

# LGBT LAW

DOMA SECTION 3 FALLS. CONTINUING  
CHALLENGES. MARRIAGES RESUME  
IN CALIFORNIA. THE POWER OF  
WINDSOR. THE MARRIAGE EQUALITY  
MAP EXPANDS. ENDA PASSES.  
**2013 YEAR IN REVIEW CLE**

A CLE PROGRAM PRESENTED BY THE LGBT BAR ASSOCIATION OF GREATER  
NEW YORK IN COLLABORATION WITH THE DAVIS POLK LGBT AFFINITY GROUP

Wednesday, January 15, 2014

6:00-8:00 p.m.

Davis Polk & Wardwell LLP

New York, NY



601 W 26th St., Ste 325-20 | New York, NY 10001  
le-gal.org | info@le-gal.org | 212-353-9118

**Davis Polk**

# **LGBT LAW 2013 YEAR IN REVIEW**

*Presented by LeGaL & the Davis Polk LGBT Affinity Group*

Wednesday, January 15, 2014, 6:00 p.m. to 8:00 p.m.

Davis Polk & Wardwell LLP | New York, NY

## AGENDA

- I. Introduction, 6:00-6:05 (Skinner)**
- II. Overview of recognition for same-sex relationships nationwide, 6:05-6:20 (Stein)**
- III. Developments for DOMA/marriage in the U.S. Supreme Court, 6:20-7:00 (Panel)**
  - a. *Windsor* (Sommer)
  - b. *Perry* (Stein)
  - c. *Kitchen* (Leonard)
  - d. Where SCOTUS developments have left the LGBT community (Panel)
- IV. Significant Family Law Developments, 7:00 - 7:15 (Stein)**
- V. Beyond Marriage: Continuing Challenges Facing the LGBTQ community, 7:15 – 7:30 (Sommer)**
- VI. Other Noteworthy Legal/Legislative Developments, 7:30-7:45 (Leonard)**
- VII. Q&A / Glimpses of 2014, 7:45 – 8:00 (Panel)**

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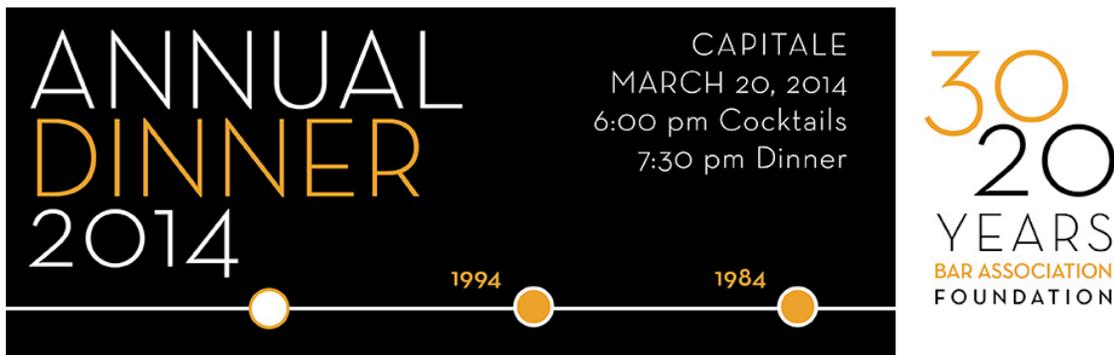
# the lgbt bar association of greater new york

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## 2014 Annual Dinner



ANNUAL  
DINNER  
2014

CAPITALE  
MARCH 20, 2014  
6:00 pm Cocktails  
7:30 pm Dinner

1994 1984

30  
20  
YEARS  
BAR ASSOCIATION  
FOUNDATION

Please consider joining us at LeGal's upcoming annual dinner, where we will be honoring **Mary Bonauto** of Gay & Lesbian Advocates & Defenders, **Brian Ellner** of Edelman, and **Credit Suisse** with this year's Community Vision Awards. More information is available at [le-gal.org](http://le-gal.org).

## LGBT Law 2013 Year In Review

### Faculty Bios

#### **Professor Arthur S. Leonard**

Professor Leonard of New York Law School graduated from Cornell University (1974) and Harvard Law School (1977). He started New York's LGBT Bar Association in 1978 and served as its first formally elected president from 1984 to 1988. He edits and largely writes the Association's monthly substantive newsletter, *Lesbian/Gay Law Notes*, which circulates directly to nearly one hundred law schools across the country and has an international readership by subscription and online. A monthly podcast discussing leading cases reported in *Law Notes* can be found in iTunes or at [legal.podbean.com](http://legal.podbean.com). Professor Leonard writes for *Gay City News*, a NYC community newspaper, and is co-editor of the first law school casebook on AIDS and a casebook on Sexuality Law (2<sup>nd</sup> edition published July 2009). He provides timely commentary on LGBT and HIV-related legal issues on his blog, <http://http://www.artleonardobservations.com/>.

Professor Leonard has been a director or trustee of Lambda Legal Defense & Education Fund, The Center for Lesbian and Gay Studies at City University of NY, The Society of American Law Teachers, Congregation Beit Simchat Torah (the world's largest LGBT synagogue), The Jewish Board of Family and Children's Services, and Howard House Owners Corporation (a New York City co-operative apartment building). At the New York City Bar Association, he is past chair of the Committee on Sex and Law and was a founding co-chair of the Special Committee on Lesbians and Gay Men in the Legal Profession (predecessor to the present-day LGBT Rights Committee), and served for many years on the Association's Special Committee on AIDS. He has also served as a member of the Task Force on Children, Youth and Families at UJA-Federation of New York from 2005 to 2011.

His courses at New York Law School have included Contracts, Torts, Labor Relations Law, Employment Law, Employment Discrimination Law, Professional Responsibility, and Sexuality & the Law, and he has published widely in law journals and other media on lesbian and gay law, AIDS law, and labor and employment law.

He and his partner of more than three decades, Tim Nenno, married in Connecticut in 2009.

#### **Susan Sommer**

Susan Sommer is Senior Counsel and Director of Constitutional Litigation for Lambda Legal, the oldest and largest national legal organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people, and people with HIV.

Sommer handles groundbreaking litigation and also oversees the work of several attorneys in all areas of Lambda Legal's work, including fighting for equal recognition of same-sex relationships, fighting for the rights of lesbian and gay parents and battling antigay discrimination in employment, housing, public accommodations, and law enforcement.

Sommer has been lead attorney on Lambda Legal's New York marriage litigation seeking the right to marry in New York and recognition of out-of-state marriages of same-sex couples, as well as parenting rights of lesbian and gay New Yorkers. She has participated at the U.S. Supreme Court and lower court levels in litigation to strike down Section 3 of the federal Defense of Marriage Act. She also played a key role in *Lawrence v. Texas*, Lambda Legal's landmark U.S. Supreme Court case that struck down Texas' "Homosexual Conduct" law.

A seasoned litigator, Sommer came to Lambda Legal from Lankler Siffert & Wohl in New York, where she specialized in commercial, securities, antitrust, not-for-profit federal and state civil litigation, white collar criminal defense, and regulatory and attorney disciplinary proceedings.

Earlier, Sommer taught at Brooklyn Law School and was a litigation associate at Davis Polk & Wardwell. Sommer clerked for U.S. District Court Judge William Schwarzer in the Northern District of California. A 1986 graduate of Yale Law School, Sommer served as notes editor at the *Yale Law & Policy Review*. She received her bachelor's degree in American Studies from Yale, graduating Phi Beta Kappa and *summa cum laude*.

### **Professor Edward Stein**

Ed Stein is Vice Dean, Professor of Law, and Director of the Program in Family Law, Policy, and Bioethics at the Cardozo School of Law in New York City. He is the author of *The Mismeasure of Desire: The Science, Theory and Ethics of Sexual Orientation* and *Without Good Reason: The Rationality Debate in Philosophy and Cognitive Science* both published by Oxford University Press as well as the editor of *Forms of Desire: Sexual Orientation and the Social Constructionist Controversy*. He has also written numerous articles, chapters, and essays on topics relating to sexual orientation, family law, ethics, philosophy, science, evolution, cognitive science, bioethics, and lesbian and gay studies. He previously was a professor of philosophy at NYU and Yale University, among other schools, a summer associate at Davis Polk in 1999, and a law clerk for a federal appeals court judge. He holds a Ph.D. in philosophy from M.I.T. and a J.D. from Yale Law School.

### **Matthew Skinner (Moderator)**

Matthew Skinner is Interim Executive Director of LeGaL - The LGBT Bar Association of Greater New York, a bar association and related foundation dedicated to serving the LGBT legal community and the public. In his role as Interim Executive Director, Matt oversees all of LeGaL's pro bono clinics, continuing legal education programs, advocacy efforts and associated fundraising and other activities. Prior to assuming his current position with LeGaL, Matt litigated at Proskauer Rose LLP and clerked for the Honorable Richard K. Eaton at the U.S. Court of International Trade. He graduated from Albany Law School and the University of Notre Dame.

**2013 LGBT/HIV Law Year in Review©**  
**January 15, 2014**

**Compiled by Prof. Arthur S. Leonard, New York Law School**  
**Based on reporting in *Lesbian/Gay Law Notes***

*Prepared for a CLE program presented by*  
*LeGaL – The LGBT Bar Association of Greater New York in collaboration with the Davis*  
*Polk LGBT Affinity Group*

This summary<sup>1</sup> lists many significant developments in United States federal, state and local LGBT and HIV/AIDS Law during 2013.<sup>2</sup>

## **A. LGBT Law**

### **1. Same-Sex Marriage**

In addition to the District of Columbia, the states that have adopted marriage equality either through judicial decision or legislation include: Massachusetts (2003/2004), California (2008/2013), Connecticut (2008), Iowa (2009), Vermont (2009), New Hampshire (2009), New York (2011), Washington State (2012), Maine (2012), Maryland (2012), **Rhode Island (2013)**, **Delaware (2013)**, **Minnesota (2013)**, **New Jersey (2013)**, **Hawaii (2013)**, **Illinois (2013, effective in 2014)**, **New Mexico (2013)**, and, provisionally, **Utah (2013; stayed by S. Ct. pending appeal, 1/6/2014)**.

#### Federal Litigation: Supreme Court

**Hollingsworth v. Perry**, 133 S. Ct. 2652 (U.S. June 26, 2013) – Held proponents of Proposition 8 did not have standing to appeal the district court’s ruling that declared it unconstitutional; same-sex marriages resumed in **California** pursuant to California Supreme Court’s **In re Marriage** ruling of 2008 after 9<sup>th</sup> Circuit lifted the stay of the district court’s order.

**United States v. Windsor**, 133 S. Ct. 2675 (U.S. June 26, 2013) – Held Section 3 of Defense of Marriage Act of 1996, which created federal definition of marriage limited to different-sex marriages, was unconstitutional under 5<sup>th</sup> Amendment by denying “equal dignity” to married same-sex couples; federal government cannot refuse to recognize same-sex marriages lawfully contracted under state law.

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<sup>1</sup> For ease of compilation, in most instances, the terminology used in the case summaries to describe the individual parties to a litigation is that used by the court itself.

<sup>2</sup> With few exceptions, this summary does not mention events that occurred subsequent to December 31, 2013.

Petitions seeking review or affirmation of lower court opinions striking down Section 3 of DOMA on various grounds were denied in **Windsor v. United States**, No. 12-63, **Bipartisan Legal Advisory Group v. Windsor**, No. 12-785, **Bipartisan Legal Advisory Group v. Gill**, No. 12-13, **Department of Health & Human Services v. Massachusetts**, No. 12-15, **Massachusetts v. Department of Health & Human Services**, No. 12-97, **Office of Personnel Management v. Golinski**, No. 12-16, **Pedersen v. Office of Personnel Management**, No. 12-231, and **Office of Personnel Management v. Pedersen**, No. 12-302.

**Coalition for Protection of Marriage v. Sevcik**, No. 12-689, 133 S. Ct. 2885 (Supreme Court, June 27, 2013) – Denying petition for certiorari before judgment in pending same-sex marriage appeal to the 9<sup>th</sup> Circuit from adverse ruling by U.S. District Court for Nevada, **Sevcik v. Sandoval**, 911 F. Supp. 2d 996 (D. Nev. 2012).

#### Federal Litigation: Circuit Courts of Appeals

**In the Matter of Alison Clark**, Case No. 13-80100 (9th Circuit, April 24, 2013) (unpublished) – Federal public defender entitled to benefits coverage for same-sex domestic partner despite DOMA Sec. 3 and Oregon marriage amendment (administrative grievance ruling)

**Golinski v. U.S. Office of Personnel Mgt.**, 724 F.3d 1048 (9th Circuit, July 25, 2013) – Dismissing appeal from district court’s ruling that Section 3 of DOMA is unconstitutional and lesbian employee of 9th Circuit was entitled to enroll her same-sex spouse in federal employee benefits program.

**Jackson v. Abercrombie**, No. 12-16995 (9th Circuit, Nov. 26, 2013) – In light of enactment of marriage equality law in **Hawaii**, informing parties that the pending appeal of the district court’s summary judgment will be dismissed as moot if parties cannot show cause why the action should be maintained on the active calendar.

#### Federal Litigation: District Courts

(Note – Some of these cases that challenge denial of same-sex marriages also challenge refusals to recognize same-sex marriages performed out of state, and, in a few cases, also challenge state laws limiting rights of adoption to married couples or individuals. This list includes only cases on file as of December 31, 2013.)

**Aranas v. Napolitano**, SACV 12-1136 (CBM) (AJWx) (Central Dist. Calif., April 19, 2013) – Certified class action to challenge failure of immigration authorities to recognize same-sex marriages (rendered moot by **U.S. v. Windsor**).

**Bishop v. United States** (D. Oklahoma) – Suit filed in 2004, originally against the governor and attorney general of the State of Oklahoma, then expanded to a DOMA challenge, now reasserted as seeking same-sex marriage in **Oklahoma**. Federal district judge has been sitting on the case without any action for years, after protracted litigation during which the 10<sup>th</sup> Circuit and the

District Court ultimately ruled that the governor, the attorney general, and the state itself were not proper defendants, leaving the Tulsa County Clerk as the defendant. By the time all this motion practice was done, it appeared that the Supreme Court might be deciding these issues during 2013, and the District Judge indicated the case would remain “on hold.” After the Supreme Court ruled in **Hollingsworth** and **Windsor**, plaintiffs asked the court to advance the case to the summary judgment stage.

**Bostic v. Rainey** (E.D. Virginia) – Challenge to **Virginia**’s refusal to allow same-sex couples to marry or to recognize out-of-state same-sex marriage of one of the couples.

**Bourke v. Breshear** (W.D. Kentucky, filed July 26, 2013) – Challenging refusal of **Kentucky** to allow same-sex marriages.

**Bradacs v. Haley** (D. South Carolina, filed August 28, 2013) – Challenging refusal of **South Carolina** to allow same-sex couples to marry or to recognize D.C. marriage of plaintiff couple.

**Connolly v. Brewer** (pending in U.S. Dist. Ct., Arizona, filed January 6, 2014) – Challenging refusal of **Arizona** to allow same-sex couples to marry.

**Cooper-Harris v. United States**, 2013 U.S. Dist. LEXIS 125029 (C.D. Cal. Aug. 29, 2013) – Plaintiffs (gay military veterans) had standing to challenge the constitutionality of the DOMA statute as applied to qualifications for veterans benefits and their equal protection challenge was not barred by the Veteran Judicial Review Act.

**Cooper-Harris v. United States**, 2013 U.S. Dist. LEXIS 125030, 2013 WL 4607436 (C.D. Cal., Aug. 29, 2013) – Granting summary judgment to plaintiffs on claim that Veterans Administration was required to recognize lawful same-sex marriages of veterans and that statute to the contrary was unconstitutional in light of **U.S. v. Windsor** under rational basis review.

**Cozen O'Connor, P.C. v. Tobits**, 2013 U.S. Dist. LEXIS 105507, 112 A.F.T.R.2d (RIA) 5597, 56 Employee Benefits Cas. (BNA) 1213, 2013 WL 3878688 (E.D. Pa., July 29, 2013) – Following the ruling in **U.S. v. Windsor**, ruling that a surviving same-sex spouse from a Canadian marriage was entitled to receive survivor’s benefit under her late wife’s law firm Profit Sharing Plan, where applicable Illinois law would have recognized the marriage as a civil union with the legal state law status of spouses; parents of decedent dropped their appeal to the 3<sup>rd</sup> Circuit.

**DeBoer v. Snyder**, 2013 WL 3466719, 2013 U.S. Dist. LEXIS 98382 (E.D. Mich. July 1, 2013) – Rejects state’s motion to dismiss in challenge to refusal of **Michigan** to allow second-parent adoptions or same-sex marriages, after oral argument on motions on October 16. Trial scheduled February 25, 2014, as judge found that contested facts cannot be decided on summary judgment.

**DeLeon v. Perry** (W.D. Texas, filed October 30, 2013) – Challenging refusal of **Texas** to allow same-sex couples to marry or to recognize Massachusetts same-sex marriage of one of the plaintiff couples.

**Edwards v. Orr**, 2013 U.S. Dist. LEXIS 173801, 2013 WL 6490577 (N.D. Ill., Dec. 10, 2013) – “Medically critical plaintiffs” certified by physician may obtain marriage licenses in advance of June 1, 2014, scheduled implementation date of marriage equality in **Illinois**.

**Fisher-Borne v. Smith**, Civ. Action No. 1:12-cv-589 (M.D. North Carolina) – Plaintiffs move in pending challenging to refusal to allow second-parent adoptions to expand case to challenge of **North Carolina**’s refusal to allow same-sex couples to marry.

**Freeman v. Parker**, Case No. 4:13-cv-3755 (S.D. Texas, filed Dec. 26, 2013) – Alleging that same-sex marriages of **Houston, Texas**, city employees must be recognized for employee benefits purposes; court subsequently suspended Texas Family Court’s order against implementation of Houston city employee benefits for same-sex spouses.

**Geiger v. Kitzhaber** (D. Oregon, filed October 15, 2013) – Challenging refusal of **Oregon** to allow same-sex couples to marry.

**Gray v. Orr**, 2013 WL 6355918 (U.S. Dist. Ct., N.D. Ill., Dec. 5, 2013) – Finding irreparable injury if same-sex couple is not allowed to marry in advance of June 1, 2014 effective date of recently enacted **Illinois** marriage equality legislation, court orders state to issue marriage license where one member of couple has medical condition making her survival until that date questionable.

**Harris v. McDonnell**, 2013 U.S. Dist. LEXIS 179449 (W.D. Va., Dec. 23, 2013) – Challenge to refusal of **Virginia** to allow same-sex couples to marry or to recognize same-sex marriage contracted out of state; ruling that governor was immune from suit, but that lower level officials could be sued and denying motion to dismiss on grounds of standing and ripeness

**Jernigan v. Crane** (E.D. Arkansas, filed July 15, 2013) – Challenging refusal of **Arkansas** to allow same-sex couples to marry.

**Kitchen v. Herbert**, 2013 WL 6697874, 2013 U.S. Dist. LEXIS 179331 (D. Utah, December 20, 2013), appeal pending in 10<sup>th</sup> Circuit – Same-sex couples in **Utah** have a 14<sup>th</sup> Amendment right to marry; claim upheld on alternative theories of due process (fundamental right to marry) and equal protection (discrimination regarding fundamental right to marry, sex discrimination, and sexual orientation discrimination); denial of stay by District Court, 2013 U.S. Dist. LEXIS 180087 (Dec. 23, 2013); denial of stay upheld by 10<sup>th</sup> Circuit on December 24, 2013; application to Supreme Court for stay filed December 31, 2013; stay granted without explanation, January 6, 2014. 10<sup>th</sup> Circuit has adopted expedited calendar for decision of case, with briefing to be concluded by late February.

**Latta v. Otter** (D. Idaho, filed November 8, 2013) – Challenging refusal of **Idaho** to allow same-sex couples to marry.

**McLaughlin v. Hagel**, 2013 WL 6622898 (D. Mass., Oct. 2, 2013) – Denying attorney fees to plaintiffs in action seeking spousal benefits for same-sex spouses of military personnel, even though they had prevailed on the merits when DoD extended the benefits in response to the **Windsor** ruling; court held that requirements of Equal Access to Justice Act, governing circumstances in which fees may be awarded against the federal government, had not been met, inasmuch as government’s litigation position in the case [that DOMA Sec. 3 was unconstitutional but would be enforced until definitively struck down by the courts] was not unreasonable.

**McGee v. Cole** (S.D. West Virginia, filed October 1, 2013), motion for summary judgment filed by plaintiffs on December 31, 2013 – Challenges refusal of **West Virginia** to allow same-sex couples to marry, decision on summary judgment expected during January 2014.

**Obergefell v. Wymyslo**, 2013 WL 6726688, 2013 U.S. Dist. LEXIS 179550 (S.D. Ohio, December 23, 2013), appeal pending in 6<sup>th</sup> Circuit – Reaffirming prior grant of preliminary relief to plaintiffs and ruling on the merits that **Ohio** must recognize same-sex marriages contracted out of state in the context of death certificates; dicta suggests broader state obligation to recognize same-sex marriages contracted elsewhere (“right to remain married”) and to allow same-sex couples to marry; decision on preliminary relief: **Obergefell v. Kasich**, 2013 WL 3814262 (S.D. Ohio, July 22, 2013); interlocutory ruling on standing: **Obergefell v. Wymyslo**, 2013 WL 5934007 (S.D. Ohio Nov. 1, 2013) (marriage recognition lawsuit by two couples was not mooted by death of a spouse from each couple, where funeral director who has Article III standing due to the nature of his practice to represent the interests of future clients has been joined as co-plaintiff).

**Palladino v. Corbett** (E.D. Pa., filed August 28, 2013) – Seeking recognition in **Pennsylvania** of same-sex marriage contracted in Massachusetts.

**Robicheaux v. Caldwell**, 2013 WL 6198279, 2013 U.S. Dist. LEXIS 168800 (E.D. La., Nov. 26, 2013) – **Louisiana** same-sex marriage suit dismissed for naming wrong defendant; state attorney general not amenable to suit on this issue due to principles of sovereign immunity.

**Sevcik v. Sandoval**, 911 F. Supp. 2d 996 (D. Nevada, Nov. 26, 2012), appeal pending in 9<sup>th</sup> Circuit, to be argued in 2014 – Challenging **Nevada**’s refusal to allow same-sex couples to marry. Attempt by intervenor citizens group opposed to same-sex marriage to by-pass 9<sup>th</sup> Circuit and take the case directly to the Supreme Court was denied.

**Tanco v. Haslam** (M.D. Tennessee, filed October 21, 2013) – Challenging refusal of **Tennessee** to allow same-sex couples to marry.

**Whitewood v. Corbett** (M.D. Pennsylvania, filed July 9, 2013) – Challenging refusal of **Pennsylvania** to allow same-sex couples to marry; in December, court denied state’s motion to dismiss based on **Baker v. Nelson** (S. Ct. 1972).

#### Federal Administrative Action

General Comment: In the months following the Supreme Court’s announcement of **U.S. v. Windsor**, federal agencies generally adopted policies recognizing same-sex marriages if they were validly formed in states that authorized such marriages (the “place of celebration rule”), even if the individuals were residing in states that did not recognize their marriage. Exceptions to this approach appeared to be mandated in a handful of statutes that specifically incorporate a “place of domicile” rule in determining eligibility for spousal treatment. Such statutes probably violate the 14<sup>th</sup> Amendment equal protection clause in light of **U.S. v. Windsor**.

Internal Revenue Service, Revenue Ruling 2013-17 (September 15, 2013) – Applying **U.S. v. Windsor** to require that legally-contracted same-sex marriages in the place of celebration be treated as marriages under the Internal Revenue Code regardless of the tax-payer’s state of domicile.

Federal Election Commission, Advisory Opinion 2013-06, Advisory Opinion 2013-07 (July 25, 2013) – Analyzing impact of **U.S. v. Windsor** on various requirements of laws governing financing of federal elections, requiring recognition of same-sex marriage in those contexts using place of celebration rule.

Federal Retirement Thrift Investment Board – Published proposed regulations to establish place of domicile rule to govern spousal status of federal employee participants in Thrift Savings Accounts.

Board of Immigration Appeals: Matter of Oleg B. Zeleniak, Beneficiary of a visa petition filed by Serge V. Polajenko, 26 I&N Dec. 158, 2013 WL 3777692 (BIA, July 17, 2013) – In light of **U.S. v. Windsor**, BIA ruled that Vermont same-sex marriage was recognized for immigration purposes, and adopted state of celebration rule for immigration purposes.

Social Security Administration, “Windsor Same-Sex Marriage Claims.” See Program Operations Manual System, Part 02 – General; Chapter 002 – Applications and Interviews; Subchapter 10 – Windsor Same-Sex Marriage Claims; BASIC, 08/2013 – In light of **U.S. v. Windsor**, legally-contracted same-sex marriages will be recognized for Social Security purposes, but under existing statute the place of domicile rule must be followed for eligibility for spousal benefits.

U.S. Department of Defense announced that military spousal benefits eligibility would be based on place of celebration rule, so lawfully married military personnel would be entitled to benefits regardless where they were assigned in the U.S.; for overseas postings, local law might have to

be taken into account. Extension of this rule to National Guard Units in the states ruffled some feathers, but after a few months of indecision, all state National Guard Units had figured out methods of compliance, even in states that did not recognize same-sex marriages. In some cases in states with marriage amendments this involved detailing of federal personnel to handle registration at state facilities, or consolidation of registration of spouses in federal facilities.

U.S. Department of Labor announced that same-sex marriages would be recognized for purposes of the Family and Medical Leave Act, but was unclear about whether this would apply to employees living in states that do not recognize their same-sex marriages.

U.S. Department of Labor issued Technical Release 2013-04 on September 18, 2013, providing that married same-sex couples would be recognized under the Employee Retirement Income Security Act for purposes of employee benefits plans (including pension plans) subject to that statute, without making clear whether place of domicile or place of celebration rule would apply regarding any particular employee benefit.

U.S. Department of Labor, Employee's Compensation Appeals Board, J.T. and U.S. Postal Service, Post Office, Portland, ME, Docket No. 13-1580, 2013 WL 6529449 (Nov. 8, 2013) – ruling that in light of *U.S. v. Windsor*, Workers' Compensation system for federal employees will recognize same-sex marriages, apparently using place of celebration rule as with other federal employee benefits determinations.

U.S. Department of State, issued release entitled “U.S. Visas for Same-Sex Spouses,” see [http://travel.state.gov/visa/frvi/frvi\\_6036.html](http://travel.state.gov/visa/frvi/frvi_6036.html) (setting forth policy for treatment of same-sex marriages in light of *U.S. v. Windsor*, using state of celebration rule).

U.S. Department of Veterans Affairs initially took the position that it was bound by a federal veterans benefits statute not mentioned in *U.S. v. Windsor* to apply place of domicile rule in determining benefits entitlement of same-sex spouses of military veterans. U.S. District Court in California held statute unconstitutional insofar as it discriminated against same-sex spouses on August 29 (see *Cooper-Harris v. U.S.*, above); subsequently, agency announced it would apply place of celebration rule.

U.S. Office of Personnel Management announced shortly after *U.S. v. Windsor* decision that it would recognize same-sex marriages of federal employees using place of celebration rule, regardless of domicile, for purposes of federal employee benefits programs, but would not recognize domestic partnerships or civil unions.

#### State Litigation

**Ballen v. Corbett** (pending in Pennsylvania Commonwealth Court, filed September 25, 2013) – Same-sex couples married in Montgomery County, Pennsylvania, under policy announced by county clerk seek declaration of validity of their marriages.

**Baus v. Gibbs** (Pennsylvania, Northampton County Common Pleas Court, filed October 25, 2013) – Surviving spouse of same-sex couple married in Connecticut challenges refusal of **Pennsylvania** tax authorities to recognize the marriage for purposes of inheritance taxes

**Brinkman v. Long** (Adams County District Ct., filed October 31, 2013) – Challenging refusal of **Colorado** to allow same-sex marriages.

**Commonwealth v. Hanes** (Pending in Pennsylvania Supreme Court) – Litigation by the state against Montgomery County, Pennsylvania, Clerk, who issued marriage licenses to same-sex couples; lower courts ruled that clerk did not have authority to determine that state’s ban on same-sex marriage was unconstitutional; clerk argues that state court should issue a ruling on constitutionality as part of this case.

**Costanza and Brewer, In re** (Louisiana 3<sup>rd</sup> Circuit Court of Appeal) – Pending appeal from trial court’s refusal to require **Louisiana** to recognize out-of-state same-sex marriage.

**Czekala-Chatham v. Melancon** (Mississippi, DeSoto County Chancery Court, filed September 11, 2013) – Seeking recognition by **Mississippi** of same-sex marriage concluded out-of-state, in context of proposed divorce action.

**Darby v. Orr; Lazaro v. Orr**, Case No. 12 CH 19718 (IL Circuit Ct., Cook County, Sept. 27, 2013) – Motion to dismiss lawsuit against Cook County Clerk seeking marriage license for same-sex couples denied; case essentially mooted when **Illinois** enacted marriage equality statute, to take effect June 1, 2014, although plaintiffs refused to consent to dismissal until new law goes into effect.

**Garden State Equality v. Dow**, 2013 WL 6153269 (N.J. Superior. Ct., Mercer Co., September 27, 2013), stay denied by Superior Court, 79 A.3d 479 (N.J. Superior Ct., Mercer Co., Oct. 10, 2013) – Granting summary judgment for plaintiffs in suit seeking right to marry for same-sex couples in **New Jersey**; held state’s provision of civil unions did not afford equal protection of the laws, in light of federal recognition of marriages but not civil unions, ordered state to allow same-sex marriages effective October 21; stay denied, 2013 WL 5687193 (N.J. Supreme Ct., October 28, 2013).

**Greigo v. Oliver**, 2013 WL 6670704, 2013 N.M. LEXIS 414 (New Mexico Supreme Ct., Dec. 19, 2013) – Unanimous ruling that same-sex couples in **New Mexico** have a state constitutional right to marry.

**J.B. v. State of Texas**, No. 11-0024 (pending in Supreme Court of Texas) – Two combined lawsuits raising the question whether same-sex couples married in other states can obtain divorces in **Texas**.

**Kentucky Equality Federation v. Breshear** (Franklin County Circuit Ct., filed September 10, 2013) – Challenging refusal of **Kentucky** to allow same-sex marriages

**Nelson v. Kansas Department of Revenue**, No. 13-C1465 (Kansas, Shawnee Co. Dist. Ct., filed Dec. 30, 2013) – Challenging Kansas’ refusal to allow same-sex couples legally married in other jurisdictions to file their **Kansas** taxes as “married.”

**Pidgeon v. Parker**, No. 2013-75301/Court 310 (Harris Co. Dist. Ct., filed Dec. 17, 2013) – Trial court order temporarily blocks implementation of **Houston, Texas** Mayor Annise Parker’s directive that the city recognize legally-married same-sex partners for employee benefits purposes.

**Romero v. Romero** (Franklin County Circuit Ct., filed October 25, 2013) – Seeks recognition in **Kentucky** of same-sex marriage contracted out of state in context of action for divorce.

**Thigpen v. Cooper**, 739 S.E.2d 165 (N.C. Ct. App. 2013) – State attorney general was not proper defendant in challenge to same-sex marriage ban by **North Carolina**.

**Wright v. State of Arkansas** (Pulaski County Circuit Court, filed July 2, 2013) – Challenging refusal of **Arkansas** to allow same-sex marriages; court denied all pending pretrial motions on Dec. 20, 2013, refusing either to dismiss the case or grant preliminary relief to the plaintiffs.

#### State Legislation, Regulations and Administrative Actions

Marriage equality bills enacted in **Minnesota, Rhode Island, Delaware, Hawaii, and Illinois**.

**Alaska** State Personnel Board voted to include same-sex spouses of state employees as immediate family members, under regulations that will allow state employees to take leave to care for same-sex spouses with serious medical conditions.

**Douglas County, Nebraska**, extended benefits coverage to same-sex spouses of county employees who married out-of-state (Nebraska prohibits same-sex marriage by constitutional amendment and statute)

**Missouri** Governor Jay Nixon ordered that the state tax department allow married same-sex couples to file their Missouri income taxes using the married status, as Missouri’s tax statutes track federal tax statutes.

**New York** State Department of Taxation and Finance posted Technical Memorandum TSB-M-13(5)(I), (10)(M), outlining impact of **U.S. v. Windsor** on tax filing status and entitlement to refunds for NY state taxpayers.

**Oregon**: Relying on October 16 opinion letter from Deputy Attorney General, State Director of Administrative Services instructs state agencies that Oregon recognizes same-sex marriages contracted in other states, even though state law does not authorize same-sex marriages (neighboring states to south and north do authorize same-sex marriages).

## 2. Legal Recognition of Same-Sex Couples (other than marriage)

### Litigation

**Attorney General v. Civil Service Commission**, 2013 WL 85805 (Mich. Ct. App. Jan. 8, 2013), review denied by Mich. Sup. Ct., 829 N.W.2d 867 (May 1, 2013) – Civil Service Commission did not violate **Michigan** Marriage Amendment when it extended domestic partner benefits eligibility to same-sex partners of state employees.

**Bassett v. Snyder**, 2013 WL 3285111 (E.D. Mich., June 28, 2013) -- **Michigan** Act 297, which prohibits public employers from providing medical and fringe benefits to unmarried cohabitants of public employees, may violate the Equal Protection Clause of the 14th Amendment; enforcement enjoined.

**Brewer v. Diaz**, 133 S.Ct. 2884 (Supreme Court) (cert. denied) – U.S. Supreme Court refused to intervene on interlocutory appeal by state of Arizona of district court’s preliminary injunction ordering restoration of benefits to same-sex partners of **Arizona** state employees.

**Coates v. Fallin**, 2013 OK 108, 2013 WL 6670585, 2013 Okla. LEXIS 145 (Dec. 16, 2013) – Rejects constitutional challenge to new **Oklahoma** Workers Compensation Law provisions that expressly deny benefits to same-sex spouses of employees.

**Commonwealth of Kentucky v. Clary** (Jefferson Circuit Court, Sept. 23, 2013) – Refusal to extend **Kentucky** marital testimonial privilege in criminal prosecution in context of Vermont Civil Union on grounds that witness and defendant are not married.

**D.M. v. M.P.**, 2013 WL 6174805, 2013 Del. Fam. Ct. LEXIS 28 (Nov. 22, 2013) (not officially published) – Rules governing marital property applied to a case involving a **Delaware** same-sex civil union couple who were divorcing shortly after they had married.

**Dee v. Rakower**, 2013 N.Y. App. Div. LEXIS 7468, 2013 NY Slip Op 7443, 2013 WL 5989685 (N.Y., Appellate Division, 2nd Dept., Nov. 13, 2013) – Former lesbian partner can sue in **New York** to enforce “joint venture” agreement concerning shared assets of their relationship.

**Diaz v. Brewer**, No. CV09-02402-PHX-JWS (D. Ariz., Dec. 23, 2013) – Certifies class action of **Arizona** state employees suing for benefits for same-sex partners, designating names plaintiffs as class representatives and Lambda Legal and local cooperating attorneys as class counsel.

**Fonberg, In the Matter of**, 736 F.3d 901 (9th Cir. (Jud. Council), November 25, 2013) – Grievance body for 9th Circuit Court of Appeals holds that court employee is entitled to benefits coverage for her Oregon registered domestic partner; distinction between spouses and domestic partners is not constitutionally consistent with **U.S. v. Windsor**.

**Glossip v. Missouri Department of Transportation**, 411 S.W.3d 796 (Missouri Sup. Ct., Oct. 29, 2013) – Surviving same-sex partner of slain **Missouri** state trooper was ineligible to receive benefits, which are reserved to legally-recognized spouses.

**Holmes, In re**, 496 B.R. 765 (Bankr. M.D. Pa. 2013) – Rejected U.S. Trustee’s argument that petitioner’s same-sex partner’s income should be taken into account in determining whether he was qualified to file for personal bankruptcy, but granted motion to dismiss bankruptcy petition on other grounds.

**Infinity Corp v. Danko**, 2013 WL 146272 (N.Y.C. Housing Court) – Enforcing tenant succession rights, despite evidence that much younger surviving same-sex partner of tenant advertised his massage services on rentboy.com. Court held this this evidence went to his employment, not to the validity of his relationship with the deceased tenant.

**Massey v. Byrne**, 38 Misc. 3d 1215(A), 967 N.Y.S.2d 868, 2013 WL 285572 (N.Y.Sup.), 2013 N.Y. Slip Op. 50104(U) (N.Y. Sup. Ct., Jan. 15, 2013) (unreported disposition) – Plaintiff brought an action against his alleged former partner and his partner’s company, claiming that their ten year relationship was not only romantic but “confidential and fiduciary;” court denied summary judgment, finding valid cause of action requiring trial of disputed facts.

**U.S. v. Crew**, 2013 WL 5861508, 2013 U.S. App. LEXIS 22237 (2nd Cir., Nov. 1, 2013) (not published in F.3d) – Affirming district court’s forfeiture order concerning assets of a same-sex couple where one member of the couple was convicted of federal criminal offenses.

## Legislation

### State Statutes

Arizona – Legislated to limit the authority of counties and municipalities to adopt partner benefits policies. Such policies may extend only to employees of the government body, and not to the private sector.

California – Enacted law excluding from taxation extra pay some California employers provide to employers who are federally taxed on the value of health insurance provided to their registered domestic partners.

Colorado – Civil Union Law - Same-sex and different-sex couples can register, many state-law rights but not exactly equivalent to marriage.

Connecticut – Legislated to restore partner benefits to individuals who lost military veteran benefits due to prior exclusion of gay people from military service; subsequent legislation extended state FMLA leave rights to registered civil union partners of employees.

### Municipal and County Ordinances

Bisbee, Arizona – Civil Union ordinance.

Bay Harbor Islands, Florida – Domestic Partnership Ordinance – Benefits for partners of city employees.

Boca Raton, Florida – Spousal benefits for domestic partners of city employees.

Buncombe County, North Carolina – Domestic Partner benefits for same-sex partners of county employees.

Chattanooga, Tennessee – City employee benefits extended to same-sex and different-sex partners of employees. Sufficient petition signatures submitted to block implementation pending reconsideration by Council or submission to ballot referendum.

Collegedale, Tennessee – City employee benefits extended to same-sex and different-sex partners of employees.

Dallas (Texas) Area Rapid Transit Board – Domestic partnership benefits for employees.

El Paso County, Texas – Modified employee benefits policy to continue providing benefits to same-sex partners of county employees without violating state’s anti-gay marriage amendment.

Houston, Texas – Benefits for same-sex married spouses of city employees, by mayoral directive (litigation promptly filed challenging mayor’s authority to do this).

Knoxville, Tennessee – Domestic partner benefits for city employees, by mayoral order.

Miami Beach, Florida – Tax Equity Ordinance, reimbursing city employees who have to pay taxes on value of domestic partner benefits.

Palm Beach County, Florida – Reimburse city employees who pay extra taxes due to value of partnership benefits.

Palm Beach Gardens, Florida – Health insurance for partners of city employees.

Pensacola, Florida – Domestic Partner Registry, with specified rights.

Philadelphia, Pennsylvania – Tax credits for employers that provide LGBG-inclusive employee benefits.

Pinellas County, Florida – Domestic Partnership Registry.

Richmond, Virginia – Spousal benefits for same-sex partners of city employees (won’t go into effect unless authorized by state government, due to constitutional amendment banning same-sex marriage or other similar legal status).

Sarasota County, Florida – Domestic Partnership Registry and list of rights for domestic partners of county employees.

Summit County, Ohio – Health benefits for domestic partners of county employees.

Tavares (Lake County), Florida – Domestic Partnership Registry.

#### Administrative Decisions

The Defense Department announced in February that it would expand the list of benefits available to same-sex domestic partners of military personnel, effective in the fall. This initiative was *withdrawn*, however, when DoD followed **U.S. v. Windsor** by recognizing same-sex spouses of military personnel, effective September 3, 2013.

Texas Attorney General Greg Abbott – A.G. Opinion: Counties, municipalities, school districts may not establish domestic partnership policies, as this would conflict with Texas Marriage Amendment ban on creating a legal status similar to marriage for same-sex couples.

#### Native-American Tribal Law

Little Traverse Bay Bands of the Odawa Indians (northern Michigan) enacted marriage equality law for the tribe.

### **3. LGBT Family Law – Divorce, Dissolution, and Property Issues**

**Beatie v. Beatie** – Arizona - Maricopa County Family Court – Transgender husband who gave birth to children – Court lacks jurisdiction over divorce petition due to uncertainty about validity of Hawaiian marriage between transgender man and cisgender woman.

**Davis v. Summers**, 2013 Ind. App. LEXIS 630 (Indiana Court of Appeals, Dec. 20, 2013) – Holding that a marriage contracted in **Indiana** between different-sex partners does not automatically become void when one of the spouses transitions to the same gender as the other – reversing trial court that had ruled it was without jurisdiction to conduct a divorce action because the marriage was voided by the gender transition of the husband.

#### **4. LGBT Family Law – Parent-Child Relationships, including Custody, Visitation, Support, Adoption, Reproductive Issues**

##### Litigation

**A.C. v. N.J.**, 2013 WL 5833310 (Indiana Ct. App., Oct. 31, 2013) – Former same-sex domestic partner of a woman who gave birth to a child during the course of their relationship may seek visitation but not custody; court bemoaned lack of express legislative guidance in dealing with a recurring issue involving non-traditional families.

**A.F. v. K.H.**, V-00918-13, NYLJ 1202621759664, at \*1 (New York, Fam. Ct., Rockland County, August 05, 2010) – Lesbian co-parent was legal stranger to children, and extraordinary circumstances do not exist to override birth mother’s right to custody and to exclude former partner from visitation.

**A.R.L., In re (Limberis v. Havens)**, 2013 COA 170, 2013 Colo. App. LEXIS 1879, 2013 WL 6354606 (Colo. Ct. App., Div. IV, Dec. 5, 2013) – Under Colorado Uniform Parentage Act, the same-sex partner of a birth mother can be a presumed parent, and a child can have two legal parents of the same sex.

**Beth C. v. Marcia B.**, B233825, 2013 WL 143543 (Cal. Ct. App. Jan. 14, 2013), unpublished/noncitable (Jan. 14, 2013), review denied (Apr. 17, 2013) – Same-sex co-parent of a child adopted from Russia by her partner was legal parent of the child.

**Bowden v. Korslin (In re A.M.K.)**, 838 N.W.2d 865 (Wis. Ct. App. Sept. 5, 2013) – A non-biological parent in a former lesbian couple was not a legal parent sufficient to receive custody rights, but was a parent sufficient to pay child support.

**Boxley v. Boxley**, 2013 WL 3619085 (Conn. Super. Ct., June 26, 2013) (not reported in A2d) – One party to a divorcing lesbian couple filed for a petition to vacate the adoption degrees [granting adoption of their 4 children to the non-biological mother] claiming that the adoptive mother had committed fraud by not informing the court of marital problems. The court denied her motion.

**Brimberry v. Gordon**, 2013 Ark. App. 473, 2013 Ark. App. LEXIS 490, 2013 WL 4748028 (Ark. Ct. App., Sept. 4, 2013) – Awarding custody of a child born out of wedlock to its biological father, terminating the custody of the child’s lesbian mother because of her “lifestyle choices,” not her sexual orientation.

**C.P. and D.F.. In re Domestic Partnership of**, 2013 WL 2099156 (Cal. App. 4 Dist., May 16, 2013)(unpublished) – Rejects argument that child cannot simultaneously have two mothers; where women filed domestic partnership before child was born, both partners were legal parents of child

**D.M.T. v. T.M.H.**, 2013 Fla. LEXIS 2422, 2013 WL 5942278, 38 Fla. L. Weekly S812 (Nov. 7, 2013) – Lesbian co-parent who had donated an egg that was fertilized in vitro and implanted in her same-sex partner, could seek custody of the resulting child whom she had parented for the first two years of the child’s life before the couple’s relationship ended.

**Druen v. Miller**, 2013 WL 5676894, 2013 Ky. App. Unpub. LEXIS 842 (Ky. Ct. App., Oct. 18, 2013) – Affirming joint custody decision for lesbian mothers.

**Estrellita A. v. Jennifer D.**, 963 N.Y.S.2d 843 (N.Y., Fam. Ct., Suffolk Co., April 2, 2013) – Judicial estoppel used to find standing to seek custody for lesbian co-parent.

**Franklin v. Johnston**, 2013 WL 6212017, 2013 Wash. LEXIS 942 (Washington Supreme Ct., November 27, 2013) – Lesbian co-parent’s status as a foster parent to her partner’s child did not disqualify her from seeking a determination that she is a “de facto parent” of the child.

**Frazier v. Goudschaal**, 296 Kan. 730, 295 P.3d 542 (2013) – Written co-parenting agreement of same-sex couple made prior to use of reproductive technology was enforceable under Kansas’s version of Uniform Parentage Act to determine parental rights.

**G, Matter of the Adoption of a Child Whose First Name is** (New York, Surrogate’s Court, N.Y. County, Dec. 27, 2013) – Surrogate approved second-parent adoption of child by gay male friend of heterosexual adoptive mother, finding parties could be considered “unmarried intimate partners” within meaning of N.Y. Dom. Rel. L. Sec. 110, specifying classes of person authorized to adopt.

**Gartner v. Iowa Dept. of Public Health**, 830 N.W.2d 335 (Iowa 2013) – Both spouses in a married lesbian couple should be listed on the birth certificate of a child born to one of them during the marriage.

**Giancaspro v. Congleton**, 2013 WL 5663109, 2013 Mich. App. LEXIS 1701 (Mich. Ct. App., Oct. 17, 2013) (unpublished opinion) – Full faith and credit requires Michigan to recognize second-parent adoption from another jurisdiction, so former same-sex adoptive mother who also adopted child is entitled to be awarded custody under best interest of child standard; original adoptive mother had waived objections to the second-parent adoption by not raising them early enough in the case.

**Goss v. Harrison**, 2013 WL 3357604 (Ky. Ct. App. July 5, 2013) (not reported in S.W.2d) – The court of appeals affirmed a ruling by the family court that the former same-sex partner of a child’s maternal grandmother did not have standing to intervene in an ongoing custody case between the child’s parents to seek custody or visitation rights, despite her role in helping to raise the child.

**Havron v. Havron**, 2013 Ala. Civ. App. LEXIS 185, 2013 WL 4289318 (Alabama Court of Civil Appeals, Aug. 16, 2013) – Appellate court refused to disturb circuit court’s award of

primary residential custody of a child to her mother despite the father's objections to the mother's socializing with lesbians.

**Holt v. Holt**, 2013 WL 6212020, 2013 Wash. LEXIS 944 (Nov. 27, 2013) – Court approves “flexible” use of de facto parent doctrine in custody and visitation cases.

**J.B. v. Superior Court**, 2013 WL 6092880 (3rd Dist. Ct. App., Nov. 20, 2013) (not officially published) – Sperm donor who had obtained paternity judgment prevailed in parental claim over biological mother's occasional same-sex partner who had a role in raising the children; judgment of paternity prevails over a presumed parentage status.

**J.M.B. & D., In re; E.M.B. v. J.E.B.**, 2013 Ill. App (1st) 1221-42-U, 2013 Ill App. Unpub. LEXIS 2868 (Appellate Ct. of Illinois, Dec. 19, 2013) – Ruling on financial obligations of lesbian civil union partners upon break-up of their relationship.

**L.B., In re**, 2013-Ohio-5648, 2013 Ohio App. LEXIS 5912 (Ohio, 11th Dist. Ct. App., Dec. 23, 2013) – Withdrawal of lesbian co-parent's counsel while summary judgment motion was pending did not excuse her failure to file response to former partner's motion, so appeals court refused to vacate trial court's grant of motion, rejecting her petition for parental status or visitation rights; concurring judge says she would not be collaterally estopped from bringing a new action because the trial court never considered the substantive legal issues.

**M.M., in the Matter of**, 750 S.E.2d 50 (N.C. App., Nov. 5, 2013) – Trial judge improperly relied on mother's bisexuality in making custody determination against her.

**Moix v. Seventeenth Division Libby Moix**, 2013 Ark. 478, 2013 Ark. LEXIS 569, 2013 WL 6118520 (Arkansas Sup. Ct., Nov. 21, 2013) – Vacates restriction on father having same-sex partner present during child visitation.

**Ramsey v. Morales**, 2013 WL 6091613 (La. App., 2nd Cir. Nov. 20, 2013) – Homemade surrogacy agreement was unenforceable; biological father was entitled to joint custody with biological mother, who had been in a relationship with a woman when child was conceived.

**St. Mary v. Damon**, 309 P.3d 1027 (Nevada Supreme Ct., Oct. 3, 2013) – Child can have two legal mothers; agreement by which one mother donated egg and the other was gestational surrogate was enforceable as a contract.

**Stankevich v. Milliron**, 2013 WL 5663227, 2013 Mich. App. LEXIS 1684 (Mich. Ct. App., Oct. 17, 2013) (unpublished opinion) – Because Michigan does not recognize Canadian same-sex marriage, biological mother of child has sole claim to custody and may deny visitation to her spouse.

### Legislation

California enacted a law allowing for a child to have three legal parents, such as in cases involving a sperm donor and a lesbian couple where the parties want all three to have parental rights and obligations for the child.

## **5. Discrimination in Public Accommodations/Public Facilities/by Public Officials**

### Litigation

**Cervelli & Bufford v. Aloha Bed & Breakfast**, 2013 WL 1614105 (Hawaii, 1<sup>st</sup> Circuit Court, 2013) – Defendants unlawfully discriminated based on sexual orientation against lesbian couple who booked accommodations together.

**Craig v. Masterpiece Cakeshop, Inc.**, Case No. CR 2013-0008 (Colo. Off. of Admin. Cts.) – Administrative ruling that baker violated state public accommodations law by refusing to sell wedding cake to same-sex couples that was marrying out of state and planning an in-state reception after the wedding.

**Elane Photography, LLC v. Willock**, 2013-NMSC-040, 309 P.3d 53 (New Mexico Supreme Ct., August 22, 2013), No. 13-585 (Petition for certiorari filed, Nov. 8, 2013) – Wedding photography business violated the New Mexico Human Rights Act by refusing service to a lesbian couple for their commitment ceremony; business's religious and free speech rights were not violated by the result; petition for cert. argues that case raises important issues of 1st Amendment right.

**Rodgers v. Board of County Commissioners of Summit County**, 2013 WL 1764663, 2013 COA 61 (Colorado Ct. App., April 25, 2013) – Gay couple who allege discriminatory enforcement of sewage regulations by County Board entitled to new trial of equal protection claim; Trial court erred by excluding evidence and improperly instructing jury concerning comparator requirements.

**Shaw v. District of Columbia**, 944 F. Supp. 2d 43 (D.D.C. May 13, 2013) – transgender woman was entitled to be treated as a legal woman by police and court officers.

### Legislation

Adding sexual orientation and gender identity to laws banning discrimination by public accommodations:

Alachua County, Florida

Boca Raton, Florida

Bristol, Pennsylvania  
Coeur d'Alene, Idaho  
Delhi Township, Michigan  
Delta Township, Michigan  
Frankfurt, Kentucky  
Hyattsville, Maryland  
Meridian Township, Michigan  
Morehead, Kentucky  
Phoenix, Arizona  
Pinellas County, Florida  
Pittston, Pennsylvania  
Pocatello, Idaho, subject to referendum vote in May 2014  
San Antonio, Texas  
Shreveport, Louisiana  
Vicco, Kentucky

Adding gender identity to existing laws that already cover sexual orientation:

Maryland

Albany County, New York

Multnomah County, Oregon – all new construction projects for the county must include gender-neutral restroom facilities

Philadelphia, Pennsylvania (and mandates all new city buildings include gender neutral restroom facilities)

## 6. Employment Discrimination

### Litigation

**Asch v. NYC Board/Department of Education**, 104 A.D.3d 415, 960 N.Y.S.2d 106 (N.Y.A.D. 1 Dept. 2013) – Affirming arbitrator’s imposition of discipline on gay male school employee who failed to observe appropriate boundaries concerning touching male students.

**Autocam Corp. v. Sebelius**, 730 F.3d 618 (6th Cir. Sept. 17, 2013) – Holding that a for-profit corporation could not be relieved of providing contraception coverage to its female employees under the ACA based on religious views of owners.

**Bah v. Millstone Med. Outsourcing**, 2013 U.S. Dist. LEXIS 126502, 120 Fair Empl. Prac. Cas. (BNA) 173, 2013 WL 4782373 (W.D. Tenn. Sept. 4, 2013) (not officially published) – Granted summary judgment for employer on discrimination claim by Muslim employee who was discharged based on gay employee’s claims of anti-gay harassment by plaintiff.

**Baldazo v. Elko County ex rel. its Sheriff’s Dep’t**, 2013 U.S. Dist. LEXIS 131251, 97 Empl. Prac. Dec. (CCH) P44,920, 2013 WL 5330581 (D. Nev. Sept. 13, 2013) (not officially published) – Granted employer’s motion for summary judgment on Title VII discriminatory discharge and retaliation claims brought by a lesbian former sheriff’s deputy, but denied as to her hostile environment claim.

**Barrett v. Carlos O’Kelly’s, Inc.**, 2013 WL 5503666, 2013 U.S. Dist. LEXIS 143338 (N.D. Iowa, Oct. 2, 2013) – Sexual orientation discrimination claim asserted under state law in diversity case dismissed as time-barred.

**Bowen v. Labor and Industry Review Commission**, 2013 WL 5433529 (Wis. App., Oct. 1, 2013) (unpublished disposition) – Employer had legitimate reason, which was not a pretext for discrimination, to discharge gay employee.

**Canalosi v. Holmdel Board of Education** (N.J., Monmouth County Super. Ct., jury verdict for plaintiff, Oct. 2013) – Sexual orientation discrimination and hostile environment claims.

**Caparanis v. Ford Motor Company**, 2013 WL 6626839, 2013 U.S. Dist. LEXIS 175955 (N.D. Ohio, Dec. 16, 2013) – Denying summary judgment for employer in same-sex harassment case brought under Title VII that might be litigated as a gender stereotyping case.

**Carr v. Beverly Health Care & Rehabilitation Services, Inc.**, 2013 WL 5946364, 2013 U.S. Dist. LEXIS 158479 (N.D. Cal., Nov. 5, 2013) – Judicial estoppel precludes an employment discrimination plaintiff from suing his former employer when he had failed to list his potential claim against the employer in a bankruptcy pleading that he had filed prior to his discrimination suit.

**Chavez v. Credit Nation Auto Sales, Inc.**, 2013 U.S. Dist. LEXIS 116718, 2013 WL 4482519 (N.D. Ga. Aug. 19, 2013) (not officially published) – Transgender plaintiff whose attempts to file a Title VII claim were twice rebuffed by local EEOC office in Georgia could invoke equitable tolling to make her filing timely.

**Conestoga Wood Specialties Corp. v. Sec’y of U.S. Dep’t of Health and Human Servs.**, 724 F.3d 377 (3d Cir. 2013), cert. granted, 134 S.Ct. 678 (Nov. 26, 2013) – For-profit employer may not claim religious exemption from Affordable Care Act requirement to cover female contraception as part of employee health insurance plan.

**Conner-Goodgame v. Wells Fargo Bank, N.A.**, 2013 WL 5428448, 2013 U.S. Dist. LEXIS 139477 (N.D. Alabama, Sept. 26, 2013) – Straight woman employee’s Title VII sexual harassment claim against employer because of gay supervisor’s constant talking about his sexual life and interests at the workplace was not actionable.

**Cook v. Nordstrom**, 2013 WL 6633522, 2013 U.S. Dist. LEXIS 176832 (D.N.J., Dec. 17, 2013) – Enforces employer’s arbitration policy requiring plaintiff to submit state law allegations of sexual orientation discrimination to arbitrator, in case removed to federal court.

**Dawkins v. Porter**, 2013 U.S. Dist. LEXIS 158818, 2013 WL 5952005 (M.D.N.C., Nov. 6, 2013) – Magistrate recommends letting gay teacher assert equal protection claim against school principal who did not renew teacher’s contract, but recommends dismissing claims against other school officials.

**Derr v. Kern County Fire Dep’t**, 2013 WL 223736 (Cal. Ct. App. Jan. 22, 2013) – Former firefighter can pursue harassment claim against Fire Department where harassment was due to firefighter standing up for his lesbian daughter.

**DeVito v. Sears, Roebuck & Co.**, 2013 N.Y. Slip Op. 51057(U), 2013 N.Y. Misc. LEXIS 2784, 40 Misc.3d 1206(A), 975 N.Y.S.2d 708 (Table), 2013 WL 3388637 (Sup.Ct., N.Y. Co., June 28, 2013) (unreported disposition) – Denying motion to dismiss sexual orientation hostile environment complaint against employer.

**Dias v. Archdiocese of Cincinnati**, 2012 WL 1068165 (S.D. Ohio Mar. 29, 2012) – Recognized cause of action for pregnancy discrimination under Title VII by lesbian Catholic school employee who was terminated after becoming pregnant through donor insemination.

**Eden Foods, Inc. v. Sebelius**, 733 F.3d 626 (6th Cir., October 24, 2013) – For-profit corporation is not a “person” entitled to free exercise of religion; no exemption from contraception coverage requirement under Affordable Care Act for employee health insurance plan.

**EEOC v. Boh Bros. Constr. Co.**, 731 F.3d 444 (5th Cir. en banc, Sept. 27, 2013) – Upheld jury verdict finding that an employer violated Title VII due to the hostile environment sexual

harassment of a male employee by a male supervisor, but remanded the case for reconsideration of damages.

**Falcon v. Continental Airlines**, 2013 U.S. Dist. LEXIS 171349 (D. N.J., Dec. 4, 2013) – Gay flight attendant defeats airline’s summary judgment motion on his sexual orientation discrimination claim, stemming from incident about his alleged Mohawk-style haircut, but loses on battery and emotional distress claims.

**Felix v. California**, 2013 WL 3730176, 119 Fair Empl.Prac.Cas. (BNA) 282, 97 Empl. Prac. Dec. P 44,871 (E.D. Cal. July 12, 2013) – Court rejected a motion to dismiss a sexual harassment claim based on gender stereotyping based on the precedent of **Nichols v. Azteca Restaurant Enterprises**, 256 F.3d 864 (9th Cir. 2001).

**Fox v. Shinseki**, 2013 WL 4431088 (Vet. App. Aug. 19, 2013) (not officially published) – Because sexual orientation is not a prohibited ground of discrimination under the federal CRA of 1964, an employee who claimed to have suffered retaliation because of her involvement in protesting homophobic harassment of a colleague could not maintain a retaliation claim under Title VII.

**Gadling-Cole v. West Chester Univ.**, 2013 U.S. Dist. LEXIS 123433 (E.D. Pa. Aug. 28, 2013) – Applicant for position who alleged that her religiously-based anti-gay views led to her rejection for position for which she was qualified has stated a cause of action under Title VII.

**Gardner v. Abbott**, 2013 Tex. App. LEXIS 8829, 2013 WL 3791463 (Tex. App. Austin July 18, 2013) – Rejecting employment discrimination claim by gay government call center employee under Texas constitution’s equal protection clause.

**Gliha v. Butte-Glenn Community College District**, 2013 WL 3013660, 28 A.D. Cases 173 (E.D. Cal., June 14, 2013) (not officially published) – Refusal to dismiss retaliation claim in sexual orientation discrimination case, allowing leave to amend complaint to try to support other aspects of claim.

**Gotham v. Los Angeles Police Department**, No. BC 465451 (Cal. Super. Ct., settlement approved 3/20/2013) – Alleged harassment of lesbian police officers by supervisor.

**Greene v. Harris Corp.**, 2013 WL 3873212 (D. Md. July 24, 2013) – Court granted defendant’s motion to dismiss a discrimination and wrongful interference with contract claim brought by a lesbian whose contract to provide cleaning services to a Florida-based corporation’s Maryland office was terminated, on grounds of pleading deficiencies.

**Hall v. Tift County Hospital Authority**, 2013 WL 2484089, 118 Fair Empl. Prac. Cas. (BNA) 1625 (M.D. Ga., June 10, 2013) (not officially published) – Religious employee discharged by hospital after sending anti-gay propaganda to co-worker failed to state Title VII or constitutional discrimination claim.

**Hammer v. University of Michigan Board of Regents**, 2013 Mich. App. LEXIS 1972 (Mich. Ct. App., Dec. 3, 2013) – Rejecting gay law professor’s appeal of directed verdict against him in tenure dispute; court of appeals found insufficient evidence that tenure denial was due to anti-gay bias by voting professors as opposed to concerns about the professor’s scholarship.

**Hart v. Lew**, 2013 U.S. Dist. LEXIS 135330, 97 Empl. Prac. Dec. (CCH) P44,920, 2013 WL 5330581 (D. Md. Sept. 23, 2013) (unpublished disposition) – Denied government’s motion to dismiss a Title VII sex discrimination claim by a transgender former IRS agent; and authorized discovery for the plaintiff.

**Hawkins v. Avalon Hotel Group**, 2013 U.S. Dist. LEXUS 171170 (M.D. La., Dec. 4, 2013) – Granting summary judgment in same-sex harassment claim brought by female employee against her supervisor, as employee failed to present evidence supervisor (who denied allegation of sexual solicitation) was a lesbian

**Herx v. Diocese of Ft. Wayne**, 2013 U.S. Dist. LEXIS 144420, 120 Fair Empl. Prac. Cas. (BNA) 573, 28 Am. Disabilities Cas. (BNA) 1104, 2013 WL 5531376 (N.D. Indiana, Oct. 7, 2013) – Unmarried lesbian discharged by Catholic school upon reporting to her principal that she was pregnant through donor insemination is entitled to discovery in her Title VII pregnancy discrimination suit; no religious exemption.

**Hobby Lobby Stores, Inc. v. Sebelius**, 723 F.3d 1114 (10th Cir. 2013), cert. granted, 134 S. Ct. 678 (Nov. 26, 2013) – For-profit corporate employer may claim religious exemption from complying with Affordable Care Act requirement to cover female contraception under employee health insurance plan.

**Inskeep v. Western Reserve Transit Authority**, 2013 WL 979054, 2013-Ohio-897 (7th Dist. Ct. App. 2013) – Sexual orientation discrimination (including hostile environment harassment) not actionable under Ohio state law banning sex discrimination.

**Krolkowski v. St. Francis Preparatory School** (New York, Queens County Supreme Court, Sept. 2013) – Rejecting motion to dismiss transgender teacher’s employment discrimination claim against Catholic school under NYC Human Rights Ordinance.

**Lee v. Harris County Hospital District**, 120 Fair Empl. Prac. Cas. (BNA) 753, 2013 WL 5637049, 2013 Tex. App. LEXIS 12778 (Oct. 15, 2013) -- rejecting gay plaintiff’s discrimination claim, inasmuch as Texas law does not prohibit sexual orientation discrimination.

**Macy v. Bureau of Alcohol, Tobacco, Firearms and Explosives**, Complain No. ATF-2011-00751 (U.S. Dept. of Justice, Complaint Adjudication Office, July 8, 2013) – Macy applied for a job at the Bureau before her gender transition, and all signs pointed to her being hired, but she was rejected once her sex change was made known. EEOC held that this was a case of sex discrimination under Title VII, and Justice Department upheld that determination.

**Manning v. Lifeguard Ambulance Service of Alabama**, 2013 U.S. Dist. LEXIS 94459, 2013 WL 3388510 (S.D.Ala.), 119 Fair Empl. Prac. Cas. (BNA) 59, 97 Empl. Prac. Dec. P 44,868 (S.D. Ala., July 5, 2013) (not officially published) – Allowing plaintiff to replead discrimination case after finding that sexual orientation discrimination claim must be dismissed under Title VII.

**Mendez-Nouel v. Gucci America, Inc.**, 2013 WL 5584317, 2013 U.S. App. LEXIS 20676 (October 11, 2013) (to be published in Fed. Appx.) – Affirming summary judgment for employer in same-sex hostile environment harassment case, on grounds alleged harassment was neither severe nor pervasive.

**Moore v. Treatment Ctrs. of Am. Group, LLC**, 2013 U.S. Dist. LEXIS 131703, 2013 WL 5229979 (M.D. Ga. Sept. 16, 2013) (not officially published) – Granted summary judgment in favor of defendant in a woman’s same-sex harassment suit under Title VII, finding allegations of harassment insufficiently severe.

**Muir v. Applied Integrated Technologies, Inc.**, 2013 WL 6200178, 2013 U.S. Dist. LEXIS 167680 (D. Md., Nov. 26, 2013) – Rejects motion to dismiss transgender plaintiff’s Title VII employment discrimination action against federal contractor.

**Nava v. Safeway, Inc.**, 2013 WL 3961328 (Calif. 5th District Ct. App., July 31, 2013) (not officially published) – Labor Code provisions protecting employee free speech provide basis for suit by employee discharged for tearing down workplace poster saluting Gay Pride Month.

**Parris v. Keystone Foods**, 2013 U.S. Dist. LEXIS 111036, 2013 WL 4010288 (N.D. Alabama, Aug. 7, 2013) (not officially published) – Court rejected transgender woman’s Title VII employment discrimination claim and granted the defendant summary judgment because plaintiff had not met the pleading requirements of showing unequal treatment with comparators.

**Price v. Warrensville Heights City Schools**, 2013 WL 1337713 (N.D. Ohio, March 29, 2013) (unpublished) – Employer entitled to judgment on sexual orientation discrimination claim where plaintiff failed to show decision-maker was aware of her sexual orientation when she was dismissed.

**Rabe v. United Air Lines, Inc.**, 2013 WL 5433251 (N.D. Ill., Sept. 30, 2013) – Lesbian flight attendant discharged for purportedly violating employer work rules could not establish discrimination claim.

**Rice v. Deloitte Consulting LLP**, 2013 U.S. Dist. LEXIS 95439, 2013 WL 3448198 (D.Colo.), 119 Fair Empl.Prac.Cas. (BNA) 38, 28 A.D. Cases 436, 47 NDLR P 155 (D. Colo., July 9, 2013)(not officially published) – Transgender employment discrimination plaintiff does not have automatic standing to bring Title VII sex discrimination claim on gender stereotyping theory.

**Robertson v. Siouxland Community Health Center & Stephan**, 938 F. Supp. 2d 831 (N.D. Iowa 2013) – Dismissing lesbian employee’s sexual orientation discrimination claim under Title

VII as non-actionable, but allowing claim for sex discrimination and sexual harassment under Title VII and sexual orientation discrimination under Iowa state law.

**San Ysidro Unified Sch. Dist. v. Comm'n on Prof'l Competence**, 2013 Cal. App. Unpub. LEXIS 5539, 2013 WL 3995009 (Cal. App. 4th Dist., Aug. 5, 2013) – Affirming decision to hold a gay teacher unfit to teach after his ex-boyfriend “accidentally” emailed inappropriate information to a student, and the school investigation found sexual images and other inappropriate documents on teacher’s school computer, even though the teacher had received multiple awards for his skill.

**Sanchez-Ramirez v. Consulate Gen. of Mexico in San Francisco**, C 12-3485 PJH, 2013 WL 4013947 (N.D. Cal. Aug. 5, 2013) – Consulate General of Mexico enjoyed diplomatic immunity from a sexual orientation discrimination suit by a former employee.

**Savoie v. The Lawrenceville School**, 2013 WL 1492859 (N.J. Super. Ct. App. Div. Apr. 12, 2013) (unpublished) – Trial judge improperly awarded summary judgment to employer on issue whether its reason for discharge of gay teacher was pretextual.

**Scott v. UPS Supply Chain Solutions**, 2013 WL 1855726 (3<sup>rd</sup> Cir. May 3, 2013) (unpublished disposition) – Gay temp worker could not maintain Title VII and Delaware state law employment discrimination claims, because he was not an “employee” for purposes of discrimination law.

**Stacy v. LSI Corporation**, 2013 U.S. App. LEXIS 22885 (3<sup>rd</sup> Cir., Nov. 13, 2013) – Employer’s stated reasons for terminating employment of transgender individual were not pretextual, so no Title VII violation was stated.

**State v. AFSCME, Council 4, Local 391**, 309 Conn. 519, 69 A.3d 927 (Conn. Supreme Ct. 2013) – It would violate the state’s policy against workplace homophobic sexual harassment to enforce an arbitrator’s award to reinstate an employee who had been found to engage in such conduct.

**Taylor v. Anne Arundel County**, 2013 U.S. Dist. LEXIS 116049, 2013 WL 4451221 (D. Md. Aug. 15, 2013) – Lesbian plaintiff who brought a Title VII and state discrimination claim against her employer and her supervisor could not maintain the action against her supervisor, due to lack of statutory authority, or her intentional infliction of emotional distress claim, because her allegations of despicable conduct did not meet the high evidentiary bar for that cause of action.

**Vega v. Chicago Park District**, 2013 U.S. Dist. LEXIS 104097 (N.D. Ill., July 25, 2013) -- Rejecting motion to dismiss lesbian’s Title VII sex stereotyping employment discrimination claim.

**Vernon v. AlliedBarton Security Services LLC**, 2013 WL 2643808, 118 Fair Empl. Prac. Cas. (BNA) 1591 (M.D. Tenn., June 12, 2013) (not officially published) – Title VII hostile

environment sexual harassment claim brought by lesbian employee rejected on grounds that alleged harassment was not sufficiently severe or pervasive to be actionable.

**Wesolowski v. Napolitano**, 2013 WL 1286207 (S.D. Ga. Mar. 25, 2013) (unpublished) – Man with long hair and earrings can maintain sexual stereotyping claim under Title VII.

**Zuidema v. Raymond Christopher, Inc.**, 2013 U.S. Dist. LEXIS 128623, 2013 WL 4821099 (N.D. Ill. Sept. 10, 2013) (unpublished disposition) – Granted summary judgment to the defendant-employer in plaintiff’s Title VII sexual harassment claim, only because the gay employee alleged to have harassed the (straight) plaintiff was not a supervisor as established in **Vance v. Ball State**.

### Legislation

Federal – Senate passed transgender-inclusive Employment Non-Discrimination Act (ENDA) in a bipartisan vote (54 Democrats, 10 Republicans).

Hawaii – Extends sexual orientation and gender identity discrimination protection to domestic workers.

Kentucky – Legislature approved H.B. 279 to carve out a big religious exemption from discrimination law.

Jurisdictions adopting bans on discrimination because of sexual orientation and gender identity:

Puerto Rico

Alachua County, Florida

Berea, Kentucky – Mayoral executive order, city employees

Boca Raton, Florida

Bristol, Pennsylvania

Buncombe County, North Carolina – Public employment

Coeur d’Alene, Idaho

Delhi Township, Michigan

Delta Township, Michigan

Frankfurt, Kentucky

Grand Forks, North Dakota – City employees only

Hyattsville, Maryland

Idaho Falls, Idaho

Meridian Township, Michigan

Morehead, Kentucky

Phoenix, Arizona

Pinellas County, Florida

Pittston, Pennsylvania

Pocatello, Idaho (subject to referendum vote in May 2014)

Royal Oak, Michigan (and HIV status) (subject to initiative challenge)

San Antonio, Texas – Covers municipal workers and employees of city contractors

Shreveport, Louisiana

Twin Falls, Idaho – Public employment

Vicco, Kentucky – Public and private employment

Jurisdictions adding sexual orientation to existing anti-discrimination law:

Huntington, West Virginia

Jurisdictions adding gender identity to existing statutes banning sexual orientation discrimination:

Maryland

Albany County, New York

Philadelphia, Pennsylvania

## 7. Housing Discrimination

### Litigation

**Weinstein v. Weinreb Management LLC** (N.Y. Supreme Ct., N.Y. County, settlement announced, Dec. 4, 2013) – Landlord had refused to add name of same-sex spouse to lease; settled on the basis that landlord conceded that same-sex and different-sex marriages are entitled to equal treatment under New York landlord-tenant law after enactment of Marriage Equality Act of 2011.

**Wilson v. Phoenix House**, 2013 N.Y. Misc. LEXIS 5657 (Supreme Ct., Kings Co., Dec. 10, 2013) – Residential drug treatment facility may have unlawfully discriminated against transgender individual by prematurely terminating her residency.

### Legislation

Jurisdictions adding sexual orientation and gender identity to anti-discrimination law:

Alachua County, Florida

Appleton, Wisconsin

Boca Raton, Florida

Bristol, Pennsylvania

Coeur d'Alene, Idaho

Delhi Township, Michigan

Delta Township, Michigan

Frankfurt, Kentucky

Grand Forks, North Dakota

Hyattsville, Maryland

Idaho Falls, Idaho

Morehead, Kentucky

Phoenix, Arizona

Pinellas County, Florida

Pittston, Pennsylvania

Pocatello, Idaho (subject to referendum vote in May 2014)

San Antonio, Texas

Shreveport, Louisiana

Vicco, Kentucky

Jurisdictions adding sexual orientation to anti-discrimination law:

Huntington, West Virginia

Jurisdictions adding gender identity to anti-discrimination law:

Maryland

Albany County, New York

Philadelphia, Pennsylvania

## **8. Asylum/Withholding of Removal/CAT Protection/Immigration – Sexual Orientation/Gender Identity**

**Alvarado-Rivas v. Holder**, 2013 WL 6157135, 2013 U.S. App. LEXIS 23697 (5th Cir., Nov. 25, 2013)(not official published) – Rejecting appeal from denial of relief on credibility grounds for gay plaintiff from El Salvador.

**Blackmore v. Holder**, 2013 WL 5433356 (2nd Cir., Oct. 1, 2013) – Gay man from Guyana failed to prove he would face torture if deported, so BIA properly denied relief under the Convention Against Torture.

**Campbell v. U.S. Attorney General**, 521 Fed.Appx. 869, 2013 WL 2460728 (11th Cir., June 7, 2013) (not officially published) – Upheld BIA’s determination that gay man from Jamaica was ineligible for relief under the Convention Against Torture.

**Doe v. Holder**, 736 F.3d 871 (November 27, 2013) – Government has burden on remand to show that gay man from Russia could not have a reasonable fear of persecution if he was deported there.

**Ferreira v. Attorney General**, 2013 WL 518600 (3d Cir. February 7, 2013) (not published in F.3d) – Brazil – Gay HIV+ man – asylum denied due to untimeliness – withholding denied

because scattered criminal acts don't amount to persecution – failure to show there was no place in the country where he could safely live.

**Funes-Bonilla v. Holder**, 2013 WL 2321521 (5<sup>th</sup> Cir. 2013) (Unpublished disposition) – Plaintiff failed to show changed conditions in Honduras that would justify withholding of removal.

**Garcia v. Holder**, 2013 WL 4505132 (9th Cir., Aug. 26, 2013) (unpublished disposition) – Court rejected a changed circumstances argument asserted by a woman seeking cancelation of removal on the grounds that the only person with whom she could live in Mexico was her gay cousin, and it would allegedly be dangerous to live with him.

**Garcia-Perez v. Holder**, 2013 WL 5515876, 2013 U.S. App. LEXIS 20445 (5th Cir., Oct. 7, 2013)(unpublished disposition) – Plaintiff failed to show changed conditions in Honduras, so court sustained denial of his petition to reopen removal proceeding.

**Gutierrez v. Holder**, 2013 WL 4873881, 2013 U.S. App. LEXIS 19033 (9th Cir., Sept. 15, 2013) – Denied a petition to review the determination against CAT protection by the BIA, because conditions for transgender individuals in Mexico have improved significantly.

**Karanja v. Holder**, 2013 U.S. App. LEXIS 19853, 2013 WL 5405309 (9th Cir. Sept. 27, 2013)(unpublished opinion) – Rejecting refugee status for bisexual man from Kenya; evidence of heterosexual relationship in the U.S. undermined credibility of claim of persecution based on sexual orientation.

**Mancia-Garcia v. Holder**, 2013 U.S. App. LEXIS 15767, 2013 WL 3929257 (9th Cir. July 31, 2013) – Gay man from Guatemala lost his bid for asylum, and withholding of removal or protection under the CAT.

**Marku v. Holder**, 418 F. App'x 52 (2d Cir. 2011) – Albania – Denial upheld on credibility issues.

**Mukhamedjanova v. Holder**, 2013 WL 1188944 (2nd Cir. 2013) (unpublished) – Uzbekistan – Appeal denied on credibility grounds.

**Okhremenko v. U.S. Attorney General**, 522 Fed.Appx. 887, 2013 U.S. App. LEXIS 13719 (11th Cir., July 8, 2013) (unpublished disposition) – Case remanded for new fact-finding on asylum application by gay man from Ukraine.

**Rosal v. Holder**, 2013 U.S. App. LEXIS 23669 (9th Cir., Nov. 25, 2013) (not officially published) – Affirming IJ finding that gay man from Guatemala could avoid persecution by settling in a different part of the country where there was an active gay community.

**Rosiles-Camerana v. Holder**, 735 F.3d 534 (7th Cir. August 21, 2013) – Reversing BIA’s denial of withholding of removal for gay HIV-positive plaintiff from Mexico, because BIA improperly engaged in de novo review of facts found by Immigration Judge.

**Salazar v. Holder**, 2013 WL 5433799, 2013 U.S. App. LEXIS 20047 (9th Cir. Oct. 1, 2013) – Gay man from Mexico delayed unduly in moving to reopen removal proceedings for new evidence.

**Shala v. Holder**, 2013 WL 5603254, 2013 U.S. App. LEXIS 20754 (5th Cir., October 14, 2013) – Credibility issues justified BIA’s decision to deny application for relief from alleged gay plaintiff from Kosovo.

**Thomas v. Holder**, 2013 WL 792826 (9<sup>th</sup> Cir. 2013) (unpublished) – Grenada – HIV+ bisexual man entitled to individualized reconsideration of case after drug crime conviction expunged.

**Vitug v. Holder**, 723 F.3d 1056 (9th Cir. 2013) – Granting withholding of removal to a gay man from the Philippines on account of the abuse he had faced there and would be almost certain to face were he to return.

**Yaqoob v. Attorney General**, 2013 WL 3958383 (3d Cir. Aug. 2, 2013) (unpublished disposition) – Rejects gay man from Pakistan’s bid for reopening and reconsideration of his case for protection under the Convention against Torture, finding he failed to provide evidence of changed country conditions since the initial decision.

**Zeleniak, Matter of Oleg B., Beneficiary of a visa petition filed by Serge V. Polajenko**, 26 I&N Dec. 158, 2013 WL 3777692 (BIA, July 17, 2013) – In light of **U.S. v. Windsor**, BIA ruled that Vermont same-sex marriage was recognized for immigration purposes.

## **9. Criminal Law – (including scope of *Lawrence v. Texas* in Sex Crimes Cases and military sodomy cases)**

### Litigation

**Alman v. Reed**, 703 F.3d 887 (6th Cir. 2013) – Gay man arrested in park ex sting operation could maintain 4<sup>th</sup> Amendment Sec. 1983 claim against police officer based on lack of probable cause for arrest.

**Brown v. Buhman**, 2013 U.S. Dist. LEXIS 175443, 2013 WL 6568756 (D. Utah) – Provision in Utah Polygamy Law banning unmarried adult cohabitation violates the 14<sup>th</sup> Amendment, citing **Lawrence v. Texas**.

**Green v. State of Georgia**, 2013 WL 6512056 (N.D. Ga., Dec. 9, 2013) – Granting writ of habeas corpus to man who was convicted in state court of failing to register as a sex offender based on a consensual sodomy guilty plea from the 1990s.

**Leggette v. United States**, 69 A.3d 373 (D.C. Ct. App., June 20, 2013) – Evidence of similar past crime admissible in prosecution for sexual assault of transgender victim to counter defendant’s consent argument.

**MacDonald v. Moose**, 710 F.3d 154 (4<sup>th</sup> Cir.), cert denied, 134 S.Ct. 200 (2013) – Virginia sodomy law is facially unconstitutional because it broadly applies without regard to whether conduct was public or private, consensual or non-consensual, or between adults or involving minors, in violation of **Lawrence v. Texas**.

**Mack v. State**, 2013 WL 5789265, 2013 Miss. App. LEXIS 725 (Miss. Ct. App., Oct. 29, 2013) – Affirming capital murder and arson conviction of man who met his victim on gay chatline.

**Minter v. Commonwealth**, 2013 Ky. LEXIS 635 (Kentucky Supreme Ct., Dec. 19, 2013) – Trial court correctly excluded testimony that male victim of anal rape had engaged in homosexual activity in the past; rape shield statute applied, and alleged propensity of ostensibly straight victim to engage in gay sex in the past, based on proffered hearsay evidence, was correctly kept from the jury.

**O’Leary v. State**, 109 So.3d 874 (Fla. App. 1 Dist., 2013) – Upholding criminal penalties for man who posted threat to lesbian relative and her partner on facebook.com homepage.

**Pawlak v. State**, 2013 WL 5220872 (Tex. Crim. App., Sept. 18, 2013) – Trial court committed an abuse of discretion in a sexual misconduct case by admitting thousands of extraneous-offense mainly gay pornographic images from the defendant’s computer.

**People v. Arena**, 107 A.D.3d 1440, 967 N.Y.S.2d 301 (N.Y. App. Div., 4th Dep’t, June 7, 2013) – Allowing transgender witness, sworn as a man, to testify in women’s garb, did not violate rights of defendant.

**People v. Brooks**, 2013 WL 372566 (Jan. 31, 2013) (not reported in Cal.Rptr.3d) – Upholding conviction of woman for violating order of protection in stalking case.

**People v. Clark**, 2013 Mich. App. LEXIS 2055 (Mich. Ct. App., Dec. 17, 2013) – Affirming life sentence for killer of gay man, jury rejected self-defense for unwanted sexual advance defense and appeals court rejected defendant’s argument that prosecutor wrongly sought to evoke sympathy for victim by telling jury that victim was preying upon gay men who he thought would be vulnerable to robbery based on stereotypes.

**People v. Delee**, 108 A.D.3d 1145, 969 N.Y.S.2d 350 (N.Y. App. Div., 4th Dept., July 19, 2013) – Confusion over hate crimes jury charge led to reversal of conviction, appellate court finding

that jury rendered inconsistent verdicts by convicting on the hate crime charge but acquitting on the underlying murder charge; prosecutor's petition for leave to appeal granted by New York Court of Appeals.

**People v. Fructuoso**, 2013 WL 1401388 (Cal. 2nd Dist. Ct. App. 2013) (unpublished) – Affirming conviction of murder of gay man; evidentiary dispute about victim's proclivity to hire escorts.

**People v. Lopez**, 2013 WL 1791041 (Cal. 4th Dist. Ct. App. 2013) (not reported in Cal.Rptr.3d) – Evidence of defendant's bisexuality was relevant to charge of sexually assaulting both boys and girls.

**People v. McEvoy**, 215 Cal. App. 4th 431, 154 Cal. Rptr. 3d 914 (Cal. 1st Dist. Ct. App. 2013) – Rejects challenge to criminal incest law; not in violation of **Lawrence v. Texas**.

**Santos v. State**, 110 So. 3d 341 (Miss. Ct. App. 2013) – Affirming conviction and 18 year sentence for man who had sex with mentally deficient 17-year-old boy; lack of valid consent placed case outside cope of **Lawrence v. Texas**.

**State v. Bertolone**, 2013 WL 6116863, 2013 Iowa App. LEXIS 1228 (Iowa Ct. App., Nov. 20, 2013) – Defendant's argument that his sexual activity with sleeping fraternity brother was consensual is not credible, conviction affirmed.

**State v. Boleyn**, 297 Kan. 610, 303 P.3d 680 (Kansas Supreme Ct., June 14, 2013) – Harmless error to admit evidence that male defendant possessed gay pornography in case of alleged sexual abuse of male minor, since other evidence supported conviction.

**State v. D.C.**, 114 So.3d 440 (5th Dist. Ct. App., May 31, 2013) – Finding that gay sex is "sexual intercourse" within the meaning of criminal statute applied to sexual intercourse by person infected with HIV – certifying question to State Supreme Court because of split with another district court of appeals.

**State v. Dykes**, 403 S.C. 499, 744 S.E.2d 505 (South Carolina Supreme Court, May 22, 2013) – Woman convicted of having sex with underage girl entitled to hearing on whether she should be subject to lifetime satellite monitoring, criterion being likelihood of reoffending.

**State v. Green**, 2013-Ohio-1197, 989 N.E.2d 1088 (Ohio Ct. App. 2013) – Criminal ban on soliciting prostitution is constitutional, rejecting challenge based on **Lawrence v. Texas**.

**State v. Gustafson**, 2013 Wisc. App. LEXIS 1069 (Wis. 3d Dist. Ct. App., Dec. 27, 2013) – Rejecting appellant's bid for downward sentence reduction in child sexual assault case, where appellant's gender identity issues were known to and taken account of by trial court in exercising discretion on sentencing.

**State v. Mole**, 2013-Ohio-3131, 994 N.E.2d 482 (Ohio 8th Dist. Ct. App., Cuyahoga County 2013) – Reversed the conviction of a police officer on a charge of sexual battery involving a 14 year old boy, finding that the relevant Ohio statute is unconstitutional.

**State v. Wayne**, 2013-Ohio-5060, 2013 WL 6055004, 2013 Ohio App. LEXIS 5248 (Ohio Ct. App., 2nd App. Dist., Nov. 15, 2013) – Trial court did not err by allowing prosecutor to call alleged rape victim to testify that she was a lesbian and not sexually attracted to men to counter male defendant’s claim that sex was consensual.

**Touchet v. Jones**, 2013 Fla. App. LEXIS 12809, 38 Fla. L. Weekly D 1770, 2013 WL 4224095 (Fla. Dist. Ct. App. 5th Dist. Aug. 16, 2013) – Trial court improperly required victim of domestic violence perpetrated by her same-sex partner to submit to psychological evaluations; also improper to require son of victim to submit to psychological evaluation.

**U.S. v. Castellano**, 72 M.J. 217 (U.S. Ct. App. Armed Forces, May 23, 2013) – All of Marcum factors used to determine whether consensual sodomy can be prosecuted present jury questions that should not be decided by the presiding authority [possibly superseded by legislative reform of Art. 125].

**United States v. Gibson**, 2013 WL 5878801, 2013 CCA LEXIS 850 (U.S. Air Force Court of Criminal Appeals, Oct. 9, 2013) – Mistake of age is not a defense under Article 125 UCMJ in sodomy prosecution; airman’s conviction of consensual sodomy with 16-year-old male sustained.

**United States v. Jenkins**, 2013 U.S. Dist. LEXIS 87606, 2013 WL 3158210 (E.D.Ky., June 20, 2013) (not officially published) – Court explains sentencing analysis under federal hate crimes statute in case involving gay victim.

**United States v. Jenkins**, 2013 U.S. Dist. LEXIS 92945, 2013 WL 3338650 (July 2, 2013) (not officially published) – Court explains jury charge under federal hate crimes statute in case involving gay victim.

**United States v. Lanning**, 723 F.3d 476 (4th Cir. 2013) – Reversing conviction of gay man on disorderly conduct charge in park sting operation because the complainant, a US ranger, was not physically threatened or menaced and defendant’s conviction would result in a real threat of anti-gay discrimination.

**United States v. McLaurin**, 731 F.3d 258 (2nd Cir. Oct. 3, 2012) – Requirement of submission to penile plethysmograph testing was unconstitutional probation condition for man convicted of producing child pornography based on nude photographs of his teenage daughter.

**United States v. Medina**, 72 M.J. 148 (C.A.A.F., May 2, 2013) – Where court martial authority failed to engage in sufficient colloquy with defendant pleading to military sodomy charge, guilty plea vacated as improvident [may be superseded by legislative reform of Art. 125].

**United States v. Whitaker**, 72 M.J. 292, 2013 WL 3010815 (U.S. Court of Appeals for the Armed Forces, June 18, 2013) – Reversing Coast Guard Court of Criminal Appeals, held that guilty plea to sodomy charge was provident and that military judge did not have to explain to defendant why his conduct was subject to criminal sanction [may be superseded by legislative reform of Art. 125].

**Watson v. State**, 750 S.E.2d 143 (Georgia Supreme Ct., Oct. 21, 2013) – Rejecting constitutional challenge to state’s Solicitation of Sodomy statute, but reversed conviction of police officer who had solicited 17 year old boy due to limiting construction of statute to apply only to acts of sodomy that were not constitutionally protected.

#### Legislation and Administrative Policy

Congress has amended Article 125 of the Uniform Code of Military Justice to comply with the Supreme Court’s ruling in *Lawrence v. Texas* that consensual sodomy between adults in private is constitutionally protected conduct. Under revised Article 125, criminal penalties apply only to forcible sodomy and bestiality. Preferring archaic language to the clinical precision of the Model Penal Code, however, Congress outlawed “unnatural carnal copulation” without providing any definition of what counts as “unnatural” or “carnal” or “copulation.” Also, prohibition of bestiality seems to be partial, in that only “unnatural carnal copulation” with an animal is outlawed; natural carnal copulation is OK, if you are military personnel!

Milwaukee Police Department Policy - Sexual orientation and gender expression discrimination banned.

Montana – Repealed unconstitutional sodomy law to bring penal code in compliance with **Lawrence v. Texas**.

Nevada – Added “gender identity” to state’s hate crimes law.

Puerto Rico – Added “sexual orientation and gender identity” to state’s hate crimes law.

Violence Against Women Act (federal) was reauthorized with specific coverage against domestic violence in same-sex couple families.

### **10. Gender Identity Recognition – Birth Certificate Change, Name Change on official documents**

U.S. Social Security Administration – Proof of surgical transition no longer required for change of sex designation in Social Security records.

U.S. Department of Health & Human Services – The Medicare program is reevaluating its existing rule against covering gender transition treatment (including surgery), in light of growing

body of legal opinion that such treatment is medically necessary – See DHHS, Departmental Appeals Board, Docket No. A-13-47, NCD Ruling No. 2, December 2, 2013.

U.S. Centers for Disease Control and Prevention announced that it would no longer exclude transgender women from participating in the National Breast and Cervical Cancer Early Detection Program, acknowledging that transgender women can benefit from early detection of breast cancer.

California liberalized procedures for transgender individuals to obtain changed birth certificates.

Connecticut mandated that health insurers cover gender transition procedures, including surgery.

D.C. enacts law dispensing with surgical requirement for gender change on birth certificates.

**Doe, Matter of John**, [Index Number Redacted by Court], NYLJ 1202601879249, at \*1 (N.Y. Sup. Ct., Westchester Co., May 16, 2013) – Ordering NY State Education Department to issue professional license in new name of transgender licensed professional.

**Doe v City of New York**, 2013 N.Y. Misc. LEXIS 5491 (New York Supreme Ct., N.Y. Co., December 2, 2013) – Refusing to dismiss transgender client’s discrimination claim against NYC’s HIV/AIDS Services Administration for inadequate response to her request to change gender identity information in her records due to inability to produce revised Puerto Rico birth certificate, even though client had obtained legal name change.

Idaho Transportation Department – Applicants for change of gender on driver’s license do not have to prove surgical alteration.

## 11. Defamation/Dignitary Torts

**Armstrong v. Shirvell**, 2013 U.S. Dist. LEXIS 129526, 2013 WL 4833948 (E.D. Mich. Sept. 11, 2013) (not officially published) – Affirmed jury award of \$4.5 million in damages to an openly gay former University of Michigan student body president against a former Michigan assistant attorney general who had defamed him on an anti-gay blog and stalked him on the university campus.

**Carvajal v. Pride Industries, Inc.**, 2013 WL 1728273 (S.D. Cal., April 22, 2013) – False imputation of homosexuality is not actionable in California.

**Farber v. Jefferys**, 103 A.D.3d 514, 516, 959 N.Y.S.2d 486, 488 (N.Y. App. Div. 2013) – Prominent published HIV-denialist was a public figure who could not succeed on a defamation claim against a gay journalist who called her a liar absent a showing of actual malice, which had not been made,

**Walsh v. Tehachapi Unified School District**, 2013 U.S. Dis. LEXIS 121274 (E.D. Calif., Aug. 26, 2013) – Rejecting defendant’s motion for summary judgment on a claim by a mother of a harassed gay teenager who committed suicide in their backyard, who wanted to pursue her own claim of negligent infliction of emotional distress to a bystander against the school for failing to take reasonable steps to protect her son from harassment.

**Yonaty v. Mincolla**, 97 A.D.3d 141, 945 N.Y.S.2d 774 (N.Y. App. Div. 2012) leave to appeal denied, 20 N.Y.3d 855, 982 N.E.2d 1260 (2013) – NY Court of Appeals denied review of ruling that calling somebody gay is not per se defamatory in New York.

## **12. Estates, Wills & Trusts**

**Devoe, In re Estate of**, 2013 PA Super 228, 74 A.3d 264 (Pa. Super. Ct. 2013) – A surviving same-sex domestic partner can recover against his late former partner’s estate under the doctrine of equitable subrogation.

**Drewry, In re Estate of (Drewry v. Keltz)**, 2013 WL 6687255, 2013 Ill. App. Unpub. LEXIS 2850 (Dec. 17, 2013) – Reviving challenge to decedent’s last will that favored his last same-sex partner over blood relatives and children of first same-sex partner, on claim of undue influence and testamentary incapacity of elderly decedent.

**Dumont v. United States**, 2013 WL 6240468, 2013 U.S. Dist. LEXIS 170058 (N.D. N.Y., Dec. 3, 2013) – Dismissing for failure to state any federal claim the pro se challenge to will by surviving same-sex partner of decedent.

**Ranfle, In re Estate of**, 108 A.D.3d 437, 969 N.Y.S.2d 48 (N.Y. App. Div., 1st Dept., July 2, 2013) – Rejecting challenge to New York probate of estate of gay man who had second residence in Florida but had moved back to New York residence after becoming ill.

## **13. Rights of Students and Children (includes state bans on “conversion therapy” for minors)/liability of schools**

### Litigation

**D.V. v. Pennsauken School District**, 2013 U.S. Dist. LEXIS 111045, 2013 WL 4039022 (D.N.J., Aug. 7, 2013) – Discrimination and federal civil rights claim by gay uncle of student falsely accused of child abuse by school district may proceed.

**Davis v. Carmel Clay Schools**, 2013 WL 5487340, 2013 U.S. Dist. LEXIS 141888 (S.D. Ind., September 30, 2013) – School district’s prompt response to student’s harassment claims precluded liability under Title IX.

**Doe v. Bd. of Education**, 2013 WL 6065269, 2013 U.S. Dist. LEXIS 163479 (D. Md., Nov. 18, 2013) – School that responded reasonably to complaints of same-sex harassment involving 4th grader was not liable under Title IX.

**Doe v. Unified School District 233, Johnson County, Kansas**, 2013 U.S. Dist. LEXIS 107802, 2013 WL 3984336 (D. Kans., Aug. 1, 2013) – Found school district had responded reasonably to student’s complaints of harassment and thus could not be held liable for his emotional distress claim.

**Ferguson v. JONAH**, Docket No. L-5473-12 (N.J. Superior Ct., Hudson Co., July 19, 2013) – Rejecting motion to dismiss consumer fraud complaint against organization that performs “sexual orientation change efforts” (SOCE) on minors.

**Glowacki v. Howell Pub. Sch. Dist.**, 2013 US Dist. LEXIS 85960, 2013 WL 5203994 (E.D. Mich., June 19, 2013) (not officially published) – High school teacher violated 1st Amendment rights of anti-gay student by removing him from class for his remarks on school’s anti-bullying day.

**King v. Christie**, 2013 WL 5970343, U.S. Dist. LEXIS 160035 (D.N.J., November 8, 2013) – State law banning “sexual orientation change efforts” therapy by licensed professionals did not violate constitutional rights of practitioners or parents.

**M.D. v. School Board of Richmond**, 2013 WL 2404842 (E.D.Va., May 30, 2013) – Severe and pervasive homophobic harassment is not actionable under Title IX, which does not extend to claims of sexual orientation discrimination.

**N.K. v. St. Mary's Springs Acad. of Fond du Lac Wis., Inc.**, 2013 U.S. Dist. LEXIS 116209, 2013 WL 4456995 (E.D. Wis. Aug. 16, 2013) – Granting summary judgment for a primary school subject to federal anti-discrimination requirements that had acted reasonably in response to complaints by a mother that her son was being harassed because of race and perceived sexual orientation by other students.

**Pickup v. Brown**, 728 F.3d 1042 (9th Cir., August 29, 2013), affirming 2012 WL 6021465 (E.D. Cal., December 4, 2012) (not officially published) – Denying injunctive relief to therapist affected by California law banning “sexual orientation change efforts” for minors; statute survives rational basis review and does not violate 1st Amendment rights of therapists or due process rights of parents.

**Silberstein v. Lake County, Florida, Board of Education** (Fla. U.S. Dist. Ct., May 2013) – Settlement announced to allow formation of Gay Straight Alliance at high school.

**Wyatt v. Fletcher**, 718 F.3d 496 (5th Cir., May 31, 2013) – High school coach did not violate student’s federal constitutional privacy rights by telling her mother that student was a lesbian.

### Legislation/Policy

California – Bill of rights for transgender students, protecting right to use facilities and participate in program consistent with their gender identity – opponents are seeking initiative repeal or judicial invalidation, calling it a “bathroom bill.”

Massachusetts Department of Education – Policy to protect rights of transgender students.

Montana State University amended non-discrimination policy to include sexual orientation and gender identity.

New Jersey – Enacted a law prohibiting licensed health care workers from performing “sexual orientation change efforts” (SOCE) therapy on children – survived initial court challenge in **King v. Christie**, see above.

Sacramento City Unified School District – Adopted policies for to protect transgender students against discrimination, which will be effective regardless when the state law is repealed by the voters.

Virginia Beach School Board, Virginia – Resolution against sexual orientation discrimination and anti-gay bullying

West Aurora School Board, Illinois – Added “gender-related identity” as an antidiscrimination factor in Board’s civil rights policy.

## **14. Prisoner Rights**

### Gay Prisoners

**Collier v. Conrad**, 2013 U.S. Dist. LEXIS 133057 (S.D. Ill. Sept. 18, 2013) – After preliminary review, court judge allowed pro se prisoner same-sex sexual harassment case against a supervisor at the prison to continue on its 8th and 1st amendment (retaliation) claims.

**Fletcher v. Little**, 2013 WL 6247436, 2013 U.S. Dist. LEXIS 164831 (D. Del., November 20, 2013) – Dismisses gay inmate’s equal protection claim, commenting that “homosexuals” are not a “protected class” under the 14<sup>th</sup> Amendment’s equal protection clause.

**Fox v. Superintendent**, 2013 U.S. Dist. LEXIS 159637, 2013 DNH 149, 2013 WL 5963109 (D. N.H., November 7, 2013) – Gay inmate’s post-release suit for damages for post-traumatic stress disorder due to prison assaults was dismissed for failure to exhaust administrative remedies.

**Gadson v. Fuson**, 2013 WL 6498069, 2013 U.S. Dist. LEXIS 173431 (M. D. Tenn., December 11, 2103) – Lesbian inmate who alleges she is treated more harshly than straight inmates for rule violations states equal protection claim.

**Johnson v. Doe**, 2013 U.S. Dist. LEXIS 102179, 2013 WL 3816727 (S.D.Tex., July 22, 2013) – Inmate failed to allege facts sufficient to support constitutional claims for sexual assault by other inmates or being denied adequate medical care.

**Lee v. Willey**, 2013 WL 5645773, 2013 U.S. App. LEXIS 21197 (6th Cir., October 17, 2013) (not officially published) – Psychiatrist working at a Michigan state prison as a contractor of a private company could not invoke the doctrine of qualified immunity to avoid liability to gay prisoner for failing to follow up on the prisoner’s request to be placed into protective custody.

**Montgomery v. White**, 2013 U.S. Dist. LEXIS 126700, 2013 WL 4780098 (W.D. Ky. Sept. 5, 2013) – Court allows 8th amendment action to go forward against prison wardens, alleging they failed to respond to gay inmate’s request for protection against members of a prison gang.

**Ramirez v. Godinez**, 2013 U.S. Dist. LEXIS 156757, 2013 WL 5876715 (C.D. Ill., November 1, 2013) – Slightly built gay Honduran inmate survived screening of 8th Amendment complaint of failure to protect him from abuse by other inmates.

**Taylor v. Beard**, 2013 WL 6491524, 2013 U.S. Dist. LEXIS 173265 (E.D. Calif., December 10, 2013) – Rejecting “deliberate indifference to safety” claim by bisexual inmate.

**Toliver v. City of New York**, 2013 U.S. Dist. LEXIS 175670; 2013 WL 6476791 (S.D.N.Y., December 10, 2013) – Reducing the number of defendants in inmate’s suit alleging discriminatory harassment.

#### Transgender Prisoners

**De'lonta v. Johnson**, 708 F.3d 520 (4th Cir. 2013) – Transgender prisoner may have a right to gender reassignment therapy if shown to be medically necessary.

**Diamond v. Silver**, 2013 WL 6584037, 2013 U.S. Dist. LEXIS 176049 (M.D. Ga., December 16, 2013) – Allegations that prison officials denied any treatment for gender identity disorder stated a claim under 8<sup>th</sup> Amendment.

**Konitzer v. Hamblin**, 2013 U.S. Dist. LEXIS 138748, 2013 WL 5429935 (W. D. Wis., September 27, 2013) – Sustaining transgender inmate’s cause of action against various prison officials who did not protect her from assault despite knowledge of danger.

**Lee v. Eller**, 2013 U.S. Dist. LEXIS 113415, 2013 WL 4052878 (S.D. Ohio Aug. 12, 2013) – Court accepted a recommendation from a magistrate judge to dismiss a transgender state inmate’s 8th amendment claim against a medical administrator, a hospital administrator who

refused to issue hormone treatment or to contact the system's chief medical inspector about hormone therapy, but not to dismiss action against doctor responsible for inmate's care.

**Murillo v. Rucker**, 2013 U.S. Dist. LEXIS 149135, 2013 WL 5670952 (S.D. Cal., October 15, 2013) – Transgender pro se inmate adequately set forth factual allegations for complaints of physical abuse against corrections officers.

**Quick v. Conley**, 2013 U.S. Dist. LEXIS 134578, 2013 WL 5306098 (W.D. Tenn. Sept. 20, 2013) – Transgender inmate denied waiver of filing fee due to three-strike status; threat that inmate would commit self-mutilation if prison authorities would not treat her as a woman did not create an emergency justifying federal court intervention.

**Tate v. Lynch**, 2013 U.S. Dist. LEXIS 82982, 2013 WL 2896885 (C.D. Ill., June 13, 2013) (not officially published) – Transgender inmate may have 8th Amendment claim for deliberate indifference to serious medical condition, but has not shown that transfer to different facility is warranted.

## **15. Freedom of Speech (mainly anti-gay speech) – First Amendment**

**Dixon v Univ. of Toledo**, 842 F Supp 2d 1044 [ND Ohio 2012], *aff'd*, 702 F3d 269 [6th Cir 2012], rehearing and rehearing en banc denied (Feb 27, 2013), cert. denied, 134 S. Ct. 119 (Oct. 7, 2013) – University human resource administrator's 1st Amendment free speech rights were not violated when she was discharged after publishing an op-ed article stating views on homosexuality inconsistent with University diversity policies.

**Johnson v. Minneapolis Park & Recreation Bd.**, 729 F.3d 1094 (8th Cir. Sept. 11, 2013) – Reversed denial of a preliminary injunction and remanded for trial for anti-gay man who is suing the parks and recreation board for not allowing him to distribute Bibles and spread the word against homosexuality at the Gay Pride Festival, because the prohibition was not narrowly tailored to serve a significant governmental interest.

**National Organization for Marriage v. Walsh**, 714 F.3d 682 (2<sup>nd</sup> Cir. 2013) – Allowing National Organization for Marriage (anti-same-sex-marriage political organization) to challenge NY statute requiring disclosure of funding sources by political committees

**National Organization for Marriage v. Commission on Governmental Ethics and Election Practices**, 2013 ME 53, 66 A.3d 579 (May 30, 2013) – First Amendment does not shelter National Organization for Marriage from complying with subpoena from state agency investigating possible violation of campaign disclosure laws.

## 16. Torts (including Insurance Law and constitutional torts)

**Bridgeman v. United Cont'l Holdings**, 2013 WL 5881210, 2013 U.S. App. LEXIS 22373 (5th Cir., November 4, 2013) – Gay couple can sue air carrier for emotional distress and embarrassment caused by the way their checked baggage was mishandled upon delivery.

**Doe v. Franklin County**, 2013 U.S. Dist. LEXIS 13484, 2013 WL 5311466 (S.D. Ohio Sept. 20, 2013) (not officially published) – Lesbian suing government for being unlawfully subjected to a strip search may not proceed anonymously, rejecting argument that public disclosure of her homosexuality will subject her to harm.

**Fuller v. Aliff**, 2013 U.S. Dist. LEXIS 165958, 2013 WL 6115853 (E.D. Va., Nov. 20, 2013) – Dismissing intentional infliction of emotional distress claim against individuals who conspired to harass a gay couple on the beach, but allowing plaintiffs' conspiracy claim to go forward, together with assault and battery claims that were not the subject of this motion to dismiss.

**Jenkins v. Miller**, 2013 WL 5770387, 2013 U.S. Dist. LEXIS 152846 (D. Vt., Oct. 24, 2013) (unpublished decision) – Legal mother of child abducted by former same-sex partner with assistance of defendants could maintain federal civil rights claim against the defendants under 42 U.S.C. section 1985 for unconstitutional discrimination based on sexual orientation.

**Keister v. Nat'l Council of the YMCA of the United States**, 2013 NCBC 36, 2013 WL 3864583 (N.C. Super. Ct. 2013) – Rejected argument of a man who claimed false advertising by the YMCA for promoting themselves as a “family friendly” and “Christian” organization because he had been sexually propositioned by men in the shower room.

**Lambi v. American Family Mutual Insurance Co.**, 2013 WL 490778 (Feb. 11, 2013) (not published in F.3d) – Insurer did not have to defend insured defendant against claim that insured had sexually infected plaintiff with HIV, where policy disclaimed liability for injury due to communicable diseases.

**Lanoce v. Mellace**, 2013 WL 5951550, 2013 U.S. Dist. LEXIS 158772 (N.D.N.Y., Nov. 6, 2013) – Criminal defendant who claimed his defense counsel homophobically forced him to plead guilty could not maintain pro se federal civil rights action against attorney, prosecutor and court.

**Ondo v. City of Cleveland**, 2013 WL 6089475, 2013 U.S. Dist. LEXIS 164304 (N.D. Ohio, Nov. 19, 2013) – Allowing gay couple who were mistreated by SWAT team members exacting revenge for a personal grudge to pursue federal civil rights suit against officers who participated, but not against those who were merely present and stood by, or the municipal employer.

**Pinter v. City of New York**, 2013 WL 5597545, 2013 U.S. Dist. LEXIS 147459 (S.D.N.Y., Oct. 10, 2013) – Man arrested on false prostitution charges in police sting operation at adult

bookstore entitled to trial of various tort claims against City of New York; arresting police officer enjoyed qualified immunity.

**Schroeder v. RGIS, Inc.**, 2013 IL App (1st) 122483, 992 N.E.2d 509, 372 Ill.Dec. 667 (App. Ct. Ill., 1st Dist., June 11, 2013) – Emotional distress tort claim brought by gay employee is preempted by Human Rights Act sexual orientation discrimination provision and Worker’s Compensation Act.

**Sexual Minorities Uganda v. Lively**, 12-CV-30051-MAP, 2013 WL 4130756, 2013 U.S. Dist. LEXIS 114754 (D. Mass. Aug. 14, 2013) – Refusing to dismiss claim under U.S. Alien Tort Statute against U.S. minister alleged to have actively participated in campaign to enact harsh anti-gay laws in Uganda.

### **17. Access to Health Care (including Gender Transition Procedures)**

California – Department of Managed Health Care Guidelines – Insurers must cover medically necessary transition-related treatment for transgender patients.

Philadelphia, Pennsylvania – City workers health plan to cover gender transition procedures.

Vermont Department of Financial Regulation Division of Insurance – Insurers should cover medically necessary transition-related treatment for transgender patients.

### **18. Federal Judicial Confirmations of Openly LGB Judges**

Todd Hughes (Court of Appeals for the Federal Circuit)

Pamela Ki Mai Chen (E.D.N.Y.)

Michael McShane (D. Oregon)

Nitza I. Quinones Alejandro (E.D. Pennsylvania)

Elaine Kaplan (Court of Federal Claims)

### **19. Intersexuality**

**M.C. v. Aaronson**, Civ. Action No. 2:13-cv-01303-DCN (U.S. Dist. Ct., D. South Carolina, Charleston Division) (unpublished decision) – motion to dismiss denied August 29, 2013 –

Seeking to hold state liable in tort for gender transition surgery imposed on infant who was ward of the state upon a diagnosis of intersexuality at birth.

## **20. Veterans Benefits**

**White v. Shinseki**, 2013 WL 5797648, 2013 U.S. App. Vet. Claims LEXIS 1802 (Bd. of Veterans Appeals, Oct. 29, 2013) – Reopening claim by man dismissed for homosexuality in 1957 who claims to have been sexually assaulted by other military personnel and seeking compensated for service-related emotional injury.

## **21. International and Foreign Legal Developments**

### Litigation

#### European Court of Human Rights Rulings

**Case of X and Others v. Austria**, Application no. 19010/07 – Austria violated the Convention by refusing to allow second-parent adoptions for same-sex couples when it allowed such adoptions for similarly-situated different-sex couples.

**Boeckel & Gessner-Boeckel v. Germany**, Application No. 8017/11 – Germany did not violate Convention by requiring adoption of partner’s child by registered partner of birth mother.

**Eweida and Others v. the United Kingdom**, Application Nos. 48420/10, 59842/10, 51671/10. – U.K. did not violate the religious freedom rights of employees who refused to serve LGBT people in violation of anti-discrimination law.

**Hay v. Credit agricole**, Case C-267/12 (5th Chamber, Dec. 12) – Gay employee of bank who had a French pact civil with his same-sex partner stated sexual orientation discrimination claim based on employer’s refusal to extend equal benefits that it provides to employees when they marry.

**I.B. v. Greece**, ECHR 283 (2013) – Employment discrimination against somebody because they are HIV-positive violates the European Convention on Human Rights.

**Vallianatos v. Greece**, Applications Nos. 29381/09 and 32684/09 (Nov. 7, 2013) – Greece violated equality requirements of European Convention on Human Rights by enacting civil union law that excluded same-sex couples.

### Rulings by European Court of Justice

**Minister for Immigration and Asylum v. X, Y & Z**, Joined Cases C-199/12 to C-201/12) – Upheld rights of gay people subject to persecution in their home countries to seek asylum in European Union countries.

### Rulings by National Courts

Australia: **Commonwealth of Australia v. Australian Capital Territory**, [2013] HCA 55 (December 12, 2013) – High Court of Australia rules that definition of marriage is preempted by federal law, thus invalidating a same-sex marriage law recently adopted by the Australian Capital Territory (ACT) encompassing the city of Canberra and invalidating a handful of same-sex marriages that had taken place before this decision was rendered, but rejected argument that “marriage” as used in constitution limited jurisdiction of Parliament based on early 20<sup>th</sup> century definition of the term.

Australia: **Margan v. President**, Australian Human Rights Commission, NSD12013/2012 (Fed. Ct. of Australia [Sydney]) – Refusal to register same-sex marriages is not unconstitutional sex discrimination.

Brazil: Chief Justice issued a directive that local courts should perform same-sex marriages, but the final status of this was a matter of some confusion, so it is not clear that Brazil is in the marriage equality column yet.

Canada: **Attorney General of Canada v. Bedford**, 2013 SCC 72 (Supreme Court of Canada, Dec. 20, 2013) – Declaring unconstitutional remaining laws against prostitution; suspending judgment one year to allow Parliament to consider constitutionally acceptable alternatives to deal with consequences.

Canada: **Saskatchewan Human Rights Commission v. Whatcott**, Supreme Court of Canada, 2013 SCC 11 – Rejecting constitutional challenge to hate speech law as applied to homophobic publication.

Germany: Constitutional Court ruled that a same-sex co-parent can adopt her partner’s adoptive child, thus expanding availability of second-parent adoptions.

Guyana: Constitutional Court narrowed construction of criminal ban on cross-dressing in public to “improper purposes” such as prostitution or fraud.

Hong Kong: **W v. Registrar of Marriages**, Final Appeal No. 4 of 2012 (Hong Kong Court of Final Appeal, May 13, 2013), on appeal from CACV No. 266 of 2010) – Transgender woman is entitled to marry as a woman.

India: **Koushal v. Naz Foundation**, Civil Appeal No. 10972 of 2013 (December 12, 2013) -- Supreme Court of India, reversing a 2009 ruling by the Delhi High Court, affirmed the constitutionality of Section 377, the colonial-era sodomy law prohibiting “unnatural carnal copulation.”

Ireland: **Matter of an Application by JR65 for Judicial Review**, [2013] NIQB 101 (High Court of Justice of Northern Ireland, Belfast, October 11, 2013) – Northern Ireland Health Minister’s decision not to adopt a new one-year deferral policy instead of the existing lifetime deferral policy on blood donations by men who have sex with men (MSM) was irrational.

Israel: High Court of Justice ruled that a transgender inmate’s prison term should be reduced to reflect the fact that it would be served in solitary confinement to protect the inmate from assault by other inmates.

Italy: **S.E.T. v. I.B.**, Supreme Court of Italy, No. 631/2013 – recognized a family founded on a homosexual relationship (lesbian couple), ruling against former husband of one of the women who was seeking custody of their children

Italy: **A & A v. Minister of Interior & Others**, No. 14329/13 (Supreme Court of Italy, June 6, 2013) – Automatic dissolution of a marriage upon gender transition of one spouse is unconstitutional.

Japan: Osaka Family Court ruled against transgender father seeking to have children born through donor insemination to his wife deemed his legitimate child; similar case is on appeal to Supreme Court

Malaysia: Court of Appeal ruled that police decision to ban a “Sexuality Festival” for alleged security reasons was not subject to judicial review.

Mexico: Supreme Court of Mexico ruled in favor of a same-sex couples from Oaxaca state seeking to marry.

Mexico: Supreme Court of Mexico found actionable a newspaper’s publication of slang words for homosexuality with negative connotations

Nepal: Supreme Court of Nepal ordered government must accommodate transgender individuals by devising a third gender category for passports so that transgender individuals will not have to declare themselves either male or female.

Singapore: High Court rejected a challenge to Section 377A, colonial-era sodomy law, and rejected a petition to have sexual orientation discrimination by employers declared illegal.

Slovenia: Constitutional Court ruled that inheritance laws improperly discriminated against same-sex couples.

South Korea: Supreme Court rejected censorship of a short gay romantic film aimed at teenage viewers.

Turkey: Trial judge rules that gay sex is not “unnatural,” reversing conviction of man prosecuted for selling DVDs depicting gay sex.

United Kingdom: **Bull v. Hall**, [2013] UKSC 73 (U.K. Supreme Court, November 27, 2013) (rejecting appeal of ruling that hotel owner violated anti-discrimination laws by canceling room reservation for same-sex couple; state interest in banning sexual orientation discrimination in public accommodations outweighed incidental burden on religious freedom of owner).

United Kingdom: **Black and Morgan v. Wilkinson**, Case No.: B2/2012/2896 (U.K. Court of Appeal July 9, 2013) (upholding ruling against bed & breakfast that cancelled reservation for same-sex couple).

### Legislation

Marriage Equality legislation approved in Uruguay, New Zealand, France, and United Kingdom (England and Wales) – Implementation in U.K. & Wales delayed until March 29, 2014.

Australia – Parliament approved new anti-discrimination statute that includes sexual orientation and gender identity.

Australia – Australian Capital Territory (ACT) passed a law authorizing same-sex marriage, but it was declared invalid by the Supreme Court shortly after it went into effect on grounds that national legislation had preempted localities from legislating on the definition of marriage.

Austria – Approved second-parent adoptions for same-sex couples to comply with an ECHR ruling.

Bangladesh – Government rejected recommendation of law commission to repeal Section 377, criminal sodomy law of colonial origin.

Bosnia – Adopted hate crime legislation inclusive of sexual orientation and gender identity.

Canada – Parliament approved addition of gender identity to non-discrimination law.

Canada – Civil Marriage Act amended to allow for divorces of non-residents whose domiciles will not grant divorces due to refusal to recognize their Canadian same-sex marriages.

Canada – British Columbia Health Ministry dropped surgical requirement for modification of birth certificates for transgender individuals.

Colombia – Registered partnerships made available for same-sex couples.

Costa Rica – Enacted civil unions for same-sex partners (but inadvertently).

Croatia – Referendum amended constitution to provide that marriage can be only the union of a man and a woman.

Germany – Birth certificate rules modified to accommodate intersex infants – binary choice for gender indication abandoned.

Hong Kong – Legislative counsel rejected proposal to authorize transgender individuals to marry in their preferred gender, despite court ruling appearing to mandate this result.

Moldova – Adopted an anti-gay propaganda law modeled on Russian statute

Portugal – Allowing second-parent adoptions by same-sex spouses of legal parents

Russia – Adopted legislation banning adoptions by foreign same-sex couples and criminalizing “propaganda” for non-traditional relationships; constitutional court rejected challenge to legislation.

Slovakia – Sexual orientation added to hate crimes legislation.

Vietnam – National Assembly repealed statutory ban on same-sex marriage, but it is not yet authorized by statute.

## **B. HIV/AIDS Law**

### **1. Discrimination – Prisoners**

Note: Most 8<sup>th</sup> Amendment treatment claims by HIV-positive inmates that are lost have to do with disagreements between the inmate and prison medical staff about appropriate treatment. Most such claims that are won concern allegations that treatment was denied or unduly delayed. The 8<sup>th</sup> Amendment standard is “deliberate indifference” to a serious medical condition.

**Boone v. Daughtery**, 2013 WL 5670876, 2013 U.S. Dist. LEXIS 148033 (W. D. Pa., Oct. 15, 2013) – Rejecting pro se 8th Amendment suit by prisoner over disputed treatment for HIV.

**Chapman v. Tucker**, 2013 WL 5445285, 2013 U.S. Dist. LEXIS 140702 (S.D. Miss., September 30, 2013) – Dismissing HIV-positive inmate’s 8th Amendment claims relating to treatment and other issues.

**Clark v. Spencer**, 2013 U.S. Dist. LEXIS 180147 (D. Mass, December 26, 2013) – Inadequate treatment claim survives initial screening, court orders that answer be filed to complaint.

**Gaines v. Sheriff Bryan Bailey**, 2013 WL 6191349, 2013 U.S. Dist. LEXIS 167809 (S.D.Miss., Nov. 26, 2013) – Rejecting equal protection complaint from HIV-positive inmate who was placed in single cell at a time when facility was overcrowded; plaintiff was complaining about isolation from other inmates, but court found he suffered no tangible harm.

**Jones v. Crompton**, 2013 U.S. Dist. LEXIS 107798, 2013 WL 3967159 (W.D. Mich., Aug. 1, 2013) – Court ruled that an HIV-positive inmate’s interest in keeping his HIV status confidential from other inmates was not of “constitutional dimensions”, and rejected his claim against a prison doctor.

**Jones v. Hines**, 2013 U.S. Dist. LEXIS 92626 (N.D. Ill., July 1, 2013) – HIV-positive inmate may have 8th Amendment claim of deliberate indifference to serious medical needs; court recruits attorney to represent him in repleading complaint.

**Henderson v. Thomas**, 2013 U.S. Dist. LEXIS 140098, 140094 (M.D. Alabama, Sept. 30, 2013) – Approving settlement of lawsuit on conditions for HIV-positive inmates of Alabama state prison system that was negotiated by counsel for parties after court found existing conditions violated American with Disabilities Act.

**Lotz v. Elderkin**, 2013 WL 5963117, 2013 U.S. Dist. LEXIS 159348 (D. Conn., November 7, 2013) – HIV-positive prison inmate did not state an 8th Amendment claim on allegations he was denied necessary pain medication.

**Nunes v. UMass Correctional Health**, 2013 WL 5505364, 2013 U.S. Dist. LEXIS 143292 (D. Mass., Oct. 3, 2013) – Rejecting inmate’s constitutional privacy claim based on having to standing in line to receive his medications.

**Rosado v. Herard**, 2013 WL 6170631, 2013 U.S. Dist. LEXIS 169068 (S.D.N.Y., November 25, 2013) – Magistrate judge upheld a jail inmate’s retaliation claim against a mental health clinician who revealed his HIV status to others after he filed a grievance against her.

**Simon v. N.Y.C. Dep’t of Corr.**, 2013 U.S. Dist. LEXIS 123944 (S.D.N.Y. Aug. 29, 2013) – Pro se former state prison inmate’s claim that his constitutional privacy right was violated would be dismissed because the doctor in the prison had simply called prisoner’s names for HIV-testing, not announced any diagnoses.

**Taylor v. Anderson**, 2013 U.S. Dist. LEXIS 106279, 2013 WL 3938653 (W.D. Tex., July 30, 2013) – Magistrate judge denied a motion for appointment of pro bono counsel by a person living with HIV/AIDS, who claims his 1st, 4th, 6th, 8th, and 14th, amendment rights were violated during a previous period of incarceration, mainly due to deprivation of necessary medication for his HIV-positive condition.

**Trotter v. Fresno County Jail**, 2013 U.S. Dist. LEXIS 161889, 2013 WL 6019689 (E.D. Cal., November 13, 2013) – No 8th amendment claim for inmate who alleged he had been denied an HIV test.

**Worley v. Correctional Medical Services**, 2013 WL 4874456 (D. Ariz. Sept. 12, 2013) (not officially published) – Granted summary judgment in favor of prison medical service (specifically the dentist) against an HIV-positive inmate on his 8th amendment suit.

## **2. Discrimination – Civilian**

**Bailey v. Real Time Staffing Services, Inc.**, 2013 WL 5811647 (6th Cir., October 29, 2013) (not published in F.3d) – Employer did not violate American with Disabilities Act by discharging HIV-positive employee who tested positive for drug use, where employee claimed positive test was due to his HIV-related meds.

**Croy v. Blue Ridge Bread, Inc.**, 2013 U.S. Dist. LEXIS 98734, 28 Am. Disabilities Cas. (BNA) 414, 20 Wage & Hour Cas. 2d (BNA) 1798, 15 Accom. Disabilities Dec. (CCH) P15-205, 2013 WL 3776802 (W.D. Va. July 15, 2013) – HIV-positive gay man survived summary judgment motion in his employment discrimination case, the court finding there were sufficient disputed material facts to merit trial.

**L.C. v. LeFrak Organization, Inc.**, 2013 U.S. Dist. LEXIS 175756 (S.D.N.Y., Dec. 13, 2013) – Landlord may have violated federal, state and local discrimination laws by imposing unequal burdens on prospective HIV-positive tenants whose rents will be subsidized by NYC's AIDS Services Administration.

**Maureen K. v. Tuschka**, 215 Cal. App. 4th 519, 155 Cal. Rptr. 3d 620 (2<sup>nd</sup> Dist. Ct. App. 2013) – HIV infection is a disability under California's Unruh Civil Rights Act, which forbids public accommodation discrimination.

**Wilson v. Sedgwick Claims Management Services, Inc.**, 2013 WL 6080106, 2013 U.S. Dist. LEXIS 164329 (S.D.W.V., Nov. 19, 2013) – In dispute about application of ADA and FMLA to discharge case of HIV-positive employee, genuine dispute about material facts precludes summary judgment.

## **3. Funding Restrictions**

**Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.**, 133 S. Ct. 2321 (2013) – Requiring NGO recipients of federal funds for HIV prevention work to adopt affirmative policies opposed to prostitution violates 1<sup>st</sup> Amendment.

#### **4. Confidentiality of HIV Information (includes discovery disputes in litigation)**

**Rahman v. Pollari**, 107 A.D.3d 452, 967 N.Y.S.2d 31 (N.Y. App. Div., 1st Dept., June 6, 2013) – Defendants in personal injury litigation failed to show compelling need for discovery of HIV/AIDS related medical information about decedent.

**State v. C. M.**, 2013 WL 3582074 (N.J. Super. Ct. App. Div. July 16, 2013) (unpublished opinion) – County prosecutor’s office was not entitled to disclosure of the medical records of an HIV-positive man who was charged with two counts of “third-degree diseased person committing an act of sexual penetration.”

#### **5. Asylum/Withholding of Removal/CAT Protection – HIV Status**

**Ferreira v. Attorney General**, 2013 WL 518600 (3d Cir., February 7, 2013) (not published in F.3d) – Petition for review denied, failure to show likelihood of persecution of HIV-positive individual in Brazil.

**Medina v. Holder**, 2013 WL 5651319, 2013 U.S. App. LEXIS 21041(9th Cir., Oct. 17, 2013) (not selected for publication in Fed.3rd) – Substantial evidence supported an Immigration Judge’s conclusion that an HIV-positive man from Bolivia had not shown he was likely to be subjected to persecution if he was deported to his home country; remanded on procedural grounds.

**United States v. Carranza**, 2013 WL 2456266 (E.D.N.Y., June 6, 2013) (not officially published) – HIV-positive man subject to deportation may seek resentencing in his illegal entry case in order to qualify for withholding of removal on humanitarian grounds (court does not mention defendant’s country of origin).

#### **6. Tort Claims**

**Canales v. Gatzunis**, 2013 WL 5781285 (D. Mass., Oct. 28, 2013) – Prisoner can maintain tort action for being subjected to treatment based on facilities’ mistaken belief that he was HIV-positive.

## 7. Criminal Law

### Litigation

**Gaines v. State**, 308 P.3d 30, 2013 Kan. App. Unpub. LEXIS 777 (Kan. Ct. App. 2013) – Prosecutor’s repeated reference to defendant’s HIV status not shown to have affected outcome of trial, as he was acquitted on some counts.

**Musser v. Mapes**, 718 F.3d 996 (8th Cir., June 24, 2013) – Rejecting constitutional challenge to Iowa statute criminalizing exposure to HIV; upholds conviction despite lack of evidence that HIV was transmitted and evidence of condom use by defendant.

**People v. Soliz**, 2013 WL 6667660, 2013 Cal. App. Unpub. LEXIS 9096 (Cal. 6<sup>th</sup> Dist. Ct. App., Dec. 18, 2013) (not officially reported) – Rejected prosecutor’s demand for HIV testing of defendant, who pled guilty to lesser-included offenses that were not on the statutory list of sex crimes for which testing is permitted; noted that victim had not requested testing of the perpetrator at time of arrest or guilty plea.

**People v. Williams**, 974 N.Y.S.2d 742 (New York, Appellate Division, 4th Dept., November 15, 2013) – Approving decision by trial judge to reduce HIV exposure charge from felony to misdemeanor, where defendant’s condom use and other acts showed his good faith in trying to avoid infecting sexual partner to whom he had not disclosed his HIV-status.

**Rhoades v. State of Iowa**, 2013 WL 5498141 (Iowa Court of Appeals, Oct. 2, 2013) (not officially published) – Affirming conviction of HIV-positive gay man for engaging in unprotected oral sex and protected anal sex with a man he met through an on-line chat-room, defendant not having disclosed his HIV-status prior to the sexual acts, under state criminal exposure statute.

**State of Tennessee v. Brown**, 2013 WL 6730101, 2013 Tenn. Crim. App. LEXIS 1119 (Tenn. Ct. Crim. App., Dec. 19, 2013) – Upholding conviction of criminal exposure to HIV, where defendant was informed of his HIV-status a year prior to incident with 8-year-old granddaughter, had admitted to having intercourse with her, and victim had tested positive for HIV.

**State v. Debaun**, 2013 WL 5814005, 2013 Fla. App. LEXIS 17224, 38 Fla. L. Weekly D 2266 (Fla. 3rd Dist. Ct. App., Oct. 30, 2013) – Criminal statute applicable to sexual intercourse by person infected with HIV applies to gay sex; term “sexual intercourse” is not limited to heterosexual penile-vaginal sex.

**State v. Rick**, 835 N.W.2d 478 (Minn. 2013) – Affirms reversal of conviction of HIV-positive gay man accused of first degree assault by “transferring” a communicable disease, because the statute was too vague, and legislative purpose focused on blood, tissue, bone donations, not sexual intercourse.

**United States v. Gutierrez**, 2013 WL 1319443 (Air Force Court of Criminal Appeals, March 21, 2013) (not reported in M.J.) – HIV-positive man could not raise consent to adultery as defense to charge of assault.

## **8. Disability Benefits Claims**

**Broussard v. Colvin**, 2013 U.S. Dist. LEXIS 136722, 2013 WL 5370592 (E.D.N.C., Sept. 24, 2013) – Affirmed denial of social security disability benefits to person living with HIV, because the appellant wanted court to reconsider and reweigh the evidence.

**Chambers v. Reliance Std. Life Ins. Co.**, 2013 U.S. Dist. LEXIS 100661 (S.D. Ohio July 12, 2013) – Ruled that an insurance company improperly discontinued long-term disability benefits for an insured living with HIV/AIDS)

**Hamlin v. Colvin**, 2013 WL 5466789, 2013 U.S. Dist. LEXIS 140711 (N.D. Ohio, Sept. 30, 2013) – HIV-infected man who is capable of working is not entitled to Social Security disability benefits.

**Harding v. Colvin**, 2013 U.S. Dist. LEXIS 109532 (D. Neb. Aug. 5, 2013) – Remanded a decision regarding disability benefits for a plaintiff living with HIV and other conditions that impacted her mental capacities. Social Security ALJ had found that the plaintiff had sufficient residual functional capacity to perform unskilled work in the economy, but the magistrate thought this contradicted the medical evidence.

**Montes v. Commissioner of the Social Security Administration**, 2013 U.S. Dist. LEXIS 107157, 2013 WL 3945931 (D.N.J., July 31, 2012) – Remanding denial of Social Security disability benefits for HIV-positive plaintiff on grounds that ALJ failed to adequately explain his decision to reject treating physician's opinion.

**Richardson v. Comm'r of Soc. Sec.**, 195 Soc. Sec. Rep. Service 467, 2013 WL 5816883 (2013) U.S. Dist. LEXIS 154822 (D.N.J., Oct. 29, 2013) (not officially published) – Orders Social Security Administration to reconsider disability benefits application by HIV-positive man, due to discrepancies in the record concerning medical findings.

**Scherpenberg v. Commissioner of Social Security**, 2013 WL 3455843 (S.D. Ohio, July 9, 2013) (not officially published) – Remanding for grant of social security disability benefits for HIV-positive plaintiff, finding proof of disability overwhelming.

## **9. Children with HIV**

**J.M. and L.N., Parents, Matter of the Welfare of the Child of**, 2013 WL 5778225 (Minn. Ct. App., Oct. 28, 2013) (unpublished decision) – HIV denialist parents refused to administer meds consistently, so child was a person in need of supervision under state law.

## **10. HIV-Related Legislation**

Federal: HIV Organ Policy Equity Act, authorizes organ donations between HIV-positive individuals