 1146657 (E.D.Pa., May 19, 2004) (not officially published) (ruling that plaintiff, a lesbian employee of the National Park Service, should be allowed to pursue sex, disability and retaliation claims against her employer, arising from

incidents while she was working at National Historic Park in Philadelphia, the site of Independence Hall and the Liberty Bell).

*Knight v. Schwarzenegger*, 2004 WL 2011407 (Sacramento Super. Ct., Sept. 8, 2004) (rejecting an attempt by anti-gay forces to block California's wide-ranging domestic partnership from going into effect on January 1).

*Koebke v. Bernando Heights Country Club*, 10 Cal. Rptr. 3d 757 (Cal. App. 4<sup>th</sup> Dist., Div. I, March 8, 2004) (ruling that private businesses can lawfully refuse to provide domestic partners with benefits provided to married couples and affirming a lower court's ruling that California's civil rights law does not prohibit marital status discrimination).

*Koebke v. Bernando Heights Country Club*, 10 Cal. Rptr. 3d 757 (Cal. App. 4<sup>th</sup> Dist., Div. I, March 8, 2004), rev. granted, June 9, 2004 (agreeing to review the court of appeal decision that had rejected a discrimination claim by B. Birgit Koebke and Kendall French against a San Diego country club that refused to accord them the same access as is extended to married couples).

*Lankford v. BorgWarner Diversified Transmission Products, Inc.*, 2004 WL 540983 (S.D.Ind., March 12, 2004) (Not Reported in F.Supp.2d) (granting judgment on the pleadings against a male employee who pursued a claim of discrimination based on sex under Title VII of the Civil Rights Act of 1964, ruling that the wrongs alleged related to sexual orientation and not gender discrimination).

*Largess v. Supreme Judicial Court of the State of Massachusetts*, 317 F.Supp.2d 77 (D. Mass., May 13, 2004) (rejecting lawsuit brought by a right-wing litigation group, calling itself Liberty Counsel on behalf of a twelve Massachusetts citizens, eleven of them members of the legislature, alleging that Massachusetts citizens had been denied the right to a republican form of government, as guaranteed them in the U.S. Constitution, when the Supreme Judicial Court engaged in legislating by redefining the meaning of marriage under state statutory law).

*Largess v. Supreme Judicial Court for the State of Massachusetts*, 373 F.3d 219 (1st Cir. U.S. Court of Appeals, June 29, 2004), cert. denied, 2004 WL 2184961 (Nov. 29, 2004) (finding that case law is imprecise about the meaning of the Constitution's provision in Art IV guaranteeing to each state a "republican form of government," court finds that Mass. S.J.C. did not violate this provision by ordering the state to allow same-sex couples to marry through a change in the common law definition of marriage).

*Lawrence v. Texas*, 539 U.S. 558 (2003) (Texas Homosexual Sodomy law, which made oral or anal sex between adults of the same sex a misdemeanor, violated the liberty protected by the Due Process Clause of the 14<sup>th</sup> Amendment).

*Levin v. Levin*, 645 N.E.2d 601 (Ind. 1994) (husband of woman who conceived child through donor insemination is legal father of child).

Lewittes v. Cohen, NYLJ, 6/4/2004, (S.D.N.Y.) (expressing doubt on whether it is still defamatory per se to falsely call somebody gay).

Li v State of Oregon, (Multnomah Cir.Ct, March 12, 2004) (lawsuit initiated by the ACLU in Multnomah County to decide whether gay will win the right to marry).

Li and Multnomah County v. State of Oregon, No. 0403-03057 (Oregon Circuit Ct., Multnomah County, 4<sup>th</sup> Dist. April 20) (finding that Oregon's marriage statute violates the equal benefits provision of the state constitution by depriving same-sex couples of the same benefits of marriage that are afforded to opposite-sex couples).

Li v. State of Oregon, 2004 WL 1258167 (Ore., Multnomah Co. Cir. Ct., April 20, 2004) (unpublished decision) (ruling that the state must accept for registration the licenses of same-sex couples who had been married in Multnomah County prior to the issuance of Bearden's order).

Limon, State of Kansas v., 83 P.3d 229 (Kans. App. Jan. 30, 2004), rev. granted, 2004 Kan. LEXIS 284 (May 25, 2004) (voting 2-1 to reject a challenge to the lengthy prison sentence imposed on Matthew R. Limon, who was found at age 18 to have engaged in oral sex with a 14-year-old who was a fellow resident of an institution for developmentally disabled youth).

Lin v. Ashcroft, 2004 WL 1153699 (9<sup>th</sup> Cir., May 24, 2004) (unpublished decision) (unanimous affirming the Board of Immigration Appeals' refusal of asylum to a gay man from China).

Local Union No. 12004, United Steelworkers of America v. Commonwealth of Massachusetts, 377 F.3d 64 (1<sup>st</sup> Cir., July 30, 2004), (ruling that a gay discrimination claim brought against a labor union and its members before a state agency may be preempted because of federal labor relations law).

Lockyer v. City and County of San Francisco, 95 P.3d 459, 17 Cal. Rptr. 3d 225 (Cal.Sup.Ct., Aug. 12, 2004) (unanimously holding that local officials in San Francisco could not unilaterally defy the state's marriage law and issue licenses to same-sex couples).

Lofton v. Sec'y of the Dep't of Children and Family Servs., 358 F.3d 804 (11<sup>th</sup> Cir., Jan. 28, 2004), pet. for en banc rev. denied, 377 F.3d 1275 (11<sup>th</sup> Cir., July 21, 2004), certiorari denied, 125 S.Ct. 869 (U.S.Sup.Ct., Jan. 10, 2005) (Florida's categorical ban on "homosexuals" adopting children does not violate the due process and equal protection rights of gay adults who seek to be adoptive parents; Florida's belief in the desirability of traditional families headed by two parents of the opposite sex as the optimal setting for child-raising provides a rational basis, and no heightened scrutiny is required for sexual orientation discrimination claims).

Lozoya v. Sanchez, 66 P.3d 948 (N.M. 2003) (ruling that domestic partners should also be able to claim compensation when an injury inflicted on their partner deprives them of the “consort, companionship, society, affection, services, and support” of their partner).

Lucas v. Redig, 2004 WL 1700517 (Cal. Ct.Apps., 3<sup>rd</sup> Dist., July 30, 2004) (not officially published) (holding that if a man agrees to have gay sex with his boss because he is afraid of offending him and perhaps affecting his employment it is a consensual, non-actionable situation and invalid for purposes of a later action for sexual battery).

Lundy v. General Motors Corp., 2004 WL 1262134 (6<sup>th</sup> Cir., June 4, 2004) (not officially published) (affirming a grant of summary judgment, the court found, among other things, that incidents of harassment of a male employee on account of perceived homosexual orientation could not be the basis of a discrimination claim under Ohio civil rights law or Title VII, because sexual orientation discrimination is not covered under those statutes).

M. v. H., 2 S.C.R. 3 (Supreme Court of Canada, 1999) (same-sex partners are entitled to be treated as spouses for purposes of federal law).

Marcum, United States v., 60 M.J. 198 (Ct.App., Armed Forces, Aug. 23, 2004) (ruling on the appeal of a consensual sodomy conviction of an Air Force sergeant for performing oral sex on an enlisted man under his command and finding that the conduct in question was not protected by the Constitution, so the conviction should be upheld. The court found it unnecessary to address whether Article 125 of the Uniform Code of Military Justice, the sodomy law for the armed forces, is unconstitutional on its face, because of the particular facts in this case).

Marsh v. State, 2004 WL 1687986 (Tx.Ct.Apps., July 29, 2004) (affirming a seventy-year prison sentence for a teenager who killed his friend and neighbor with whom he had been engaged in a homosexual relationship).

Martin M., In re, 2004 WL 370762 (Cal.Ct.App., 6<sup>th</sup> Dist., March 1, 2004) (Not Reported in Cal.Rptr.3d) (holding that treating the offense of oral copulation with a minor as a felony violates equal protection because the companion statute, dealing with sexual intercourse with a minor, treated that crime as a misdemeanor).

Martin v. Los Angeles Unified School District, 2004 WL 928182 (Cal. Ct. App., 2<sup>nd</sup> District, April 30, 2004) (unpublished disposition) (holding that in a hostile environment sexual harassment case brought by a male employee based on the actions of a male supervisor, it was not necessary for the plaintiff to prove that the supervisor was gay, and the lower court erred by dismissing his claim based, in part, on the lack of evidence about the supervisor’s sexual orientation).

Martinez v. Port Authority of the City of New York (S.D.N.Y., Jury Verdict, Nov. 18, 2004) (awarding damages to man arrested in WTC restroom by Port Authority police officers in entrapment action against gay men).

Matter of Adoption of Infant K.S.P. and Infant J.P., 804 N.E.2d 1253 (Ind. Ct.App., March 23, 2004) (ruling that a lesbian co-parent may adopt her same-sex partner's biological child without extinguishing the partner's parental rights, if that is in the best interests of the child).

Matter of N., NYLJ, 3/29/2004, pg.19 (Richmond County Family Court) (holding that same-sex couple may jointly adoption).

McConnell v. Internal Revenue Service (Magistrate's opinion recommending dismissal of federal suit by gay man claiming to have been married to his same-sex partner and entitled to federal recognition for tax purposes, Nov. 2, 2004, D. Minn.)

McGrath v. Toys "R" Us, Inc., 356 F.3d 246 (2<sup>nd</sup> Cir., Jan. 23, 2004) (certifying a question to the New York Court of Appeals concerning whether court awarded substantial attorneys fees would be justified as a matter of New York Law considering that jury awarded only nominal damages to the plaintiffs), 2004 N.Y. Slip Op. 08593, 2004 WL 2720092 (Nov. 23, 2004) (N.Y. will follow federal rule on attorney fee awards in cases where jury awards only nominal damages for actual injury).

McGriff v. McGriff, 2004 WL 2101731 (Idaho, Sept. 21, 2004) (unanimously concluding that homosexuality is no per se bar to child custody, and upholding a county magistrate's decision denying custody to a gay father, and limiting the children's visitation to times when his partner is not in residence).

McHenry v. United States, 367 F.3d 1370 (Fed. Cir., May 13, 2004) (affirming a determination by Court of Federal Claims that the permanent disability rating of 30% assigned to Major Frederick McHenry on account of his HIV status by the Navy's Physical Evaluation Board was valid).

Meeks, People v., 12 Cal.Rptr.3d 174 (Cal.App. 3 Dist., April 13, 2004) (upholding the conviction of an HIV+ man for failing to register his address with the State, and the sentence of 25 years to life under California's three strikes law, plus 2 additional years, in a 2-1 ruling).

Miguel, US v., 2004 WL 193250 (9<sup>th</sup> Cir., Jan. 30, 2004) (unpublished disposition) (rejecting the appeal of a second degree murder conviction in the U.S. District Court in Arizona, which included "a special jury finding that the murder was motivated in substantial part by the victim's actual or perceived sexual orientation").

Miller-Jenkins, Janet v. Miller-Jenkins, Lisa, Docket No. 454-11-03 Rddm (Rutland Family Ct., Sept. 2, 2004) (finding Lisa in contempt of its prior visitation order) (On September 28, Frederick County Virginia Judge John R. Prosser ruled that Lisa, as the child's birth mother, was the only person with a claim to legal custody of the child and, as Virginia did not recognize the Vermont civil union or any action taken pursuant to that status, that Lisa had the right to exclude Janet from contact with the child, as a legal parent generally has a right to exclude unrelated third-parties from contact with their

children; during Nov. 2004, Vermont Judge William Cohen ruled that both women were legal parents of the child under Vermont law.).

*Miner v. New York State Dept. Of Health*, 2004 WL 1152491 (S.D.N.Y., May 24, 2004) (not officially published) (granting summary judgment to the defendants, New York State prison health officials, on constitutional claims by an inmate who was falsely labeled HIV+ through a clerical error. Court concluded that Miner failed to state constitutional claims; his suit against the state was barred by immunity, and government officials are not held to individual liability for constitutional torts based on negligent conduct).

*Minnesota, State of v. Myrland*, 681 N.W.2d 415 (Minn. Ct. App., June 22, 2004) (unanimously reversing the convictions of elementary school teacher Brian Victor Myrland for three counts of possession of pictorial representations of minors and concluding that insufficient evidence had been presented against Myrland to sustain the convictions. The court also sternly rebuked the prosecutor in the case for making inappropriate, inflammatory comments to the jury designed to suggest that Myrland was a pedophile, notwithstanding the utter lack of evidence that this was so).

*Mississippi Commission on Judicial Performance v. Wilkerson*, 876 So.2d 1006 (Mississippi Supreme Court, July 1, 2004) (judicial ethics: 1st Amendment free speech rights protect judge from ethical sanctions for writing letter to the editor to local newspaper and participating in radio interview in which he expressed the opinion that gay people are sick and should be in mental institutions rather than the beneficiaries of legislation recognizing partnership rights; dissent opens up a significant policy debate with the majority about the purpose of judicial ethics sanctions).

*Moraga v. Ashcroft*, 2004 WL 1895128 (10<sup>th</sup> Cir., 2004) (not selected for publication in the Federal Reporter) (unanimously rejecting disability and sex discrimination claims from Virginia Moraga, a lesbian who was employed as a correctional officer at the federal prison in Florence, Colorado holding that that it was a pre-existing condition and that at the lower level she failed to argue sexual discrimination and had argued sexual orientation discrimination).

*Mullin v. Barnhart*, 2004 WL 1447967 (N.D.Iowa, June 15, 2004) (rejecting the reports of doctors, a Federal Magistrate upheld the denial of social security disability benefits to an HIV+ man in Iowa who argued that he was unable to work due to complications from his illness and finding that Mullin's doctors lacked the requisite psychiatric experience to back up his claim and that he was able to hold certain jobs).

*Muriel v. St. Barnabas Hospital*, 771 N.Y.S.2d 107 (N.Y.App.Div., 1<sup>st</sup> Dept., Jan. 20, 2004) (approving the restoration to the active trial calendar of a case that had been dismissed as abandoned, in which the plaintiff claimed she was given a false AIDS diagnosis after a spinal tap procedure, resulting in the destruction of her marriage).

Nei v. Dooley, 372 F.3d 1003 (8<sup>th</sup> Cir., June 18, 2004) (refusing summary judgment to prison officials in an action by South Dakota inmates who claim their lives were endangered by the conduct of a fellow inmate with HIV infection).

Newton, People v., 2004 WL 25314 (Cal. Ct. App., 5<sup>th</sup> Dist., Jan. 5, 2004) (not officially published) (rejecting defendant's appeal regarding his earlier agreement to take an AIDS test after being convicted of committing a lewd and lascivious act on a minor, to wit, placing one of his hands inside a girl's panties and holding onto her vagina).

Nichols v. Azteca Restaurant Enterprises, Inc., 256 F.3d 864 (9<sup>th</sup> Cir. 2001) and Rene v. MGM Grand Hotel, Inc., 305 F.3d 1061 (9<sup>th</sup> Cir. En banc 2002), cert. denied, 538 U.S. 922 (2003) (holding that employees subjected to homophobic harassment of a sexual nature could sue under Title VII if they could credibly claim that they were harassed due to gender non-conformity, concluding that this was discriminatory sex-stereotyping and thus sex discrimination).

Nixon v. Blunt, (Mo. Sup. Ct., May 21, 2004) (In a desperate effort to prevent the notoriously activist state judiciary from ordering marriage licenses for same-sex couples, the Missouri legislature voted to place on the ballot a proposal to amend the state constitution to ban same-sex marriages in the state. State Attorney General Nixon filed suit against Sec. of State Blunt seeking to compel a vote in August on the proposed amendment whether to the state constitution to ban same-sex marriages in the state. Nixon wanted the vote in August with primary elections rather than with the general election which would bring more conservatives to the polls. The court subsequently announced that oral argument in the matter would be held on June 1).

NPC International, Inc., v. Hill, 2004 WL 848310 (Ark. App., April 21, 2004) (not officially published) (affirmed a default judgment against a Pizza Hut restaurant for missing the filing deadline for its answer in what sounds like a substantively ridiculous AIDS phobia case).

Notch, Civil Commitment of Steven George, 2004 WL 61061 (Minn.App., Jan 13, 2004) (unpublished opinion) (affirming the commitment of a paranoid schizophrenic after he had been committed as mentally ill and dangerous subsequent to serving his second-degree murder sentence for the 1986 killing of his roommate, based on his irrational belief that the roommate was planning to rape him).

Officer, People v., 2004 WL 326929 (Cal. Ct. App., 4<sup>th</sup> Dist., Feb. 23, 2004) (Not Officially Published) (affirming the conviction of William Blade Officer on charges of sodomy of an unconscious victim and assault as a lesser included offense of a charged assault by means likely to produce great bodily injury).

Ohio, State of, v. Budreaux, 2004 Ohio App. LEXIS 2263 (Ohio Ct.App., 8<sup>th</sup> App Dist., May 20, 2004) (affirming a finding by the Common Pleas Court in Cuyahoga County that Francois Budreaux is a "sexual predator" who should remain confined under the sentence of ten to twenty-five years that was imposed on April 7, 1992).

*Oncale v. Sundowner Offshore*, 523 U.S. 75 (1998) (holding that as long as a victim was harassed “because of sex,” it did not matter whether the victim and the harasser were of the same gender or opposite genders).

*Ornstein v. New York City Health and Hospital Corp.*, NY Law Journal, Jan. 22, 2004 (N.Y. Sup Ct., N.Y. County) (Justice Sheila Abudus-Salaam ruling that a nurse who worked for a New York City hospital can sue the hospital for negligence as a result of an incident where she sustained a needle-stick injury while caring for an HIV-infected prisoner from Riker’s Island and rejected the city’s argument that it would be unreasonable for nurse Ornstein to continue suffering emotional distress from the incident when she had tested HIV-negative six months after it occurred).

*Parker v. Ashcroft*, 2004 WL 2616555 (U.S. Ct. App., 3<sup>rd</sup> Cir., Nov. 18, 2004) (not officially published) (Denying asylum application of gay man from Jamaica).

*Pennsylvania v. Bey*, 841 A.2d 562 (Pa. Super. Jan. 15, 2004) (reversing a trial court decision that had ruled that a gay man who had used his position in a convalescent home to commit sexual acts with a comatose quadriplegic was shown to be a sexually violent predator (SVP), warranting enhancement of his sentence).

*Pereira-Lima v. Ashcroft*, 2004 WL 816900 (4<sup>th</sup> Cir., April 15, 2004) (not selected for publication in the Federal Reporter) (dismissing an asylum claim on behalf of a Brazilian who claimed he was being persecuted because of his sexual orientation).

*People v. Alsbury*, 2004 WL 2439529 (Cal. Ct. App., 2<sup>nd</sup> Dist., Nov. 2, 2004) (not officially published) (affirming conviction of young gay man for murdering older gay man with whom he had a falling out).

*People v. Alvarez*, 2004 WL 1729824 (Cal. App., 5<sup>th</sup> Dist., Aug. 3, 2004) (not officially published) (ruling that where the defendant, grandfather of the two minor female complainants, who was charged with having fingered his granddaughters’ vaginas while serving as a babysitter would have to submit to an HIV test even though the facts don’t support testing).

*People v. Correa*, 2004 WL 1902742 (Cal. App., 6<sup>th</sup> Dist., Aug. 24, 2004) (not officially reported) (finding that the probable cause required by the HIV testing statute did exist, and it was appropriate to order the defendant to submit to HIV testing after defendant pled guilty to charges that included getting his girlfriend’s 8-year-old son to “put his mouth on defendant’s penis”).

*People v. Delyle*, 2004 WL 2698857 (Cal. Ct. App., 2<sup>nd</sup> Dist., Nov. 29, 2004) (not officially published) (upholding conviction of gay man for murdering wealthy widow with whom he was living when she spurned his marriage proposal).

People v. Jovanovic, 263 A.D.2d 182, 700 N.Y.S.2d 156 (N.Y. App. Div., 1<sup>st</sup> Dept. 1999) (conviction of sexual assault reversed and remanded to allow introduction of evidence as to consent in S/M situation).

People v. West, 780 N.Y.S.2d 723 (New Paltz, N.Y., Justice Ct., June 10) (finding that the state had failed to rebut West's claim that the marriage law's exclusion of same-sex couples violates the state and federal constitution, and thus that misdemeanor charges that had been brought against West for performing same-sex marriages for couples who did not have New York marriage licenses should be dismissed).

Peterson v. Hewlett-Packard Co., 2004 WL 26580 (9<sup>th</sup> Cir., Jan. 6, 2004) (unanimously rejecting a discrimination claim by a religious homophobe whose insistence on posting anti-gay materials in the workplace earned him a discharge for violating his employer's diversity policy and affirming that employers have a right to include toleration for gay people as part of their diversity policies).

Pointdujour v. Mount Sinai Hospital, 2004 WL 110617 (S.D.N.Y., Jan. 20, 2004) (Not Reported in F.Supp.2d) (dismissing with prejudice a claim of unlawful retaliation in response to charges of same-sex harassment, finding that under the circumstances the employer could reasonably condition the plaintiff's return to work on her achieving a clearance from the employer's Employee Assistance Program).

Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) (holding that sex-stereotyping is a form of sex discrimination prohibited by Title VII).

Purcell v. Kentucky, 2004 WL 2623944 (Ky. Supreme Ct., Nov. 18, 2004) (prejudicial evidence about homosexual voyeurism should have been excluded; conviction reversed).

RAG (Cyprus) Emerald Resources, L.P. v. Workers' Compensation Appeal Board (Hopton), 2004 Pa. Commw. LEXIS 404 (May 25, 2004) (reversing a decision of the Workers' Compensation Appeal Board and denying benefits to a miner who claimed to have suffered severe psychic injury as a result of unwanted homosexual harassment from a co-worker).

Ramirez v. N.Y. State Division of Human Rights, 773 N.Y.S.2d 400 (N.Y.App.Div., 1<sup>st</sup> Dept., March 18, 2004) (holding that there was no probable cause for plaintiff's complaint of HIV-related employment discrimination case).

Ramirez v. Pugh, 379 F.3d 122 (3<sup>rd</sup> Cir., Aug. 12, 2004), (ruling that sexually explicit material might become available to prisoners).

Rasile v. Liberty Life Assurance Company of Boston, 2004 WL 1207897 (S.D.N.Y., June 2, 2004) (Not Officially Published) (ruling in favor of the HIV claimant for long-term disability benefits under a policy that, due to its curious wording, gives no incentive to the insured to perform part-time work that he is capable of doing).

Rederford v. City of Oakland, (N.D. Cal., March 23, 2004) (refusing to dismiss a lawsuit filed against the city of Oakland by two city employees claiming that their freedom of speech was violated when supervisors removed their flyers announcing the formation of a religious club to promote the “natural family” in opposition to same-sex marriage).

Rich v. Hester, 2004 WL 2563702, 2004 N.Y. Slip Op. 51360(U) (Sup. Ct., N.Y. Co., Oct. 4, 2004) (table - unpublished opinion) (unpublished opinion about Hester’s refusal to answer deposition questions from Rich).

Riepe v. Riepe, 91 P.3d 312 (Az. Ct.Apps., May 25, 2004, amended June 29, 2004) (ruling that after the death of a child’s remarried father, the surviving stepmother who has formed a parental relationship with the child can petition for court-ordered visitation rights over the protest of the child’s natural mother who had joint custody with the father).

Reyes-Reyes v. Ashcroft, 2004 WL 2047563 (9<sup>th</sup> Cir., Sept. 13, 2004) (ruling that the Board of Immigration Appeals erred by applying a more demanding legal standard than required when considering the claims of a transgender refugee from El Salvador).

Reyes v. Barnhart, 2004 WL 439495.(S.D.N.Y., March 9, 2004) (Not Reported in F.Supp.2d) (holding that an HIV diagnosis is not an automatic pass to Supplemental Social Security benefits and sustaining the Commissioner’s determination that he was not disabled within the qualification requirements of the program).

RGIS Inventory Specialist v. Hawai’i Civil Rights Commission, 86 P.3d 449 (Haw. Sup.Ct., March 17, 2004) (ruling that the state’s first circuit court had appropriately overturned a declaratory order by the Hawaii Civil Rights Commission in which the Commission ruled that its jurisdiction over sex discrimination claims included discrimination claims by transsexuals).

Richard S., In the Matter of, 776 N.Y.S.2d 604 (N.Y.App.Div., 3<sup>rd</sup> Dept., April 29, 2004) (unanimous upholding the continued confinement in a non-secure psychiatric facility of “Richard S.,” who was convicted of manslaughter in the second degree upon pleading guilty in 1978 to killing a male sex partner, who had been charged with stabbing a 15-year-old boy during a sexual encounter in 1980 (to which he pled not guilty by reason of mental disease or defect), and who had been convicted in another murder of a male sex partner in 1979, the conviction having been reversed on appeal due to evidentiary problems.).

Rios v. Metropolitan Transportation Authority, 2004 N.Y. Slip Op. 51738(U), 2004 WL 3093154 (N.Y. Supreme Ct., Richmond Co., Dec. 22, 2004) (refusal of public transit agency to extend benefits eligibility of registered same-sex domestic partner of its employee did not violate city or state civil rights laws banning sexual orientation discrimination).

Roberts, State of Ohio v., 805 N.E.2d 594 (Ohio App., 9th Dist. March 3, 2004), (sustaining conviction of an HIV+ man for having sexual relations with two different women without disclosure and rejecting Roberts' appeal of his felonious assault conviction based on engaging in sexual intercourse without disclosing his HIV status).

Roe v. City of San Diego, 356 F.3d 1108 (9<sup>th</sup> Cir., Jan. 29, 2004) (holding that a San Diego, California, police officer who, during his off-duty time, made videotapes of himself stripping off a generic police officer's uniform and then masturbating, and then selling the videotapes on the adult section of eBay, had engaged in expressive conduct that falls within the protected category of citizen comment on "matters of public concern" and was thus protected by the free speech clause of the first amendment).

Roe v. Social Security Administration, (S.D.N.Y., settlement announced June 28, 2004) (The Legal Action Center has announced the settlement of an HIV confidentiality lawsuit it filed on behalf of a Jane Roe plaintiff against the Social Security Administration. Under the terms of the settlement, Roe will get \$65,000 and the SSA agrees not to disclose information about her HIV status further).

Romer v. Evans, 517 U.S. 620 (1996) (state constitutional amendment forbidding state from forbidding discrimination against homosexuals is prima facie equal protection violation).

Rosso v. Beer Garden, NYLJ, 11/8/04 (N.Y.App.Div., 1<sup>st</sup> Dept.) (Award of damages based on incident that occurred prior to enactment of private right of action under NYC Human Rights Law must be reversed).

Roush v. State, 2004 WL 1157833 (Wash.Ct.Apps., May 25, 2004) (unpublished opinion) (rejecting an appeal by Dale Evan Roush of the decision that he was a sexually violent predator who should be detailed in a special commitment center for treatment until such time as he was shown no longer to pose a threat).

Running v. Oregon, No. 04-6336, 2004 WL 2146988 (Nov. 28, 2004), denying certiorari in State v. Running, 336 Or. 545, 87 P.3d 661 (April 8, 2004) (rejecting appeal from death penalty for murder of lesbian couple where defendant, former boyfriend of one of the women, claimed mental breakdown due to alcohol abuse).

S.D. Myers v. City of San Francisco, 253 F.3d 461 (9<sup>th</sup> Cir. 2001) (U.S. Supreme Court denied a petition for certiorari for seeking a review of the constitutional status of San Francisco's Equal Benefits Law, which forbids awarding most city contracts to companies that do not provide domestic partnership benefits for their employees).

S.R. Estate of; A.M. v. Attorney General for the General Custodian, [Israel] Civ. App. (Nazareth) 3245/03 (Nov. 10, 2004) (surviving same-sex partner is entitled to inherit from intestate).

Saavedra v. Nodak Enterprises, (Georgia, May 20, 2004) (Lambda Legal has filed an ADA suit in Atlanta on behalf of Joey Saavedra, an HIV+ skilled auto glass installer who was dismissed from a new job with Nodak Enterprises, solely based on the company's articulated fear that his HIV status would be a "direct threat to the safety of others.")

Salucco v. Alldredge, reported in 365Gay.com, March 25; Boston Globe, March 25, 2004) (asserting that the equitable powers of the court were sufficient to approve the judicial dissolution of a Vermont Civil Union).

Same-Sex Marriage, Re, 2004 SCC 79, 2004 CarswellNat 4422 (Dec. 9, 2004) (Supreme Court of Canada responds to questions posed by the government concerning a same-sex marriage bill. Court concludes that bill is within Parliament's legislative powers, with the exception of provision shielding religious organizations from performing marriages, which is a subject solely of provincial jurisdiction. However, the court says that under the Charter of Rights and Freedoms, religious organizations could not be compelled to perform any marriages inconsistent with their religious precepts. Court refuses to answer the question whether the Charter requires the government to open up marriage to same-sex partners, on the ground that government never directly appealed decisions so holding).

Samuels v. New York State Department of Health (N.Y.Sup.Ct, Albany County, April 7, 2004) (The ACLU, NYCLU and cooperating attorneys at Paul, Weiss, Rifkind, Wharton & Garrison filed suit seeking marriage licenses on behalf of thirteen same-sex couples).

Sanchez v. Thomas Weisel Partners, 2004 WL 1730841 (Cal. App., Dist. 1, Aug. 3, 2004) (not officially published) (affirming a decision by the San Francisco Superior Court to dismiss a sexual orientation discrimination filed by Alexander Sanchez, a former employee of TWP).

Sandifer v. Green, 2004 WL 784934 (D. Kans., April 9, 2004) (not officially reported) (rejecting a civil rights claim by an HIV+ Kansas prison inmate dissatisfied with the medical care he is receiving).

Santa Cruz, Cal, County of v. Ashcroft, 314 F.Supp.2d 1000 (N.D. Cal., April 21, 2004) (U.S. District Judge Fogel (N.D. Cal., San Jose Div.) (issuing an injunction against Attorney General Ashcroft and the DEA at the behest of the County of Santa Cruz, a group of AIDS and cancer patients and the Wo/Men's Alliance for Medical Marijuana, finding that the application of federal criminal controlled substance laws to a local, non-commercial operation assisting patients in cultivating marijuana for medicinal use prescribed by their doctors was probably unconstitutional, and that the refusal of the DEA to agree to withhold further raids and prosecutions while the issue proceeds through the federal appeals system makes injunctive relief necessary).

Schwenk v. Hartford, 204 F.3d 1187 (9<sup>th</sup> Cir. 2000) (ruling that a transgendered person could sue under the federal Violence Against Women Act).

Sexton v. Commonwealth of Kentucky, 2004 WL 102481 (KY, Jan. 22, 2004) (Not Reported in S.W.3d) (reversing the murder conviction of Chester Slim Sexton, who claimed he was defending himself from a sexual assault when he killed or contributed to the death of David Pepper).

Sharon S. v. Superior Court of San Diego County, 73 P.3d 554, 2 Cal.Rptr. 3d 699 (California Supreme Court, Aug. 4, 2003) (holding through creative re-interpretation of adoption statute that a same-sex co-parent could adopt the child of her partner).

Sharon S. v. Superior Court, 2004 WL 304340 (Cal. 4<sup>th</sup> Dist., Feb. 18, 2004) (Not Reported in Cal.Rptr.3d) (issuing an opinion dealing with certain lingering legal questions from the 2003 opinion and holding that the document that the women signed did not fully comply with joint legal representation, but held that this did not decide the issue whether the consent was valid).

Shawn, People v., 2004 WL 2004085 (Colo.App., Sept. 9, 2004).(unanimously upholding upheld an HIV+ man's conviction for "menacing" for using his HIV status as a "threat").

Shelton v. City of Manhattan Beach, 2004 WL 2163741 (Cal. Ct.App., 2<sup>nd</sup> Dist., Sept. 28, 2004) (designated as not for official publication) (Ruling unanimously and reviving a sexual orientation discrimination suit by Shawn Shelton against the City of Manhattan Beach, its Chief of Police, Ernest M. Klevesahl, Jr., and two other police officers).

Shields v. Madigan, 783 N.Y.S.2d 270 (N.Y. Sup. Ct., Rockland Co., Oct. 18, 2004) (holding NY marriage statute does not authorize same sex marriages, that denial of marriages was rationally related to legitimate state interest and did not deny equal protection of the laws, and that the right of same-sex couples to marry is not a fundamental right protected by due process).

Shore Regional High School Board of Education v. P.S., 381 F.3d 194 (3<sup>rd</sup> Cir., Aug. 20, 2004) (ruling that U.S. District Judge Mary L. Cooper (D.N.J.) had improperly failed to give "due weight" to an administrative law judge determination that the respondent school district had failed to provide a "free appropriate public education" to a young lad who so suffered from homophobic harassment from his classmates that he was unable to complete his studies).

Siler v. Lutheran Social Services of Metropolitan N.Y., 782 N.Y.S.2d 93 (N.Y. App.Div., 2<sup>nd</sup> Dept., Sept. 13, 2004) (Reversing a decision by Kings County Supreme Court and finding time-barred all the claims by Erik and Linda Siler against the adoption agency that allegedly defrauded them by giving them HIV+ infants to adopt without disclosing that information about the infants).

Simmons, United States v., 59 M.J. 485, 2004 WL 1205724 (Ct.Apps. Armed Forces, June 1, 2004) (a divided panel partially reversed the court martial conviction of Lt. Patrick L. Simmons of the Army, finding it tainted by the improper admission of a letter

whose discovery resulted from a search in violation of the 4<sup>th</sup> Amendment by non-military police. Simmons was convicted of assault consummated by a battery and of conduct unbecoming an officer and gentleman. The latter specification was in two parts; one for having a sexual relationship with a subordinate (who happened also to be male), and another for sharing private quarters with an enlisted man in a close, personal relationship).

*Singer v. Hara*, 522 P.2d 1187 (Wash.Ct.App., 1974) (rejecting the argument that Washington's then-recent adoption of an Equal Rights Amendment meant that same-sex couples were entitled to marry).

*Singson, Commonwealth v.*, reported in the *Virginian-Pilot & Ledger Star*, Feb. 18, 2004 (If private consensual sodomy is legal, can the state outlaw public solicitation to engage in it? That proposition will be tested in this case in which Circuit Judge Frederick B. Lowe sentenced the defendant, alleged to have solicited a plainclothes police officer in a public restroom, to six months in prison).

*Smith v. City of Salem, Ohio*, 369 F.3d 912 (6th Cir., June 1, 2004) superseded by 378 F.3d 566 (6th Cir. Aug. 5, 2004) (held that transsexual discrimination claims necessarily involve the issue of gender-stereotyping and are thus actionable under Title VII of the Civil Rights Act of 1964 as sex discrimination - historic precedent departing from the approach followed by every other Circuit in Title VII cases).

*Soliman v. Deutsche Bank*, 2004 U.S. Dist. LEXIS 9087 (S.D.N.Y., May 20, 2004) (granting summary judgment to Deutsche Bank, disposing of claims of race and sex discrimination and retaliation by Farouk Soliman, an Egyptian-American who claimed his gay white male supervisor was subjecting him to sexual harassment).

*Sorey, U.S. v.*, 2004 WL 49093 (U.S. Navy-Marine Corps Ct.Crim.App, Jan. 8, 2004) (unpublished decision) (unanimously upholding the sentence on remand that had been given to Yeoman 3<sup>rd</sup> Class David Sorey, an HIV+ man convicted of failure to obey an order, aggravated assault, and "breaking restriction" for having sexual intercourse without a condom without disclosing his HIV-status to his female sexual partner, in violation of a "safe-sex order" he had been given when he was diagnosed).

*Spina v. Spina* (according to a June 28 article in the *Lexington Herald Leader*, the Kentucky Ct.Apps. is considering whether annulment or divorce is the appropriate method to end a marriage when the husband undergoes a sex-change after having fathered several children with the wife).

*Standhardt v. Superior Court*, 77 P.3d 451 (Az.Ct.App., Oct. 8, 2003) (announcing on May 25 that it will not hear an appeal on the merits in which a gay male couple is seeking to marry).

*Stargel v. Pringle*, 2004 WL 1490815 (Wash.Ct.App., Div. 1, July 6, 2004) (unpublished) (a per curiam ruling upholding the action of King County Superior Court Judge Robert

Alsdorf in issuing anti-harassment order against Patricia R. Pringle at the request of a gay male couple, Bryon Stargel and Duane Kitna, her former neighbors).

State of Kansas v. Gast (Leavenworth County District Ct., Nov. 15, 2004) (transsexual could not be convicted of wrongful swearing based on marriage application if she did not intent to mislead the court).

State of Nebraska v. Hatfield, 218 Neb. 470, 356 N.W.2d 872 (Neb. 1984) (a victim cannot consent to his own criminal assault).

State of Nebraska v. Van, 268 Neb. 814, 688 N.W.2d 600 (Nebraska Supreme Ct., Nov. 12, 2004) (Upholding conviction and sentencing of BDSM master, rejecting consent defense).

Stirewalt, U.S. v., 2004 WL 2186554 (U.S. Court of Appeals for the Armed Forces, Sept. 29, 2004) (refusing to overturn a consensual sodomy conviction).

Suesbury v. Caceres, 2004 WL 97625 (D.D.C., Jan. 22, 2004) (affirming a decision by trial judge Joan Zeldon that a doctor did not violate an HIV+ patient's confidentiality rights by discussing his infectious condition with another doctor in the same medical practice who had also rendered services to the plaintiff and was accused by the plaintiff of molesting him).

Swails v. Haberer, 2004 WL 1941245 (E.D.Pa., Aug. 30, 2004) (ruling on a property dispute between two lesbians who used to be domestic partners).

Swidriski v. City of Houston, Houston Chronicle (Feb. 5, 2004) (granting a motion by the city of Houston to dismiss an equal protection claim against the city by Gloria Swidriski, whose son, Marc Kajs, was murdered in full view of patrons of a restaurant where he worked by his former lover, Ilhan Yilmaz, who then committed suicide).

Tan v. Ashcroft, 2004 WL 1948437 (9<sup>th</sup> Cir., Sept. 1, 2004), (not selected for publication) (By a divided vote and without hearing oral argument, a panel affirmed a petition by a gay Indonesian for review of a denial of asylum by the Board of Immigration Appeals).

Tennessee, State of v. Brewbaker, 2004 WL 1372836 (Tenn.Ct Crim.Apps. June 18, 2004) (twenty-three year prison sentence unanimously upheld for second-degree murder of an out 20 year old community college student by a 30-ish closeted ex-police officer who made a date to meet the man).

T.F. v. B.L., SJC-09104 (Mass., August 25, 2004) (ruling that although a lesbian co-parent had promised to contribute support for the child born to her former partner, such a promise was not a binding contract in Massachusetts, and that the courts could not use their equitable powers to order her to support the child).

Thomas v. Louisiana Casino Cruises, Inc., 2004 WL 1418389 (La.Ct.Apps., 1<sup>st</sup> Cir., June 25, 2004) (ruling that an HIV+ security guard whose doctor recommended that he not work out of doors due to his suppressed immune system did not have a “disability” under Louisiana’s civil rights law and thus was not protected from discrimination).

Tomlin, People v., 2004 WL 1368368 (Cal. Ct. App., 5<sup>th</sup> Dist., June 18, 2004) (Not Reported in Cal.Rptr.3d) (recounting in interesting detail the conflicting but overlapping versions of an incident that occurred in the parkland surrounding Kaweah Lake, leading to the arrest and ultimate conviction of Gary Tomlin on eight felony counts based on the kidnapping and forcible sexual assault of a man identified as D.H.).

Travis D., In re, 2004 WL 45170 (Cal.Ct.App., 3<sup>rd</sup> Dist., Jan. 9, 2004) (not officially published) (finding that the trial court should not have expressed views about the procedure by which same-sex domestic partners might adopt a child, when it was conducting a hearing on the adoptability of a seven-year old child who was going to be placed with such a couple).

Troxel v. Granville, 530 U.S. 57 (2000) (invalidating a Washington state law that authorized awarding visitation rights to third parties over the protest of a child’s parents when the court found that to be in the child’s best interest).

Townsend v. American Express Financial Corporation, 2004 WL 45501 (D. Minn. Jan. 5, 2004) (declining to assert jurisdiction over a sexual orientation employment discrimination claim that was brought on behalf of plaintiff, an African-American man, as a supplemental claim to his race discrimination and retaliation claims under Title VII of the Civil Rights Act of 1964).

United States v. Abdul-Rahman, see Abdul-Rahman, United States v.

United States v. Cain, see Cain, United States v.

U.S. Equal Employment Opportunity Commission v. Caterpillar, Inc., 2004 WL 2092003 (N.D. Ill., Sept. 14, 2004) (ruling that evidence about anti-gay epithets directed against certain black employees were not admissible in a racial harassment discrimination case under Title VII).

Van, State of Nebraska v. (See under State of Nebraska).

Vekiarellis v. The Pall Corp., NYLJ, 8/6/04, p. 20, col. 3 (N.Y. Sup.Ct, Nassau County) (refusing to grant summary judgment for the employer in a same-sex harassment case, although granting summary judgment on claims of retaliatory discharge and intentional infliction of emotional distress after plaintiff alleged that a male supervisor subjected him to unwanted physical attention, including touching and frequent commands to “blow me” accompanied by pulling down his zipper).

Walker v. State Farm Lloyd's, 2004 WL 1462200 (N.D.Tex., June 28, 2004) (not officially published) (A gay male domestic partner who was not specifically mentioned in the homeowner's insurance policy that he and his partner purchased could not maintain an action on the policy for personal injuries, but could pursue a negligence claim against the insurer).

West, People v., 780 N.Y.S.2d 723, 2004 N.Y. Slip Op. 24224 (Justice Ct., Town of New Paltz, June 10, 2004) (holding the NY marriage law unconstitutional in the context of dismissing criminal charges against Mayor West of New Paltz).

Whitacre, Matter of Name Change of Michael Sean, 2004-Ohio-2926, 2004 WL 1238603 (Ohio Ct.Apps., 11<sup>th</sup> Dist., June 4, 2004) (not reported in N.E.2d) (affirming the Portage County Probate Court's denial of a proposed name-change for a gay man who was released on probation from a prison sentence for "gross sexual imposition," stated that he wanted a name change in order to start a new life after prison and to have the same surname of his "life long partner").

Williams, People v., 811 N.E.2d 1197 (App. Ct. of Ill., 3<sup>rd</sup> Dist., May 26, 2004) (rejecting defendant's argument that the Supreme Court's decision in Lawrence v. Texas, 539 U.S. 558 (2003), invalidating the Texas sodomy law, would necessarily lead to the invalidation of an Illinois statute, sec. 11-14 of the Illinois Criminal Code, making it a crime to offer sex in exchange for "any money, property, token, object, or article or anything of value.").

Williams v. Attorney General of Alabama, 378 F.3d 1232 (11th Cir. July 28, 2004) (declining to find a fundamental right to sexual privacy under the Constitution, the court has ruled that there is no fundamental right to buy or sell sex toys, and that a state legislature may outlaw such transactions in the interest of public morality).

Woodson v. State, 864 So.2d 512 (5<sup>th</sup> Dist. Ct.App., Jan. 9, 2004) (ruling that a man who pled nolo contendere to a charge of lewd and lascivious battery had violated the terms of his probation by, among other things, failing to submit promptly to an HIV test and reveal the results to his victim).

Yaeger v. Yaeger, 2004 WL 833187 (Ohio Ct. App., 11<sup>th</sup> Dist., April 23, 2004) (not reported in N.E.2d) (unanimously ruling that an ex-wife's cohabitation with another woman in a lesbian relationship does not justify terminating the spousal support payments due to her under the terms of her divorce judgment).

Yekimoff v. Seastrand, 2004 WL 556707 (D.N.H. March 19, 2004) (Not Reported in F.Supp.2d) (dismissing a series of claims of alleged discrimination on the basis of sexual orientation and HIV status, as well as race and national origin after the court held that all claims lacked sufficient evidence or suffered from technical pleadings).

Young v. City of New York (Newsday, April 2, 2004) (a New York City high school student in Ozone Park, who was suspended from school for wearing a t-shirt that said "Barbie is a Lesbian," has won a \$30,000 settlement in her lawsuit against the City).

Youngblood v. Hillsborough County School Board, NLCR/Equality Florida Press Release, (May 7, 2004) (settlement reached stemming from the defendant's refusal to allow plaintiff, then a senior at Robinson High School, to depart from the "dress code" prescribed from the girls in their yearbook portraits. A federal district judge dismissed the case, which was appealed to the 11<sup>th</sup> Circuit. The Circuit ordered mediation, which at first proved unsuccessful, so the case was restored to the argument calendar and argued before the court. After the argument, the parties agreed to try mediation again, and this time reached a settlement, so the 11<sup>th</sup> Circuit will not be issuing an opinion.)

Zheng v. Ashcroft, 332 F.3d 1186 (9th Cir. 2003) (observing that Congress intended to create a broad definition of "acquiescence," notwithstanding the Board of Immigration Appeal's repeated attempts to narrow the term's scope).

Zienka v. Zienka, 2004 WL 1557951 (Conn. Super. Ct., Middlesex Co., June 1, 2004) (not officially published) (awarding sole custody of the minor child to a lesbian mother who is living with her same-sex partner, in preference to the child's father, who is receiving treatment for a mental disorder).

### **International Cases:**

A. v. Chief Constable of West Yorkshire Police [2004] UKHL 21 (United Kingdom, House of Lords, Law Lords, May 6, 2004) (England's highest court rules that refusal of a local police department to hire a transsexual applicant violates England's statute banning employment discrimination on the basis of sex; opinion available on the House of Lords website under Judicial Business).

Appellant S395/2002 and Minister for Immigration and Multicultural Affairs, [2003] HCA 71 (High Court of Australia, Dec. 9, 2003) (addressing interesting question of asylum law for gay people; is a claim that an individual will be subject to persecution in their home country defeated if it can be shown that "closeted" gay people are generally not harassed? Or can an individual show persecution by demonstrating that openly-gay people are harassed in his home country?)

Australia - The *Sunday Sun-Herald* in Sydney reported on April 25th that Senator Brian Greig has finally won the right to have his same-sex partner treated as a spouse for purposes of parliamentary travel entitlements.

Australia - The *Age* reported on April 14 that Australian Family Court Chief Justice Alastair Nicholson has issued a landmark judgment authorizing medical procedures for a 13-year-old who wants gender reassignment from female to male.

Australia - Crellin v. Robertson, 2004 ACTSC 34 (Sept. 22, 2004) (Applying the domestic relations law of the Australian Capital Territory (ACT) – that country's federal capitol – an Australian trial court of general jurisdiction granted one spouse in a same-sex "de facto marriage," or "domestic relationship," a substantial monetary award following the dissolution of the parties' "marriage")

Britain - Ghaidan v. Godin-Mendoza, [2004] UKHL 30 (ruling on June 21 that provisions of the country's tenant protection laws must be interpreted to treat same-sex couples as spouses in order to be in compliance with the European Charter of Human Rights, to which the U.K. is a party).

Britain - The Law Lords had previously ruled in the case of Fitzpatrick v. Sterling Housing Association, [2001] 1 AC 27, that a surviving same-sex partner was entitled to be treated like a family member of a deceased tenant for purposes of the tenant protection laws.

Canada - On April 28 the Senate voted to pass a law banning hate propaganda targeting gays and lesbians as reported in the *Toronto Star*.

Canada - Canada's Immigration and Refugee Board, struggling with a large caseload of petitions for asylum from gay people from 75 different countries, seems to be falling back on stereotypes in order to simplify decision-making, according to a May 4 news report about the denial of asylum to Fernando Enrique Rivera, a gay Mexican man. Rivera, who from the newspaper account appears to fit the description "straight-appearing," whatever that means, was turned down, according to the board member who wrote the opinion, because he was not effeminate.

Canada - Little Sisters Book and Art Emporium v. Commissioner of Customs and Revenue, 2004 BCSC 823 (Sup.Ct. British Columbia, June 18, 2004) (ruling that plaintiff is entitled to have the government pay the costs of its ongoing court appeal of the Canadian Customs confiscation of gay S&M literature that Little Sisters was attempting to import from the United States). Plaintiff argued that it should be held entitled to government financing under a recent decision of the Supreme Court of Canada, *British Columbia v. Okanagan Indian Band*, [2003] 3 S.C.R. 371, 2003 S.C.C. 71 (holding that government financing of litigation costs should be made available in cases where a litigant was presenting issues of public importance that could not otherwise be addressed because the litigant could not afford to finance the lawsuit and was presenting a prima facie meritorious claim).

Canada - M v. H, 1996 CarswellOnt 4723, 31 O.R.(3d) 417 (Ontario Ct. App. 1996) (case that required the provincial government to extend certain recognition to same-sex couples and which, on appeal to the Supreme Court, produced a ruling that stimulated substantial reforms in Canadian federal law to recognize same-sex partners in scores of federal statutes).

Du Plessis v. Road Accident Fund, Case No. 443/2002 (Supreme Court of Appeal of South Africa, Sept. 19, 2003) (surviving gay life partner of a road accident victim was entitled to apply to the Accident Fund for compensation on the same basis as a surviving legal spouse - one of the first non-U.S. court decisions to cite Lawrence v. Texas).

France - Noel Mamere, a Green Party member who is mayor of Begles, a suburb of Bordeaux, announced that he would conduct a same-sex wedding on June 5, the first to be recorded in France as reported by *Reuters* on April 22. However, France's Justice Minister, Dominique Perben, said on April 28 that the planned wedding "will be entirely

and simply null, since it is contrary to the state of law,” according to a report by *Agence France Presse*.

Germany - A ruling of the federal labor court during the last week of April holds that public employers must pay the same location allowances to same-sex couples who have registered their partnership under the recent federal law as are provided to traditionally married opposite-sex couples as reported in *Expatica*, a Dutch publication, on April 30.

Ghaidan v. Godin-Mendoza, [2004] UKHL 30 (United Kingdom, House of Lords, Law Lords, June 21, 2004) (Human Rights Act 1998 which forbids sex discrimination requires that surviving same-sex partner be recognized for purposes of statutory tenant succession rights).

In an advisory opinion issued at the request of the Court of Appeal of England and Wales (Civil Division), the European Court of Justice ruled that British law was incompatible with the European Convention of Human Rights and Fundamental Freedoms, a treaty signed in Rome in 1950, to the extent that British law prevents a heterosexual couple, one of whom is transsexual, from fulfilling the requirements to enable one to qualify his or her partner for a survivor's pension. ***K.B. and National Health Service Pensions Agency, Secretary of State for Health***, Case C-117/01 (January 7, 2004). (The opinion is available on the court's website: <http://www.curia.eu.int/jurisp/>)

International Olympic Committee\_ - The International Olympic Committee (IOP) has announced that beginning with the upcoming summer games in Athens, transsexual athletes who have completed two years of post-operate hormone therapy will be treated by the IOC as members of their acquired gender, and will be allowed to compete in that gender.

Italy - The Statute Commission of the Regional Council of Tuscany has revised local laws to ban sexual orientation discrimination and provide official recognition to same-sex couples, according to the English translation of a report posted to the Internet on April 7 by the Italian Journalistic Agency.

Karner v. Austria, Application # 40016198, European Court of Human Rights (July 24, 2003) (holding that a surviving same-sex partner was entitled to be treated as spouse for purposes of tenant succession rights, under Articles 8 and 14 of the European Charter of Human Rights).

Kempling v. British Columbia College of Teachers, 2004 BCSC 133 (Feb. 3, 2004) (available at <http://www.courts.gov.bc.ca>) (Mr. Justice Holmes of the Supreme Court of British Columbia (a trial court) upheld an administrative finding of “conduct unbecoming a member of the College of Teachers, and a one-month suspension from teaching, because Kempling, a high school teacher and guidance counsellor, had had the *Quesnel Cariboo Observer* publish a variety of anti-LGB statements in a guest editorial and a series of letters to the editor.

Ligue Catholique pour les droits de l'homme (Catholic League for Human Rights) v. Michael Hendricks & Rene LeBoeuf (Quebec Ct.App., March 19, 2004) (available in

French: <http://www.jugements.qc.ca/primeur/documents/liguecatholique-19032004.doc>) (upholding and accelerating the Sept. 6, 2002 judgment of Madam Justice Louise Lemelin of the Quebec Superior Court (District of Montreal), which struck down the federal definition of marriage for Quebec (as sexual orientation discrimination violating Section 15(1) of the Canadian Charter) from Sept. 6, 2004 (if the federal Parliament did not act in the interim).

Montreuil & Canadian Human Rights Commission & National Bank of Canada, 2004 CHRT 7 (Feb. 5, 2004) The Canadian Human Rights Tribunal ruled that the National Bank of Canada engaged in unlawful sex discrimination when it rejected an employment application from a male-to-female transsexual.

New Zealand - Auckland Family Court Judge Sarah Fleming has awarded shared guardianship to a gay Sydney man who donated sperm to a lesbian couple in Australia for donor insemination. The Sunday Star Times said that Judge Fleming gave it permission to report on the case, provided that the identity of the couples was kept out of the news. *The Age*, April 19.

Spain - In his first parliamentary speech as prime minister, Jose Luis Rodriguez Zapatero said that he would seek to give same-sex couples legal recognition on “an equal basis” with heterosexual couples as reported by Gay.com UK, April 19.

United Kingdom - Mr. Justice Richards of London’s High Court rejected a suit by the Trades Union Congress, which had claimed that the government’s new employment security regulations, which include protection against sexual orientation discrimination, fail to comply with European Union requirements due to the inclusion of an exemption for faith-based employers and a reservation of pension rights solely for married couples as reported in the *Financial Times*, April 27.

United Nations - On April 8, the General Assembly voted to reject a policy decision by Secretary-General Kofi Annan to allow same-sex partners of UN staff members to receive the same family benefits as married staffer, if they were nationals of countries that recognized such a right as reported by the *ILGA World News Release*, April 15.

Zanibar - The *Financial Times* (East African Edition) reported April 19 that Zanzibar has passed a law outlawing homosexual practices and imposing severe penalties for same-sex cohabitation, including lengthy jail terms and considerable fines.

**Notes:**

In February, Scott Bloch, the recently-appointed head of the federal Office of Special Counsel, which is charged with investigating complaints of employment discrimination within the federal bureaucracy, caused a furor by removing from the agency’s website all the references to sexual orientation discrimination. On April 8, Bloch issued a statement that he had concluded that, to quote a report in *BNA’s Daily Labor Report* No. 69, dated 4/12/04, “an agency manager who is motivated by a federal employee’s sexual orientation to initiate a personnel action against them has engaged in a prohibited

personnel practice (PPP) ‘when reasonable grounds exist to infer that those engaging in discriminatory acts on the basis of sexual orientation have discriminated on the basis of imputed private conduct.’” Bloch made clear that he had not really changed his position by stating that the references to sexual orientation will not be restored to the agency’s website listing forms of prohibited discrimination in the federal service.

### **Marriage Litigation Notes:**

California: California Supreme Court has scheduled oral argument for May 25 on the question whether the city of San Francisco, at the urging of Mayor Gavin Newsom, had authority to issue marriage licenses and perform weddings for same-sex partners. The cases pending before the court are *Lockyer v. San Francisco* and *Lewis v. Alfaro*.

In *Woo v. Lockyer*, the pending lawsuit in San Francisco Superior Court in which the National Center for Lesbian Rights is seeking marriage licenses for six same-sex couples, Judge James Warren denied a motion by the Proposition 22 Legal Defense and Education Fund to intervene as a party defendant.

In March, the San Jose City Council voted to extend health and dental benefits to the same-sex partners of city employees who were married in San Francisco during the brief period when the clerk’s office there was issuing licenses. In a suit filed on May 13 by the Proposition 22 Legal Defense & Education Fund and the Values Advocacy Council, the plaintiffs argued that this action by the city violated the state marriage law.

Florida: Miami lawyer Ellis Rubin filed a second same-sex marriage lawsuit on May 12, this time a federal suit on behalf of four same-sex couples who sought him out after hearing about his earlier state-court suit, representing a large number of co-plaintiffs who were recruited in Miami gay bars claiming that the state’s refusal to issue marriage licenses to same-sex couples, backed up by the federal Defense of Marriage Act (DOMA), violates the federal and state constitutional rights of his clients.

Maine: The *Press Herald* reported on May 5 that Maine Superior Court Justice Thomas Humphrey had ruled against a lawsuit challenging Portland’s domestic partnership ordinance. The suit was filed in August 2003 by several married couples who had been recruited as plaintiffs by the American Center for Law & Justice, a right-wing litigation organization dedicated to keeping gays in their place by challenging any law that might protect the civil rights of gay people as equal citizens.

Missouri: Supreme Court sided with the Secretary of State, who will delay certifying the question long enough to ensure that it will be on the general election ballot in November. *St. Louis Post-Dispatch*, May 22. But the court subsequently announced that oral argument in the matter would be held on June 1.

New Jersey: The City Council in Asbury Park, where marriage licenses were briefly made available until the state threatened suit, has voted on April 21 to become a co-plaintiff in the *Lewis v. Harris* same-sex marriage case, which Lambda Legal will shortly

be presenting to the New Jersey Appellate Division, having suffered an adverse summary judgment in November 2003.

Oregon: On April 22, the ACLU has filed a challenge in the Oregon Supreme Court to a proposed ballot title for a constitutional amendment to ban same-sex marriage in the state claiming that the proposed title is inadequately informative, as it does not tell voters that passage of the proposed amendment would cut off any argument by same-sex partners for equal benefits rights.

West Virginia: On April 3, the state Supreme Court rejected a bid to draw it into the same-sex marriage wars for now, refusing to hear a case filed by four same-sex couples directly in the Supreme Court seeking an order to the Kanawha County Clerk to issue them marriage licenses).