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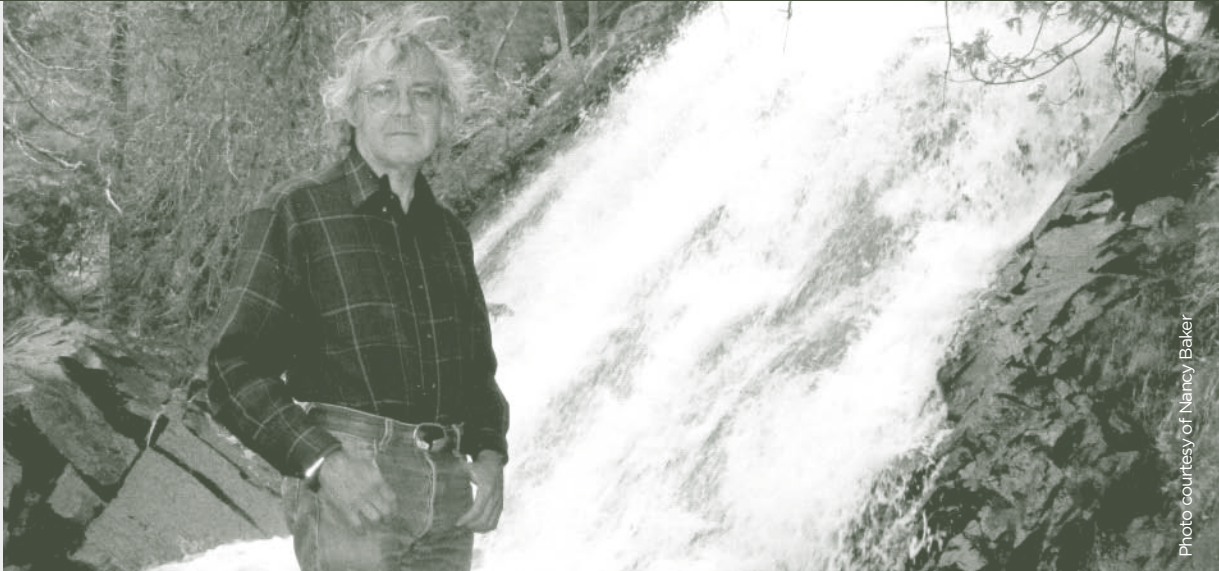


Photo courtesy of Nancy Baker

*C. Edwin "Ed" Baker, one of the nation's foremost constitutional legal scholars, was committed to lesbian, gay, bisexual, and transgender equality and justice.*

## Law Scholar C. Edwin Baker's Estate Donates \$150,000 Gift to NCLR

### Gift Establishes Clerkship to Further Social Justice and Support New Civil Rights Lawyers

From the outset of his career as a young scholar and professor, C. Edwin Baker—the University of Pennsylvania law professor widely respected as one of the nation's foremost constitutional legal scholars before his death in December 2009—was an ally for equality.

"My brother was an ally of the LGBT community in every dimension—personally, politically, philanthropically, and in his professional scholarship and work," said Nancy Baker, his sister. "As a lesbian who came of age when being gay was classified as both criminal and crazy, I feel particularly lucky to have had the love and support of my extraordinary brother. Not too many lesbians have heterosexual brothers who published op-ed pieces in *The New York Times* supporting LGBT rights, donated to LGBT charities, and joined in legal briefs supporting the freedom to marry for same-sex couples. My brother did all this, and more."

Professor Baker's estate is continuing his legacy by making it possible for future generations of lawyers to follow in his footsteps through the new C. Edwin Baker Clerkship at the National Center for Lesbian Rights. The \$150,000 gift from Professor Baker's estate was authorized by a committee consisting of Baker's sister, Nancy, and his friends, Brooklyn Law School Professor Michael Madow, New York Law

**NCLR IS NOW ACCEPTING C. EDWIN BAKER CLERKSHIP APPLICATIONS FOR SUMMER 2011.**

Visit [www.NCLRrights.org/BakerClerkship](http://www.NCLRrights.org/BakerClerkship) for more information.

School Professor Carlin Meyer, and Columbia Law School Professor Carol Sanger.

"It is rare that a great intellect is also such a kind, caring, giving, and down to earth person," Meyer said of Professor Baker, whose four books and more than 70 published articles were read by thousands of colleagues, policy makers, and students around the world. "Ed was a great friend and mentor, and in this way, he will continue to mentor others despite his untimely death."

The clerkship will create a lasting program that supports stipends for law clerks and fellows who have financial need, and who are committed to practicing social justice and progressive civil rights law. Applications are now being accepted for summer 2011, with more information available at [www.NCLRrights.org/BakerClerkship](http://www.NCLRrights.org/BakerClerkship).



photo by Jeff Singer

*a message from*  
**EXECUTIVE DIRECTOR**  
**KATE KENDELL**

## Dear NCLR Champion:

It has been a shameful time for those who abuse religion to justify their anti-LGBT bigotry, and it has been devastating for our community and families that lost sons and daughters to suicide. We now face a moral challenge that we must meet.

Just months into the school year, at least 10 teenagers committed suicide rather than continue to face the pain of daily harassment and the shame of being made to feel they were “wrong” or “immoral.” We know that for every one of these young people, there are countless more who suffer in schools and classrooms every day.

The deaths of these young people have galvanized our community and a range of allies. There has been an outpouring of support for many of the families and for other young people who may likewise be suffering, and a renewed push for accountability to address the epidemic of bullying and harassment. We must keep up the pressure. We must make sure there is lasting reform. We must reach the parents of kids who are both victims and perpetrators of bullying and forge a permanent end to this corrosive cycle. And perhaps most importantly, by speaking up and being out, as LGBT people or as allies, we must help foster a culture of greater inclusion, compassion, and understanding.

There is much to make us hopeful. We all know that progress is being made even as that progress triggers ever more harsh and desperate reactions. We have all been witnesses to this sea change in attitudes and acceptance. A real life example

of just how far we have come is embodied in the family of Jane Lynch and Lara Embry. Jane's meteoric rise to fame—all the while as an out lesbian—has been a thrill for all of us. Her meeting Lara and their marriage a year later was embraced as a story of true love. When I was the age of these young kids, such celebration would have been unthinkable. But clearly, in the wake of their deaths, the progress we have made is not nearly enough.

We still have much work to do, and some of our most profound victories lie ahead. But we must have the faith of those who know our full humanity is worth fighting for. We will win equality. And we will win a day when anti-LGBT bigotry and dehumanizing statements about us and our lives are universally condemned as damaging, wrong, and utterly unacceptable. The teenagers we fight for—Asher, Tyler, Billy, Raymond, Seth, Aiyisha, Felix, Zach, Cody, and Chloe—should be fighting with us. They, more than most, earned the right to see that day. They were robbed of that moment. Our commitment must be to do all we can to ensure that they will be hate's final victims.

In solidarity,

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**C. EDWIN BAKER—CONTINUED FROM COVER**

“Ed was one of the most incredible progressive legal scholars in American history, and we are honored that his estate has chosen NCLR to continue his legacy by helping develop new generations of attorneys who are equally committed, equally devoted, and equally passionate about the law and social justice as Ed was throughout his life,” said NCLR Executive Director Kate Kendall. “He truly is a role model, and we are proud to be able to provide this opportunity through NCLR for the next generation of legal leaders.”

Professor Baker’s interest in law began as a young boy in Madisonville, Kentucky, when he, in the fourth grade, invoked the First Amendment to try to discourage his parents from making him attend church services. It was that intrigue with the power of the law, coupled with a deep conviction that everyone has the right to make their own decisions and live according to their own commitments and ideals, that would propel his LGBT advocacy, as well as his notable career as a law professor and scholar.

In the mid-1970s, after receiving his bachelor’s degree from Stanford University and his law degree from Yale University, Ed risked his career as an untenured assistant professor at the University of Oregon Law School to speak openly—at a time when most allies were fearful—in support of lesbian and gay rights because he believed it was the right thing to do, helping to organize the law school faculty to support the Eugene Gay Rights Ordinance, and later to oppose its repeal.

He joined the University of Pennsylvania Law School in 1981, where he was the Nicholas F. Gallicchio Professor of Law and Communication, focusing his teaching on constitutional law, mass media law, the First Amendment, and jurisprudence.

“No one has been as deep. No one as broad. No one as creative. No one as original,” said Cornell Law School Professor Steve Shiffrin of Professor Baker. “I do not believe that anyone has made as important an intellectual contribution to the First Amendment as Ed Baker, whether in this century or the last.”

Since Professor Baker’s death, his sister Nancy has heard from people who knew him over the years, with each noting his commitment to the law and social justice, “but even more importantly, they have spoken about the way my brother always met people as people, viewing sexual orientation and gender identity as no reason to relate to people differently. My hope is that through this clerkship, we make it possible for my brother’s legacy, his devotion to social justice and his commitment to LGBT equality to live on in future generations.”

**To contribute to the C. Edwin Baker Clerkship at NCLR, visit [www.NCLRRights.org/BakerClerkship](http://www.NCLRRights.org/BakerClerkship).**

*Professor Baker resided in New York City. He was 62. He is survived by his sister, Nancy Baker, of El Granada, California, and her spouse, Cathy Hauer. He is predeceased in death by his parents, Falcon O. Baker, Jr. and Ernestine Magagna Baker.*

**News & Announcements****Support NCLR through eScrip!**

Looking to support the National Center for Lesbian Rights in even more ways? Have a fixed budget with no wiggle room? Want to get the merchants at which you shop to donate to NCLR too?

All you have to do is register your credit/debit cards and ATM cards with eScrip—then any time you use one of them to shop with a participating merchant, the merchant will donate up to 8% of the purchase amount to NCLR.

Sign up at [www.eScrip.com](http://www.eScrip.com) to make all your regular purchases at over 150 merchants go to work for NCLR.

**NCLR’s group name:**

“National Center for Lesbian Rights” or “NCLR.”

**NCLR’s group identification number:** 500022336.

**Have You Read NCLR’s “Don’t Ask, Don’t Tell” Series?**

NCLR in October launched the personal “Don’t Ask, Don’t Tell” series by San Francisco Bay Area attorney Huang Nguyen. She is chronicling her experiences with a diary blog, from her journey to the United States from Vietnam as a child after the fall of Saigon, to her decision to enlist, to realizing she was a lesbian, to facing the toughest challenge of all—deciding she couldn’t live under the discriminatory “Don’t Ask, Don’t Tell” policy.

Every week through December, she will share her personal journey, the struggles she faced under government-mandated discrimination, and, hopefully, inspire you to talk to your friends, your family, your co-workers, and tell them why you need their support to repeal this policy once and for all.

You can stay up-to-date with Huang’s blog posts by checking our blog ([NCLRRights.WordPress.com](http://NCLRRights.WordPress.com)) regularly, by subscribing to our blog via email, or by becoming a fan of our Facebook page, where we’ll be able keep you up-to-date with every new post.

**Stay Up-To-Date with NCLR!**

NCLR is committed to fighting for your rights, and keeping you informed of all the legal decisions and key policies that impact your lives, as well as the lives of your family and friends.

You may have noticed that our legal team over the past few months has busily been providing you with comprehensive analysis of important legal developments, breaking down and interpreting complicated issues for you, and, in the process, answering your questions about how issues affect your lives.

**Stay Connected with NCLR!**

Log on, and stay tuned-in to all of our latest work and LGBT news.

 **NCLRRights.org**

 **Facebook.com/NCLRRights**

 **Twitter.com/NCLRRights**

 **Youtube.com/NCLRRights**

 **NCLRRights.WordPress.com**

**Are You Cool With That?**

In response to the recent string of suicides by youth who took their lives because of bullying, we’ve created “Gay? I’m Cool With That” T-shirts to **let LGBTQ youth know they’re not alone.**

Shirts are available at cost for as low as \$8.99 (plus shipping).

(NCLR receives no profit from the sale of any of the “Gay? I’m Cool With That” T-shirts.)

**NCLRRights.org/Shop**

# Groundbreaking Report Urges High School and College Athletics to Establish Standard, National Policies for Transgender Student Athletes

What if you were a high school student who was born female, but deeply identifies as male, has been attending school as a boy for several years, and wants to try out for the boy's baseball team?

What if you were a college athlete who was born male, but who has been living as female and taking female hormones for the past year, and wants to try out for the girl's cycling team? What if you were a coach or school administrator faced with this situation?

The National Center for Lesbian Rights and It Takes A Team!, an Initiative of the Women's Sports Foundation, have released a groundbreaking report urging high school and college athletic associations across the country to adopt standard policies to provide transgender student athletes fair and equal opportunity to participate on athletic teams.

"On the Team: Equal Opportunities for Transgender Student Athletes," released on October 4, is the first report to address the complete integration of transgender student athletes within high school and collegiate athletic programs, providing model policies and a framework for athletic leaders to ensure equal access to school athletics for transgender students.

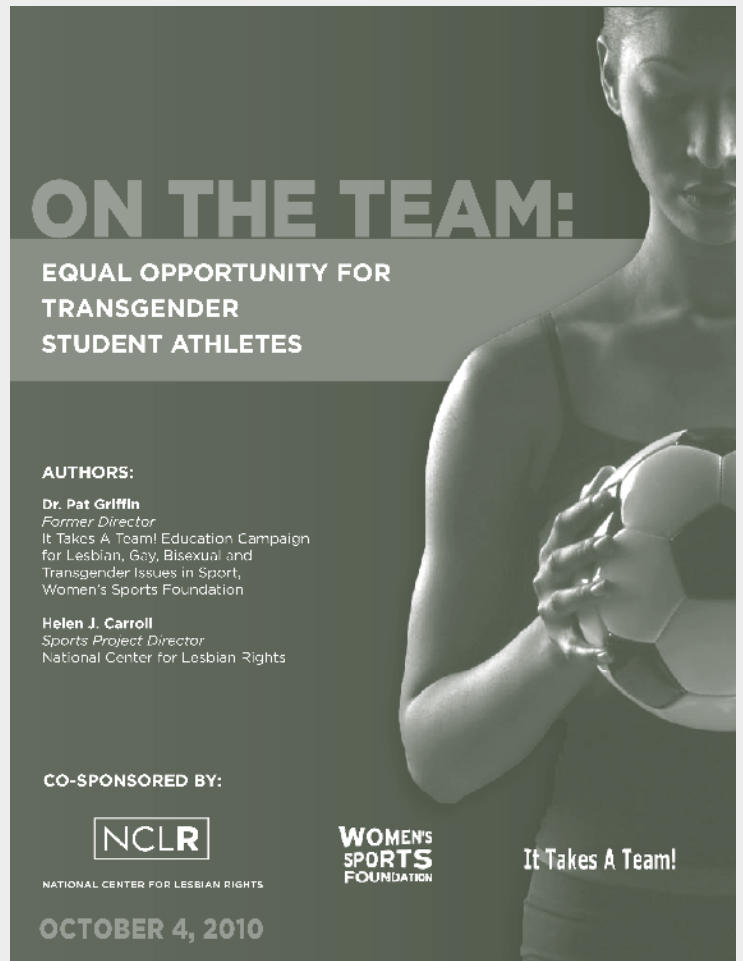
"An increasing number of high school- and college-aged young people are identifying as transgender," said report co-author NCLR Sports Project Director Helen J. Carroll. "This report is an invaluable tool to guide coaches and administrators in providing equal opportunities for transgender student athletes in a fair and just manner, based on reliable information and data," says Carroll. "No student athlete should ever be turned away from a team because an athletic department hasn't established policies that would allow them to participate."

In October 2009, NCLR and It Takes A Team! invited experts on transgender issues from a range of disciplines—law, medicine, advocacy, and athletics—to take part in a think tank to explore how to achieve equal opportunity for transgender student athletes. Think tank participants, including leaders from the National Collegiate Athletic Association and the National High School Federation, met over several days to identify best practices. Co-authors Carroll and Dr. Pat Griffin, former director of It Takes A Team!, developed these best practices into model policies to ensure the full inclusion of transgender student athletes.

"Educators and parents must be open to this challenge if we are to create educational institutions that value and meet the needs of all students," said Griffin. "Once we recognize that transgender young people are part of school communities across the United States, educational leaders have a responsibility to ensure that these students have equal access to opportunities in all academic and extracurricular activities in a safe and respectful school environment."

According to the 60-page report, although "the needs of transgender students in high school and college have received some attention in recent years, this issue has not been adequately addressed in the context of athletics. Few high school or collegiate athletic programs, administrators, or coaches are prepared to fairly, systematically, and effectively address a transgender student's interest in participating in athletics. The majority of school athletic programs have no policy governing the inclusion of transgender student athletes, and most coaches are unprepared to accommodate a transgender student who wants to play on a sports team."

In fact, the report says, most school athletic programs are unprepared to address even basic accommodations, such as knowing what pronouns



**ON THE TEAM:**  
**EQUAL OPPORTUNITY FOR  
TRANSGENDER  
STUDENT ATHLETES**

**AUTHORS:**  
**Dr. Pat Griffin**  
*Former Director*  
It Takes A Team! Education Campaign  
for Lesbian, Gay, Bisexual and  
Transgender Issues in Sport,  
Women's Sports Foundation

**Helen J. Carroll**  
*Sports Project Director*  
National Center for Lesbian Rights

**CO-SPONSORED BY:**

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**WOMEN'S  
SPORTS  
FOUNDATION**

**It Takes A Team!**

**OCTOBER 4, 2010**

**"On the Team: Equal Opportunities for Transgender Student Athletes" urges high school and college athletic leaders to adopt standard, national policies that provide transgender student athletes with equal opportunities.**

**DOWNLOAD YOUR COPY AT:**

**[www.NCLRrights.org/OnTheTeam](http://www.NCLRrights.org/OnTheTeam)**

or names to use when referring to a transgender student, where a transgender student should change clothes for practice or competition, or what bathroom or shower that student should use. The report reflects a collaborative process, including the best thinking of think tank participants, based on current medical knowledge and legal protections for transgender people, about how to ensure equal opportunities for transgender student athletes.

"We are confident that the report will be an essential guide for high school and college athletic leaders as they adopt policies to ensure that all student athletes, including transgender students, will have equal opportunities to enjoy sports," says Kathryn E. Olson, Chief Executive Officer of the Women's Sports Foundation.

## National Institute of Corrections Awards First-Ever Federal Grant to Improve Conditions for LGBTI People in Prisons and Juvenile Facilities

By **Jody Marksamer**, *Youth Project Director*

We are excited to announce that the National Center for Lesbian Rights, in collaboration with the Correctional Association of New York, and American University College of Law Professor Brenda V. Smith has been awarded the Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Guidance Project through the National Institute of Corrections (NIC).



Over the next year, our team, led by Smith, a former National Prison Rape Elimination Commissioner, will create a first-of-its-kind guide for correctional officials charged with the care and custody of LGBTI individuals in prisons, jails, juvenile corrections institutions, and juvenile detention facilities. The goal

of this guide is to provide corrections officials with accurate and up-to-date information to help them implement best practices in their specific agency or facility, establish procedures for monitoring implementation, and develop staff and prisoner training and orientation materials.

NCLR is recognized nationally as a leader in both juvenile justice and prison issues affecting LGBTI individuals. We bring to this project expertise in developing and promoting best practices for the care and custody of incarcerated LGBTI adults and youth, experience assisting agency administrators in the development of LGBTI policy and training, a deep understanding of the

problems LGBTI individuals experience while incarcerated, and unparalleled knowledge of existing statutes, policies, and case law in this area.

Guidance for correctional agencies on addressing the care and custody of LGBTI youth and adults is sorely needed, and will bring about systemic changes that will increase safety and improve the quality of life for the tens of thousands of LGBTI individuals who are incarcerated in jails, prisons, and juvenile facilities across the country. NIC anticipates the guide, which will be released in early 2012, will be used by corrections administrators, medical and mental health staff, and training coordinators from federal, state, and local agencies.

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## Florida Lifts Adoption Ban for Lesbians, Gays, and Bisexuals

By **Ilona Turner**, *NCLR Staff Attorney*

For decades, NCLR has been working to end Florida's hateful ban on adoption by lesbians, gay men, and bisexual people, which was enacted in the 1970s after a frenzied anti-gay campaign led by Anita Bryant.

Since 2007, we've represented Lara Embry, a lesbian mom, in her effort to secure her relationship to both of the children that she and her ex-partner had together. Lara and her ex each had one biological child, using alternative insemination, and then, while they were living in Washington state, each got a second-parent adoption of the other's biological child. But after the couple moved to Florida, they separated, and Lara's ex tried to argue that the Washington adoptions had no effect in Florida because of Florida's anti-gay adoption law.

In a groundbreaking ruling issued in May 2009, *Embry v. Ryan*, Florida's Second District Court of Appeal held that Florida must recognize the adoptions. But Lara's ex didn't give up so easily, and continued

to challenge the validity of the adoptions, bringing another motion to dismiss in the trial court, and then, when she lost again, appealing again to the state appeals court. The Court of Appeal dismissed her second appeal on January 29, 2010.

At the same time Lara's case was being litigated, several trial courts in Florida began granting adoptions to lesbian or gay parents. NCLR provided behind-the-scenes help in some of those cases, and in August, NCLR filed an amicus brief with the Third District Court of Appeal in an appeal of a case in which a trial court had granted an adoption to a lesbian foster parent.

Finally, on September 22, 2010, the same Court of Appeal issued a unanimous decision in another adoption case, brought by the ACLU of Florida, in which they concluded that Florida's anti-gay adoption ban violated the Florida constitution's equal protection guarantee.

The appeals court upheld the decision of a Miami-Dade trial court which had allowed Martin Gill, a gay man, to adopt the two

foster children he and his partner have parented for years. In a concurring opinion, one judge specifically cited to the Embry decision as evidence that the adoption ban was not sacrosanct.

Soon after the decision in Gill's case came out, Florida's Governor announced that he would not appeal the ruling to Florida's Supreme Court, and on October 22, Florida's Attorney General announced that he would not appeal either. Finally, on October 28, the Court of Appeals issued a ruling in the other pending adoption appeal in which NCLR had filed an amicus brief, affirming the adoption by the lesbian foster mom.

This means that the adoption ban is now officially history in Florida. The Florida Department of Children and Families has issued a memo ordering its staff to immediately stop considering sexual orientation as a factor in determining fitness to adopt. Instead, the Department's staff will focus on the quality of parenting that adoptive parents would provide.





Album

*Actress Jane Lynch and NCLR client Lara Embry met through NCLR, and have been long-time supporters of NCLR's work. They were married on Memorial Day 2010, and the photos of them and their daughter Haden are from their personal wedding album.*





# A SPECIAL MESSAGE

## From Jane Lynch and Lara Embry

By Jane Lynch and Lara Embry, *Friends of NCLR*

Many of you may know that we were married in Massachusetts on Memorial Day—creating a few memories of our own. You may also know that we met courtesy of the National Center for Lesbian Rights' 2009 Anniversary Celebration. But what you may not know is the tremendous role NCLR has played in helping our family.

Three years ago, Lara called NCLR to ask for their help in fighting for her adopted daughter in Florida. From the start of this wrenching case, we learned that the good people at NCLR are exactly who you want on your side. The legal team provided superb legal briefs. They worked all night responding to the other side's last-minute arguments. They created relationships, and obtained friend-of-the-court briefs from experts with unparalleled reputations.

But more than all of that, they provided emotional support and reassurance during a devastating time. With NCLR on the case, Lara knew it was not a matter of "if" her family would be restored, but "when." Thanks to NCLR that fight is now over, Lara's relationship with her daughter is secure, and our family is on its way to healing, with regular visits and contact reinstated.

This isn't only tremendous news for our family. Because of NCLR's hard work, it is now clear that Florida must honor second-parent adoptions from other states. This is one of the biggest issues facing our community, as anti-LGBT legal groups are doing all they can to argue just the opposite—that our adoptions are not entitled to full faith and credit in all fifty states.

And what's more, in the past month, the Florida Court of Appeals has ruled twice that gay, lesbian, and bisexual people can no longer be banned from adopting—and Lara's case was cited by the court in their historic decision.

Each hard-fought step forward serves to pave the way for more progress toward equality for our families. Although these battles have been won, we all know the culture war—in which our families are fodder—is ongoing. Unfortunately, there will be no shortage of families and individuals in need of excellent legal services to defend their rights. The work of NCLR, with its wide reach and personal impact, is so important in advancing the protection of all families, as no one is equal unless we are all afforded the same securities under the law.



**Learn how you can give a gift  
in honor of Jane & Lara at  
[www.NCLRights.org/JaneandLara](http://www.NCLRights.org/JaneandLara)**

We need to continue to support NCLR to enable them to continue their excellent work. It's in this spirit that we have asked our families and friends to donate to NCLR, in lieu of wedding gifts to us. And we'd like to ask you, as a friend of NCLR—and thus a friend of ours—to make a gift to NCLR in honor of their incredible work and the part they have played in our wonderful year. It would mean so much to us, and to all the people who will receive the same amazing representation that our family received.

And don't forget to mark your calendar for the next Anniversary Celebration on May 21. You never know who you might meet (um... if you are looking).

## Proposition 8 Federal Challenge: What Happens Next?



On August 4, we celebrated U.S. District Court Judge Vaughn Walker's landmark decision that upheld the promise of liberty and equality enshrined in our Constitution. On that historic day, Judge Walker ruled that Proposition 8, which stripped the freedom to marry from same-sex couples in California, violates the federal constitutional guarantees of due process and equal protection of the laws.

In *Perry v. Schwarzenegger*, Judge Walker ruled in favor of two same-sex couples, who challenged the discriminatory ballot measure

which amended the California Constitution to prohibit marriage by same-sex couples. The National Center for Lesbian Rights, with Lambda Legal and the ACLU, filed an *amicus* brief in support of the plaintiffs, who are represented by Ted Olson of Gibson, Dunn & Crutcher LLP, David Boies of Boies, Schiller & Flexner LLP, and the San Francisco City Attorney's Office.

The defendants representing the state of California in the case, Attorney General Jerry Brown and Governor Arnold Schwarzenegger, agreed that Prop 8 is unconstitutional and have refused to appeal Judge Walker's decision.

On the same day he issued his decision, Judge Walker also issued a temporary stay. The official proponents of Prop 8, who were permitted to intervene in the case, filed an appeal and an "emergency motion" in the Court of Appeal for the Ninth Circuit, asking the Ninth Circuit to extend Judge Walker's stay.

On August 16, 2010, the Ninth Circuit granted the Prop 8 proponents' motion to extend Judge Walker's stay, but the court also put the case on a fast track. All of the briefs in the appeal must be filed by November, and the court will hear oral argument in the case the

week of December 6, 2010. In the meantime, same-sex couples cannot get married in California.

The Ninth Circuit is not required to issue its decision within any particular time frame after oral argument; however, when an appeal is put on a fast track, the Court tends to issue decisions more quickly. Once the Ninth Circuit rules, the losing side can request the United States Supreme Court to hear the case. The Supreme Court then has discretion to take the case or to let the Ninth Circuit's decision stand.

While we wait for the court's decision, we must remember that we cannot rely solely on the courts to protect our freedom. As we have learned the hard way in California and other states, it is essential that we take responsibility for ourselves and do everything within our power to create a receptive public climate so that we can keep our legal victories. We must continue to reach out and tell our stories to create a world where *all* families are treated fairly and equally under the law.

Read NCLR's updated FAQ on What the Ninth Circuit's Latest Ruling in the Prop 8 Case Means at [www.NCLRrights.org/Perry\\_NinthCircuitFAQ](http://www.NCLRrights.org/Perry_NinthCircuitFAQ).

## NCLR Attorneys Present Legal Workshops for Parents of Transgender Youth

By **Melanie Rowen**, NCLR Staff Attorney

At the National Center for Lesbian Rights, we are constantly striving to bring cutting-edge legal information to the members of our community who need it most urgently. Among them are some of the fiercest allies we could ever have hoped for: supportive families of transgender, gender variant, and gender non-conforming youth.

In September, NCLR was honored to once again be a part of the Gender Spectrum Family Conference, a one-of-a-kind annual event in Berkeley, CA that brings families and experts together to provide support, community, and the information these families need to be powerful advocates for their children in every corner of life.

Families of gender variant youth are acutely aware of how powerful a tool the law can be as they register their kids for school and sports, stand up against bullying, bring their

kids with them on an airplane, or do any of the myriad everyday family activities that become more challenging when a child's gender presentation does not match the child's sex assigned at birth.

This year, the organizers of the Family Conference, Joel Baum, Lisa Kenney, and Stephanie Brill of Gender Spectrum, asked NCLR to coordinate a series of legal workshops that would give families a comprehensive, detailed look at each of the legal issues that affect them and give them the chance to ask the questions that come up for them every day.

NCLR Helpline Attorney Ming Wong, Sports Project Coordinator Helen J. Carroll, and I worked with our colleagues at the Transgender Law Center and the American Civil Liberties Union's LGBT Rights Project to create a program featuring four workshops and a two-day drop-in legal clinic. The

workshops included presentations on legal basics, including name changes and insurance coverage; safety and participation in schools and sports; a know-your-rights presentation for teens; and a discussion for parents with NCLR Legal Director Shannon Minter about custody disputes involving transgender, gender variant, or gender non-conforming youth.


On the last day of the conference, I participated in a session that invited family members to sit down with some of the experts and discuss their next steps as advocates for their children. From immigration questions to finding new ways to involve grandparents of gender variant youth as advocates, this session covered it all. NCLR was privileged to offer information to these loving, courageous, and dedicated families and is already working on workshops for next year's Gender Spectrum Family Conference.



# NCLR Active Cases

## U.S. SUPREME COURT

### Christian Legal Society v. Wu

 **Victory!** | California

Like many public schools, the University of California - Hastings College of the Law allows law students to organize student groups that can apply for university funding and other resources for group-related events. To be recognized as an official student group, all student groups must abide by Hastings' policy on non-discrimination. In 2004, the Christian Legal Society (CLS) filed a lawsuit against Hastings, arguing that the non-discrimination policy violated the group's First Amendment right to discriminate against LGBT and non-Christian students. NCLR, along with co-counsel Paul Smith of Jenner & Block LLP, represents Outlaw, the LGBT student group at Hastings, which intervened to defend the University's policy. On March 17, 2009, the United States Court of Appeals for the Ninth Circuit ruled in favor of Hastings and Outlaw, rejecting CLS's arguments that the school's policy violates its rights to freedom of speech, religion, and association. The Court explained:


"Hastings imposes an open membership rule on all student groups—all groups must accept all comers as voting members even if those individuals disagree with the mission of the group. The conditions on recognition are therefore viewpoint neutral and reasonable."

The Ninth Circuit's decision affirmed an earlier ruling by United States District Court Judge Jeffrey White upholding the non-discrimination policy against CLS's First Amendment challenge.

On June 28, 2010, in a 5-4 decision authored by Justice Ruth Bader Ginsburg, the United States Supreme Court affirmed the Ninth Circuit's ruling—strongly supporting the right of public universities to require funded student groups to comply with non-discrimination policies.

This case is important not only because of its impact on student groups, but because the Supreme Court put a stop to efforts by the Christian Legal Society and other far-right religious groups to undermine non-discrimination laws by establishing a First Amendment "right to discriminate" even when a group is receiving public funds.

### Doe v. Reed

 **Victory!** | Washington

In this case, anti-gay groups asked the U.S. Supreme Court to overturn a decision

ordering the release of the names of 138,000 people who signed petitions supporting a ballot initiative to repeal basic protections for same-sex couples in Washington State. In November 2009, Washington voters rejected this attempt—Referendum 71—and preserved the state's domestic partnership law. The anti-gay groups are seeking to strike down a Washington law requiring disclosure of the petitions as public records, claiming that supporters of anti-gay ballot campaigns would be exposed to harassment and intimidation by the LGBT community if their names were made public.

In a friend-of-the-court brief, NCLR, Lambda Legal, and Gay & Lesbian Advocates & Defenders (GLAD), together with the Human Rights Campaign and the National Gay and Lesbian Task Force, joined the State of Washington and others in defending open government laws requiring public disclosure of the names of individuals who sign petitions supporting state ballot initiatives. The brief refutes the false claim that supporters of anti-gay initiatives have been subjected to "systematic intimidation" by the LGBT community. In fact, it is LGBT people who continue to suffer serious violence, harassment, and discrimination, along with a 30-year barrage of ballot petitions aimed at stripping LGBT people and other minority groups of basic protections. The Supreme Court heard oral arguments on April 28, 2010.

On June 24, 2010, the United States Supreme Court, in an 8-1 decision authored by Chief Justice John Roberts, decisively rejected the challenge to the Washington statute requiring public disclosure of the names of individuals who sign petitions to place referendums or initiatives on state ballots. The Court held:

"Public disclosure thus helps ensure that the only signatures counted are those that should be, and that the only referenda placed on the ballot are those that garner enough valid signatures. Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot. In light of the foregoing, we reject plaintiffs' argument and conclude that public disclosure of referendum petitions in general is substantially related to the important interest of preserving the integrity of the electoral process."

The case remains pending on remand in the United States District Court for the Western District of Washington.

## PARENTING

### Charisma R. v. Kristina S.

 **Victory!** | California and Texas


Charisma R. and Kristina S. were in a committed relationship for six years. They decided to have children together, and Kristina gave birth to their child in 2003. They started a baby journal and sent out a joint birth announcement. Charisma and Kristina cared for their child together, and Charisma provided the primary care after Kristina returned to work. When their child was only a few months old, Kristina abruptly left their shared home and refused to allow Charisma to have any contact with their baby.

Charisma was initially denied the ability to seek visitation, but the Court of Appeal held that she could be a parent under California law. In 2006, the Family Court held that Charisma is a legal parent and awarded her visitation. The Court of Appeal upheld this decision, and the U.S. Supreme Court refused Kristina's request to review that decision on Feb. 22, 2010.

In June 2010, Kristina, who had moved to Texas, filed a petition in Texas civil court asking Texas to declare that the California court's recognition of Charisma as a parent is invalid and unenforceable in Texas. At the same time, Kristina filed a motion in the California court asking California to transfer jurisdiction to Texas. In July 2010, the California court denied Kristina's motion, and in August 2010, the Texas court denied Kristina's petition.

Charisma is represented pro bono by Amanda List and Deborah Wald, with assistance from NCLR. In Texas, Charisma was represented pro bono by Debra Hunt and Connie Moore. Charisma has been previously represented by Amy Rose of Squire Sanders & Dempsey, LLP, Algera Tucker, and Rachel Catt.

### Florida Department of Children and Families v. M.J.H.

 **Victory!** | Florida

V.A., a lesbian who lives in Florida with her partner, has been raising a baby boy, E.L.A.—a relative of V.A.'s—since nine days after he was born. After Florida's Department of Children and Families ("DCF") terminated the parental rights of E.L.A.'s birth mother, V.A. applied to adopt E.L.A. During a hearing to determine whether the adoption was in E.L.A.'s best interests, numerous witnesses testified that V.A. was a loving mother and that the adoption would be in E.L.A.'s best interests. However,

DCF withheld its consent to the adoption solely on the grounds that V.A. is a lesbian, because Florida law prohibits “homosexuals” from adopting. The trial court granted the adoption, holding that the adoption ban violates Florida’s constitution. DCF appealed that decision.

V.A. is represented by attorneys Alan Mishael and Elizabeth F. Schwartz. With pro bono help from Cristina Alonso at the law firm of Carlton Fields, on July 14, 2010,

NCLR submitted an amicus brief to the Court of Appeal explaining the historical context of the adoption ban, which was passed in 1977 in the context of a hateful anti-gay campaign led by Anita Bryant, and showing that the ban unfairly targets lesbian, gay, and bisexual people by singling them out as unfit to serve as adoptive parents, while allowing all other groups individualized consideration. The brief argued that the law is unconstitutional under the Florida constitution’s prohibitions of bills of attainder and special laws, and its equal protection requirement.

On October 28, 2010, the Court of Appeals affirmed the trial court’s decision allowing V.A. to adopt E.L.A.

### L.E. v. K.R.

#### Victory! | Florida

Lara Embry (L.E.) and Kimberley Ryan (K.R.) were a female couple who had two children together in Washington. Each partner gave birth to a child, and each adopted her non-biological child through a second-parent adoption in Washington. The couple moved to Florida, and their relationship ended several years later. They successfully shared equal custody and visitation with both children until K.R. broke their agreement to continue doing so. Although the children had been raised together all of their lives, K.R. decided that they should separate the children, disregard the second-parent adoptions, and each raise only her biological child. K.R. unilaterally cut off all contact between L.E. and her adopted daughter, and refused contact between the children.

NCLR and local family law attorney Leslie Talbot, of Leslie M. Talbot, P.A., represented L.E. in her custody case in the trial court, which initially refused to recognize L.E.’s second-parent adoption. NCLR and pro bono attorneys from Carlton Fields appealed the decision. On May 13, 2009, the Florida Court of Appeals unanimously reversed a lower court ruling and held that Florida must give full faith and credit to adoptions granted to same-sex couples by other states.

Counsel for amicus included Lambda Legal, the law firm of Shook, Hardy & Bacon, LLP, the law firm of Latham & Watkins, LLP, and Jon L. Mills of University of Florida Levin College of Law.

### Debra H. v. Janice R.

#### Partial Victory | New York

Debra H. and Janice R. were a same-sex couple living in New York who planned to have a child together and entered a Vermont civil union.

After Janice gave birth to a child conceived through alternative insemination, Debra and Janice lived together and parented their child together for over two years. After the couple separated, Debra continued to visit the child regularly, until Janice cut off contact when the child was 4 years old. A trial court awarded Debra visitation, and Janice appealed that decision, arguing that Debra should have no parental rights.

The highest court in New York held on May 4, 2010 that Debra is a legal parent because New York must recognize a Vermont Civil Union for purposes of parentage. Unfortunately, the Court declined to overrule an earlier case, *Alison D. v. Virginia M.*, which held that non-biological and non-adoptive parents cannot seek custody or visitation, leaving many families without legal protection.

NCLR wrote an *amicus* brief to the Court of Appeals that was joined by LGBT advocacy organizations from around the country. This brief was filed with the pro bono assistance of Wilson Sonsini Goodrich & Rosati.

### Smith v. Quale

#### Victory! | California

Kim Smith and Maggie Quale were in a committed romantic relationship for over two years. They held a commitment ceremony before family and friends in January 2008. They decided to have children together and used a friend’s boyfriend as a sperm donor. Kim and Maggie paid the donor for his sperm from their joint bank account. They had twins, and raised them together for approximately six months before breaking up. The donor did not meet the twins until they were about a month old, and saw them only sporadically. After the break-up, Maggie severely limited contact between Kim and the twins. Kim then filed a parentage action in Santa Cruz County family court, asserting her parental rights and requesting joint custody. As a defense to Kim’s parentage action, Maggie asked the sperm donor to return from a distant state, file a paternity action, and move in with her and the twins.

Kim was granted joint custody of the twins—and substantial visitation—by the Santa Cruz County court in preliminary hearings. On February 18, 2010, Kim and Maggie were able to settle their case, in a resolution that recognizes both women as the legal parents of their twins.

Kim Smith is represented by NCLR, Deborah Wald, and local counsel Donna Becker, with pro bono assistance from Robert Depew of the firm Wilson Sonsini Goodrich & Rosati.

### Karen Atala Riffo v. Chile

#### Victory! | Inter-American Commission on Human Rights

On May 31, 2004, a Chilean Court ordered Atala, herself a judge in Chile, to relinquish custody of her three children to her estranged husband because she is a lesbian and living with her female partner. The Supreme Court of Chile based its decision on the long-discredited and unsupportable notion that being raised by lesbian parents is harmful for children. With no legal recourse left in Chile, Ms. Atala took her case to the Inter-American Commission on Human Rights (IACHR) in Washington, D.C. NCLR, along with the New York City Bar Association, Human Rights Watch, International Gay and Lesbian Human Rights Commission, International Women’s Human Rights Law Clinic at the City University of New York, Lawyers for Children, Inc., Legal Aid Society of New York, and Legal Momentum, filed an *amicus* brief in support of Ms. Atala, arguing that the Court’s decision is contrary to the weight of international authority.

The IACHR recently ruled that “the Chilean state had violated Karen Atala Riffo’s right to live free from discrimination” when the Court revoked Atala’s custody of her children. The IACHR urged the Chile to make reparations and to adopt “legislation, policies and programmes” to prohibit and eradicate discrimination based on sexual orientation.

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## MARRIAGE & RELATIONSHIP RECOGNITION

### Jackson v. D.C. Board of Elections and Ethics

#### Victory! | Washington, D.C.


NCLR is a member of the Campaign for All D.C. Families, a diverse coalition working to achieve marriage equality for same-sex couples in the District of Columbia. The Campaign is represented by Covington & Burling LLP. On December 15, 2009, the D.C. City Council passed “The Religious Freedom and Civil Marriage Equality Amendment Act



of 2009,” which permits same-sex couples to marry. Mayor Adrian Fenty signed the measure, which took effect on March 3, 2010.

Opponents of marriage equality made several unsuccessful attempts in court to halt the implementation of D.C.’s marriage equality laws, which NCLR helped oppose as part of the Campaign for All D.C. Families. When those efforts were unsuccessful, opponents of marriage equality then sought to put the new D.C. marriage law to a popular vote. The D.C. Board of Elections and the lower courts rejected that effort, ruling that the D.C. Human Rights Act prohibits initiatives that seek to deny rights to a minority group. The D.C. Court of Appeals, the District’s highest court, issued a final ruling on July 15, 2010, affirming the rulings of the Board and the lower courts and confirming that an anti-marriage-equality initiative is impermissible under D.C. law. The initiative’s backers filed a petition for *certiorari* with the U.S. Supreme Court on October 12, 2010.

### Nancy C. v. Alameda County Fire Department

 **Victory!** | California

Nancy C. is an emergency dispatcher with the Alameda County Fire Department. Nancy and her wife, a Canadian citizen, were married in Canada in October 2009. When Nancy learned about the passage of SB 54, the new California law requiring the state government to grant all the rights and benefits of marriage to same-sex couples who get married in other states or countries any time after November 5, 2008, she asked her employer to add her wife as a beneficiary on her health and retirement plans. The H.R. department initially told her that they could not do so, after CalPERS staff incorrectly advised them that only same-sex couples who registered as domestic partners were eligible for benefits. After NCLR advocated with the fire department, with Alameda County, and with CalPERS on Nancy’s behalf, and educated them about their responsibilities under SB 54, CalPERS modified their guidance to comply with SB 54. The Alameda County Fire Department then agreed to add Nancy’s wife as a beneficiary on all of her employee benefit plans.

### Perry v. Schwarzenegger

 **Victory!** Appeal Pending | California

On May 22, 2009, two same-sex couples filed suit in the U.S. District Court for the Northern District of California, challenging California’s Proposition 8, which amended the California Constitution to prohibit marriage by same-sex couples.

NCLR, the ACLU, and Lambda Legal filed a friend-of-the-court brief in the case on June 26, supporting the argument that Proposition 8 violates the federal Constitution.

On August 4, 2010, following a three-week trial, Judge Vaughn Walker ruled that Proposition 8 violates the United States Constitution’s guarantees of due process and equal protection of the laws. The United States Court of Appeals for the Ninth Circuit stayed Judge Walker’s ruling pending its consideration of an appeal of the ruling filed by the proponents of Proposition 8. Oral argument in the appeal is scheduled for the week of December 6, 2010.

### Reynolds and McKinley

 **Pending** | Cherokee Nation

NCLR represents Kathy Reynolds and Dawn McKinley, a same-sex couple who are members of the Cherokee Nation. In May 2004, Reynolds and McKinley obtained a marriage certificate from the Cherokee Nation and married shortly thereafter. The next month, another member of the Cherokee Nation filed a petition seeking to invalidate Reynolds and McKinley’s marriage.

NCLR successfully defended Reynolds and McKinley before the Cherokee high court. Two days later, various members of the Cherokee Nation Tribal Council filed a new action seeking to invalidate Reynolds and McKinley’s marriage. In December 2005, the high court dismissed this second challenge to their marriage.

In January 2006, the Court Administrator, who is responsible for recording marriage licenses, filed a third lawsuit challenging the validity of the couple’s marriage. NCLR is now defending Reynolds and McKinley’s marriage against this third, and hopefully final, challenge. NCLR has asked the court to dismiss the case, and is awaiting a ruling from the Cherokee Nation District Court.

### Varnum v. Brien


 **Victory!** | Iowa

On April 3, 2009, the Iowa Supreme Court unanimously struck down the 1998 state ban on marriage for same-sex couples.

The case was brought by Lambda Legal on behalf of six same-sex couples. NCLR submitted an *amicus* brief with co-counsel McGuire Woods LLP and Joseph Barron, Esq. on behalf of several professors of family law in support of the couples, addressing the use of social science research in constitutional cases.

This was the fourth state supreme court to rule that same-sex couples must be permitted to marry under state law.

### Colombia Diversa, Expediente No. D-6362, Corte Constitucional de Colombia

 **Victory!** | Colombia

A group of Colombian human rights and LGBT organizations challenged their country’s marriage laws that excluded same-sex couples under the Colombia Constitution’s equal protection provision. NCLR filed an *amicus* brief along with the International Gay & Lesbian Human Rights Commission, Center for Health, Science and Public Policy at Brooklyn Law School, and the Center for the Study of Law & Culture at Columbia Law School. The Colombia Constitutional Court ruled on January 28, 2009 that same-sex couples must be granted the same legal rights and responsibilities as different-sex couples in common-law marriages.

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#### ELDER LAW

### Greene v. County of Sonoma et al.

 **Victory!** | California

NCLR clients Clay Greene and the estate of Harold Scull, Greene’s deceased partner of 20 years, reached a settlement on July 22, 2010 resolving their lawsuit against the County of Sonoma and other defendants. Greene and Scull’s estate will receive more than \$600,000 to compensate for the damages the couple suffered due to the County’s conduct.

Greene and Scull lived together for 20 years and had executed both mutual powers of attorney for medical and financial decisions and wills naming each other as beneficiaries. In April 2008, County employees separated the couple after Scull fell outside their shared home. In the next three months, County officials ignored the couple’s legal documentation, unlawfully auctioned their possessions, terminated their lease, and forced Greene into an assisted living facility against his will. The County did not consult Greene in Scull’s medical care and prevented the two from seeing one another. In August, 2008, before the partners could be reunited, Scull passed away.

In August, 2009, Greene and the representative of Scull’s estate, the couple’s longtime friend Jannette Biggerstaff, filed a lawsuit against the County. In addition to agreeing to pay a substantial sum, as a result of the lawsuit, the County has changed or modified a number of important policies in its Public Guardian’s

Office, including requiring County employees to follow protocols before seizing private property, preventing County employees from relocating elders or others against their will, and prohibiting County employees from backdating information in their guardianship database. NCLR represented Greene and the estate of Scull along with The Law Office of Anne N. Dennis and Stephen O'Neill and Margaret Flynn of Tarkington, O'Neill, Barrack & Chong.

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## FEDERAL CIVIL RIGHTS

### Iqbal v. Ashcroft

 **Loss. Remand. | Court of Appeals**

Pakistani national Javaid Iqbal was arrested in New York as part of a post-September 11 dragnet by federal officials that targeted Arab men. The U.S. detained Iqbal, subjecting him to beatings, invasive body searches, and other forms of mistreatment, and often confiscated his Koran and forbade his participation in Friday prayers. NCLR has a strong interest in ensuring that all persons receive the protections of the basic civil liberties guaranteed by the U.S. Constitution, and is concerned about government treatment of individuals, racial/ethnic targeting, and religious freedom violations. NCLR joined an *amicus* brief opposing the government's efforts to make it more difficult for civil rights plaintiffs to discover information about higher government officials who set and oversee policies that violate people's rights.

On May 18, 2009, the Supreme Court ruled 5-4 against Iqbal. Justice Kennedy, writing for the majority, held that Iqbal's pleadings were insufficient to show that former FBI Director Robert Mueller and former Attorney General John Ashcroft violated the constitutional rights of Arab Americans detained in the aftermath of the September 11 attacks.

Justice Souter dissented, joined by Justices Breyer, Ginsburg, and Stevens, said Iqbal should have been permitted to proceed with his case. An article in *The New York Times* called this case "the most significant Supreme Court decision in a decade for day-to-day litigation in the federal courts." The Second Circuit Court of Appeals next decides whether to permit Iqbal to amend his complaint and begin anew.

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## ANTI-DISCRIMINATION

### Ghiotto v. City of San Diego

 **Partial Victory | California**

After being ordered to drive a city fire engine in the 2007 San Diego LGBT Pride Parade as paid employees of the City of San Diego, a

group of firefighters sued the City for sexual harassment and violation of their rights to free speech because they objected to the message of inclusion and support for LGBT rights that the parade promotes. In the trial court, the firefighters lost on their freedom of speech claim but prevailed on the sexual harassment claim. NCLR filed an *amicus curiae* brief in the California Court of Appeal to defend the importance of Pride parades as civic celebrations and to make clear that public employees do not have a constitutional right to refuse needed emergency services to LGBT people or to refuse to participate as representatives of the city to promote goodwill between city departments and the LGBT residents they serve. On October 14, 2010, the Court of Appeal issued a decision affirming the trial court's ruling rejecting the firefighters' free speech claims, but upholding the judgment against the city on the sexual harassment claims.

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## SPORTS

### Apilado, Charles, and Russ v. North American Gay Amateur Athletic Alliance

 **Pending | Washington**

NCLR clients Steven Apilado, LaRon Charles, and Jon Russ had been playing in the San Francisco Gay Softball League and attending the Gay Softball World Series with their team, D2, for years. At the 2008 World Series in Seattle, they made it to the championship game for the first time. But during the championship, D2 learned that their eligibility to play had been challenged based on a tournament rule that each team could have no more than two straight players.

Immediately after the game, five D2 players were summoned to a conference room for a protest hearing. Each player was forced to answer questions about his sexual orientation and his private life in front of a room of over 25 people, most of them strangers. The players were forced to state whether they were "predominantly attracted to men" or "predominantly attracted to women," without the option of answering that they were attracted to both. After each player was interrogated, a panel voted on whether he was "gay" or "non-gay." Ultimately, the predominantly white committee voted that Steven, LaRon, and Jon, all people of color, were not gay, but that the other two players, both white—one of whom had given precisely the same answers as Jon—were gay. The committee recommended disciplinary

measures against Steven, LaRon, and Jon, their team and the San Francisco Gay Softball League, including forcing their team, D2, to retroactively forfeit their second-place World Series win.

Despite its policy of welcoming all players regardless of their sexual orientation, the North American Gay Amateur Athletic Association (NAGAAA), which organizes the Gay Softball World Series, has refused to change the discriminatory rule that excludes players based on sexual orientation, to apologize to Steven, LaRon, and Jon for the public interrogation they endured, or to disavow the practice of interrogating players about their sexual orientations. NCLR and Suzanne Thomas and Cristin Kent of K & L Gates LLP represent Steven, LaRon, and Jon in their challenge to NAGAAA's discriminatory practices, filed in the United States District Court for the Western District of Washington.

### Sulpizio and Bass v. Mesa Community College

 **Victory! | California**

Lorri Sulpizio was the Head Women's Basketball Coach at San Diego Mesa College (Mesa), and her domestic partner, Cathy Bass, assisted the team and served as the team's Director of Basketball Operations for over eight years. Despite their dedication and demonstrated track record of success leading the women's basketball program at the community college, Mesa officials discharged both coaches at the end of the 2007 academic year after Coach Sulpizio repeatedly advocated for equal treatment of female student-athletes and female faculty, and following publication in a local paper of an article identifying Sulpizio and Bass as domestic partners. NCLR and Leslie F. Levy of Boxer & Gerson, LLP and Mattheus Stephens of Stock Stephens, LLP represented Coach Sulpizio in her lawsuit against the San Diego Community College District.

Cathy Bass settled her lawsuit in October 2009. In November 2009, NCLR and their co-counsel represented Lorri Sulpizio in a multi-week jury trial in San Diego. On December 3, 2009, the National Center for Lesbian Rights secured a favorable jury verdict on behalf of Lorri Sulpizio on her retaliation claims. The California State Court jury awarded \$28,000 in damages, which is the equivalent of one year's salary, finding that the District violated Title IX and the California Fair Employment and Housing Act by retaliating against Sulpizio after she complained about gender inequities occurring at Mesa College.



## TRANSGENDER LAW

**Adams v. Federal Bureau of Prisons et al.** Pending | Massachusetts

Vanessa Adams is a transgender woman who is seeking medically necessary treatment for Gender Identity Disorder (GID) while she is incarcerated in the federal prison system. Ms. Adams was diagnosed with GID in 2005 by prison medical professionals and since that time she had made at least 19 written requests to prison officials asking for medical treatment, including hormone treatment for GID. These requests were repeatedly denied because Ms. Adams had not received treatment for GID prior to incarceration. As a result of these denials of treatment, Ms. Adams attempted suicide multiple times and eventually removed her own genitals—in an attempt to live more consistently with her gender identity.

The National Center for Lesbian Rights, Gay and Lesbian Advocates and Defenders, Florida Institutional Legal Services, and Bingham McCutchen LLP, filed a lawsuit in February 2009 against the Federal Bureau of Prisons, seeking to enjoin the Bureau from subjecting Ms. Adams to unconstitutional treatment and from continuing to enforce its current GID policy—which denies medically necessary care to many transgender prisoners—against other incarcerated transgender people. The Bureau filed a motion to dismiss the lawsuit in September 2009, which a U.S. district court judge in Massachusetts denied on June 7, 2010. In August 2010, the Bureau filed a motion for reconsideration and on Sept. 8, 2010, the judge once again denied the Bureau's attempt to dismiss the lawsuit. The case is now in active litigation.

**Gammett v. Idaho State Board of Corrections** Victory! | Idaho

Jennifer Spencer served a 10-year prison sentence for possession of a stolen car and a failed escape attempt that occurred when she was a teenager. While she was incarcerated in Idaho, Spencer, a transgender woman, made 75 requests for treatment for her gender identity disorder (GID), but the Idaho Department of Corrections (IDOC) failed to provide her with any appropriate care. Spencer attempted suicide when she learned that prison doctors would not provide any treatment and eventually removed her own genitals using a disposable razor blade, nearly

bleeding to death in the process. On July 27, 2007, Judge Mikel Williams of the Federal District Court for the District of Idaho ruled that, based on extensive expert medical testimony, Spencer is entitled to receive female hormone therapy while her case is being decided. Judge Williams held that “gender identity disorder, left untreated, is a life-threatening mental health condition.” On September 7, 2007 Judge Williams denied a motion for reconsideration and again held that Spencer must receive hormone therapy. Jennifer started receiving appropriate counseling and hormone treatment in Fall 2007. Because there are so few decisions addressing this important issue, this is a tremendous victory that may pave the way for other transgender prisoners who are being denied medically necessary care.

In June 2009, the Idaho Department of Corrections released two new policies to improve the delivery of health care to transgender prisoners. In July 2009, the case settled to the satisfaction of all parties. Jennifer was released from prison in late 2009.

NCLR's co-counsel were Sheryl Musgrove, Morrison & Foerster LLP, and the Idaho firm of Stoel Rives, LLP.

## YOUTH

**Doe v. Vermilion Parish School Board** Pending | Louisiana

In the fall of 2009, officials at the public Rene A. Rost Middle School in Vermilion Parish, Louisiana decided to implement mandatory sex-segregated classes. They did not offer equivalent co-ed classes for students or parents who objected. The ACLU filed suit against the school district in federal court, arguing that the mandatory single-sex classes plainly violated the federal law against sex discrimination in education, Title IX. The district court ruled in the school district's favor, and the plaintiffs appealed to the Fifth Circuit Court of Appeals.

NCLR joined an *amicus* brief in support of the plaintiffs, filed on June 6, 2010, that was authored by the National Women's Law Center and Morrison and Foerster LLP. The *amicus* brief argued that the school's mandatory sex segregation policy violated both Title IX and the equal protection clause of the U.S. Constitution, because it discriminated against students based on sex, relying on gender stereotypes to create very different educational opportunities for boys and girls, without any compelling justification. The Fifth Circuit heard oral argument in the case on October 5, 2010.

## IMMIGRATION

**J.G. v. Holder** Pending | Mexico

J.G. is a gay man from Mexico who experienced repeated sexual and physical assaults in Mexico because of his sexual orientation. He fled to the United States in 1999 after being attacked for the last time. He told no one about his sexual orientation for several years because he was so traumatized by his experiences of violence in Mexico. In 2004, after a notary offered to fill out an application to get him a work permit, J.G. found himself unexpectedly in an interview with an asylum officer. When the officer asked him if he was gay, he admitted that he was, but he was so unprepared and anxious that he did not mention the serious abuse he had experienced in Mexico.

His case was then referred to the immigration court, and he found an attorney to represent him. That attorney failed to make several basic arguments or introduce key evidence about his eligibility for asylum. When he lost at the immigration court, his attorney appealed his case to the Board of Immigration Appeals. He lost that appeal as well, because she again failed to make important arguments. The attorney then resigned from practicing law without notifying J.G. When he got the notice that his appeal had been denied, he tried contacting her numerous times, unsuccessfully. Desperate for help, he eventually found his way to NCLR's Immigration Project.

NCLR took on his appeal to the Ninth Circuit Court of Appeals and filed a motion to reopen his case with the Board of Immigration Appeals based on the ineffective assistance of his previous counsel. That motion was filed on October 14, 2010.

**Martinez v. Holder** Loss | Guatemala

Saul Martinez is a gay man from Guatemala who was beaten, sexually assaulted, and threatened by Guatemalan Congressman and repeatedly harassed by the Guatemalan police because of his sexual orientation. He fled to the United States and applied for asylum. However, in 1992, when he initially applied for asylum without an attorney, the U.S. had not yet recognized sexual orientation as a ground for asylum. Afraid of being forced back to Guatemala, where he feared for his life, Martinez did not disclose his sexual orientation in his initial asylum application, stating instead that he feared returning to Guatemala because of his political opinion. Once he retained an

attorney, however, he immediately corrected his application and told the Immigration Judge the real reason he feared returning to Guatemala—because of the persistent persecution he had faced for his sexual orientation. The judge denied him asylum, finding that since he had not told the truth in his initial application, nothing else he said was credible, even though Martinez's life partner testified in court about their relationship. On March 3, 2009, the Ninth Circuit upheld the immigration court's decision. Without any analysis of Martinez's actual claim or the conditions in Guatemala for LGBT people, the Court simply declared him not credible and denied his claim.

NCLR and Immigration Equality filed an *amicus* brief on April 24, 2009 asking the Ninth Circuit to rehear the case and grant Martinez asylum. However, on September 8, 2009, the Ninth Circuit denied the motion for rehearing. On March 26, 2010, the Supreme Court denied Saul Martinez's petition to review the case.

### In re A.C.

#### Victory! | Honduras

A.C. is a prominent lesbian activist for LGBT rights and women's rights in Honduras. A paramilitary gang of masked, armed men attacked A.C. in her home in Honduras and sexually assaulted her while making derogatory comments about her sexual orientation. A.C. did not report the sexual assault to the police, fearing that the police would subject her to further harassment or violence. After the attack, A.C. received a series of threatening phone calls that also used derogatory terms to describe her sexual orientation. She eventually fled to the United States and filed for asylum. The Immigration Judge granted A.C. asylum, but the Department of Homeland Security appealed that decision to the Board of Immigration Appeals (BIA). In March 2009 the BIA affirmed the grant of asylum, noting that it is well established that human rights violations against LGBT people are pervasive in Honduras and that the Honduran government cannot be relied upon to protect LGBT people against such harm. NCLR assisted A.C.'s pro bono counsel, Robin Nunn, in preparing her brief for the BIA.

### In re S.K.

#### Pending | Pakistan

S.K. is a gay Pakistani man seeking asylum and withholding of removal because he fears persecution based on his sexual orientation and HIV status. Under Pakistani law, being gay is punishable by death, and LGBT people are forced to live in secrecy and constant fear

of exposure. The Immigration Judge ignored the serious risk of persecution that S.K. faces and denied his application for asylum. The judge held that S.K., who is HIV positive, and was in a committed relationship with a man in Minnesota, could avoid persecution by hiding his sexual orientation, marrying a woman, and having children. The Immigration Judge also failed to recognize that S.K.'s traumatizing diagnosis of HIV understandably delayed his filing. The Board of Immigration Appeals (BIA) originally upheld the Immigration Judge's decision, and S.K. appealed.

After NCLR submitted an *amicus* brief to the Eighth Circuit, that court agreed to send the case back to the BIA so that the Board could clarify its decision. NCLR helped to organize other LGBT, HIV/AIDS, and immigrant-rights groups, including the National Immigrant Justice Center, Immigration Equality, ACLU, AIDS Legal Council of Chicago, and International Association of Physicians in AIDS Care to submit a joint *amicus* brief in support of S.K. to the BIA in July 2008. In May 2009, the BIA remanded the case to the Immigration Judge to reconsider the original ruling, instructing the judge to assume that S.K. would not hide the fact that he is gay. The hearing on remand is scheduled for May 2011.

### John Doe v. Alberto Gonzales

#### Pending | Egypt

John Doe, a gay man from Egypt, applied for asylum based on anti-gay persecution he suffered in Egypt, where gay men are frequently arrested and subjected to brutal physical mistreatment for private, non-commercial, consensual adult sexual conduct. The Immigration Judge and Board of Immigration Appeals denied his application. NCLR and the International Gay & Lesbian Human Rights Commission filed an *amicus* brief in support of Doe's eligibility for withholding of removal and relief from removal under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

### In re Vicky

#### Pending | Mexico

Vicky is a young transgender woman from Mexico. Throughout her childhood, Vicky's family and the people in her small town attacked her for her femininity. When she was 16, Vicky came home from school to find that her parents had abandoned her. She fled to the United States in 1994. In 1997, she began living as a woman. In 2003, she was detained by the Phoenix police and deported

to Mexico. Vicky sought out her family, hoping for reconciliation, but instead her brothers beat her. Vicky remained in Mexico for eight months, but she was often beaten, ridiculed, and threatened, and a fruit stand she had opened was destroyed. She returned to the United States and applied for asylum, with the help of NCLR and pro bono attorneys at the law firm of Hanson Bridgett LLP. As of 2009, Vicky has been waiting for her asylum decision for over three years.

### In re E.G.

#### Victory! | Uganda

E.G. is a young gay man from Uganda who came to the United States in order to pursue higher education. As a child and young adult, he was often verbally abused by his family members for behaving in a way that seemed too different from other boys. As he grew older, he learned to hide his sexuality for fear of being arrested by the police on the basis of his sexual orientation. E.G. hid from government operatives who hunt down men who are suspected to be gay, and then once arrested, are often tortured.

Fearful for his safety and life, E.G. suppressed his feelings and dedicated himself to his studies. When an opportunity to come to the United States on a scholarship arose, he immediately accepted. This scholarship meant everything to him, not only because of the opportunity to pursue higher education, but also because he knew that he would be free to live openly as a gay man. He arrived in the San Francisco Bay Area, went to school, met someone, and fell in love.

When a family friend in the U.S. found out about his sexual orientation, the acquaintance proceeded to tell E.G.'s family in Uganda, who summoned him home to face the consequences. E.G.'s attempts to explain his feelings to his family have been met with rejection, and all means of communication have been closed for almost two years. In addition to rejecting him as their son, his parents have reported E.G. to the police, and as a result, the police have questioned and intimidated his siblings and old friends in order to find out when E.G. would be returning to Uganda. Upon his return, he would be arrested and face jail time, torture, humiliation, and possibly death. E.G.'s asylum was granted in March 2010.

### In re Marta

#### Victory! | Mexico Immigration Court

Marta is a transgender woman from Mexico who suffered unthinkable verbal, physical, and



sexual abuse because of her sexual orientation and gender identity. The abuse began in her youth when she was abducted by a group of armed men. When her brother came to rescue her, he was shot to death in front of her.

When the police arrived, Marta was arrested for refusing to give them the names of the men who had abducted her. She was put in jail for several days where she was raped by the police. After that, she became a frequent target of the police, and when placed in jail for not paying a bribe, she was detained for days at a time and repeatedly raped while imprisoned. In 2001, Marta applied for asylum, withholding of removal, and relief under the Convention against Torture. After hearing her testimony, the Immigration Judge found her credible and granted her applications for withholding of removal and relief under the Torture Convention. U.S. Citizenship and Immigration Services appealed to the Board of Immigration, arguing that she was subject to reinstatement, drawing out an already difficult legal procedure. While the case was pending, she reported regularly to Department of Homeland Security (DHS) pursuant to an Order of Supervision. In November 2008, DHS took Marta into custody to reinstate the prior removal order against her. NCLR and pro bono attorney Cara Jobson represented Marta in Immigration Court. Marta remained in custody for 4 months until she was granted withholding of removal and asylum in the United States in February 2009.

### In re M.G.

#### Victory! | Mexico

M.G. is a gay man from Mexico who came to the United States fleeing physical abuse from gangs and extortion by the police. When his mother died when he was 17, M.G. faced more physical violence from his father and his oldest brother because of his sexual orientation. Feeling desperate, he moved out and was homeless until he was eventually taken in by a neighbor in his small town of Mixquiahuala de Juarez. This neighbor treated him like a son and gave him shelter, food, and protection. Nevertheless, her sons were unhappy about M.G. staying there and would not allow him to eat at the table with them or enter their homes. By the time he was 20, he left and headed for the capital, where he found a job in an auto shop. He also lived in the shop because he could not afford to pay rent. While living in the capital, he was attacked several times by a gang for being gay and was being extorted by the police. He decided to flee

to the United States and apply for asylum with the help of NCLR. His application was submitted in September 2009, and his asylum was granted in March 2010.

### In re R.T.

#### Victory! | Peru

R.T. is a gay man from Peru who fled to the United States because he was the victim of severe harassment and violence in his home country. While in Lima, Peru, he was physically assaulted several times in public, and was subjected to sexual abuse as well. The persecution started when he was young, with verbal and emotional abuse that eventually led to physical abuse. As he grew older, the abuse and harassment only worsened. After being stripped naked at his workplace by co-workers who constantly harassed and physically abused him, he fled to the United States fearing for his life. Neither the Peruvian authorities nor his employer would protect him from the other employees who harassed and assaulted him. With the guidance of a Peruvian friend residing in San Francisco, R.T. obtained a visa to come to the U.S. where he found NCLR and was able to apply for asylum. His application was granted in July 2009.

### In re S.H.

#### Pending | Bosnia Immigration Court

S.H. is a lesbian from Bosnia who came to the United States in 2006 to escape the oppressive and abusive conditions she faced because of her sexual orientation in her home country. While vacationing with her girlfriend in another town, a group of men found out that they were lesbians and raped them. The police initially took a report but later that night told the two women that they had to leave town. The police blamed the women for the assault and accused them of trying to cause problems in a small town. After the rape, S.H. told her mother about her sexual orientation, and her mother turned her back on S.H. and refused to talk to her. At the same time, her father kept her secluded in their home so that S.H. would be unable to see her girlfriend, and was determined to marry her to a man. After a second rape attempt, S.H. fled her country. She learned about an exchange program and was able to leave Bosnia in 2006. She submitted an asylum application on her own, but was referred to the Immigration Court. Her hearing began in June 2009 but was continued until May 2010. NCLR is working with pro bono attorney Cara Jobson of Wiley and Jobson on her case.

### In re V.R.

#### Victory! | Mexico

V.R., a gay man from Mexico, had been taunted, harassed, and assaulted for most of his life. His stepfather was particularly abusive and attempted to “make a man” out of V.R. and “correct” his sexual orientation. V.R. was also subject to constant verbal and physical harassment at school, which only worsened as he got older. He suffered physical, sexual, and emotional abuse at the hands of classmates, family members, and people in his neighborhood. He eventually left his home town of San Jose Chiltepec when he was 25 after suffering several public attacks. He moved to Tijuana where his situation improved slightly, but deteriorated when his neighbors discovered his sexual orientation. His home and his car were constantly vandalized, and he would wake up to find graffiti on the walls of his home and the tires of his car slashed. He called the police to report the vandalism but they would not respond to his calls. When he was attacked by four men who threatened his life and assaulted him with a knife, he tried to contact the police again, but they still refused to help him. He knew that he had no other choice but to flee his country. When he arrived in the United States, V.R. was referred to NCLR by his friends in San Francisco. His application was submitted in September 2008 and was granted in June 2009.

### In re Y.G.

#### Victory! | Mexico Immigration Court

Y.G. is a transgender woman from Mexico who suffered severe physical and mental abuse from her family because of her gender identity. Growing up, her family insisted that she act more “masculine,” and she was physically abused when she refused. She went to the police, but they ignored her need for protection. In February 2007, Y.G. was badly beaten by gang members who left her bleeding from head wounds. Fearing for her life, she fled to the United States. In February 2009, she was detained by the police and detained in the Yuba County Jail. As a transgender woman, she was housed with male prisoners. It was a very demoralizing situation for her, and she often struggled with her decision to remain and fight for her asylum instead of returning to Mexico where she would be in danger. Y.G.’s cousin contacted NCLR and in February, 2009, NCLR with the help of attorney of counsel Cara Jobson, successfully obtained asylum for Y.G. in July 2009.

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The National Center for Lesbian Rights is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education.

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