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Marriage Case Moves into Final Phase at Massachusetts High Court

On November 8, 2002, GLAD set forth its case for marriage for lesbian and gay couples before the Massachusetts Supreme Judicial Court, culminating a year and a half of intensive work. On April 11, 2001 GLAD had filed suit on behalf of seven gay and lesbian couples from throughout Massachusetts who had been denied marriage licenses by their city or town clerks simply because they did not fall in love with the person of the "right" sex.

In many ways, the case is a simple one: gay men and lesbians share the common human desire and need to live fully and to create meaningful relationships. In our society, the bond of love between two individuals finds expression in the institution of marriage which works, in myriad ways, to support the flourishing of that relationship.

GLAD believes that our civic society should provide the same opportunities for the recognition and support of relationships and families to all citizens.

The Massachusetts Constitution and laws acknowledge these values by recognizing a fundamental right to marry the person of one's choice, by requiring that all citizens be treated equally and by demanding that the government bear a heavy burden of persuasion when it denies access to a basic institution of society to any group of citizens.

When GLAD presented its arguments to the court on November 8th, it was joined by a stunning array of supporters in 10 friend-of-the-court briefs filed by 11 major law firms. They make the following points:

- ▲ the law creates hundreds of legal protections for couples that are unavailable without marriage (Boston Bar Association);
- ▲ barring gay men and lesbians from marriage is just as wrong as using marriage to ban interracial couples from marrying as

once was the case, or to deprive women of their legal rights (20 civil rights organizations);

- ▲ marriage has never depended on whether a couple is willing or able to procreate (leading family law experts in Massachusetts);
- ▲ the scientific consensus is that gay and lesbian parents do as good a job as non-gay parents (child welfare organizations and experts);
- ▲ many clergy and congregations support the right of lesbian and gay couples to marry (over 140 individuals and congregations representing 13 different denominations);
- ▲ allowing same-sex couples to marry is no more controversial than the many changes that have occurred in marriage throughout American history (from 26 prominent historians);
- ▲ recognition of same-sex couples is the trend throughout the world (16 international organizations and 19 professors of international law);
- ▲ marriage is a uniquely powerful way to communicate a couple's commitment and comes within our constitution's protection of intimate association (from 13 constitutional law scholars);

Marriage Case *continued on page 5*

GLAD's suit was backed by a stunning array of friend-of-the-court briefs filed by major Boston law firms on behalf of numerous organizations, experts and religious denominations.

spirit of justice



MAINFRAME PHOTOGRAPHICS, INC 2002



If you were absent for this year's **Spirit of Justice Award Dinner**, you missed a lot! Pulitzer Prize-winning playwright Tony Kushner, the honoree, dazzled the audience with hilarious remarks about serious topics: the state of the union, his favorite awards, and the similarity of dramatic writing and the legal pen in promoting a just world. Former GLAD board member, Jane L. Scarborough, gave a compelling speech about GLAD's legal work and commitment to pushing the envelope in the fight for LGBT rights. GLAD was honored to have these two very distinguished activists' involvement and the wonderful leadership of the event co-chairs: Elyse Cherry, Adam Cardinal and Andrew Searle.



Rhode Island party

Former state representative Nancy Hetherington is recognized by GLAD for her support of LGBT rights at the **Rhode Island Party** in August. Activist Tina Wood presented the Award.



GLAD's annual Summer Party in Provincetown was another great success.

summer party



MARYANN CHAISSON

VICTORIES

GLAD has had a wonderfully busy and successful year. Just since the Fall we have had several important victories:

ACCESS TO HEALTH CARE – HIV – NEW HAMPSHIRE

In the Fall of 2000, GLAD's client arrived at his doctor's office for a scheduled urological procedure. He was prepped and unclothed – when the doctor decided that he couldn't go forward because he "did not know whether his sterilization procedures were effective against HIV."

The doctor's expressed concern was troubling because, if true, he presumably wouldn't have wanted to use the equipment on any patient since he doubted that his sterilization procedures met the "universal precautions" standard. Excluding our client would not have guaranteed the protection of others.

GLAD filed a complaint at the New Hampshire Human Rights Commission. After a complete investigation, the Commission found probable cause to believe that unlawful discrimination had occurred. Prior to a public hearing, the case was settled satisfactorily to our client.

John Doe v. Richard Roe, M.D., et al.

FAMILY DISCOUNTS – CONNECTICUT

The Town of West Hartford's Cornerstone Aquatic Center offers discounted family memberships to married couples or to parents. When the Center defined "parents" it included legal parents, step-parents and adoptive parents. However, the Center's definition excluded same-sex co-parents or someone who parents a child with a non-marital partner.

For most families, the exclusion from the family membership amounts to several hundred dollars per year. Representing four couples with children (both gay and straight), GLAD, together with Attorney Maureen Murphy, sued the Town at the Connecticut Commission on Human Rights and Opportunities (CHRO), asserting discrimination in a place of public accommodation on the basis of both sexual orientation and marital status.

The CHRO ruled that there was probable cause to believe that the Town had engaged in unlawful discrimination on the basis of both sexual orientation and marital status. The Town then sought to avoid a hearing before the CHRO by filing its own lawsuit in Connecticut Superior Court. At the urging of the court, the Town agreed to enter into mediation; and the matter has now been settled.

The Town is implementing a new fee schedule that will include rates that treat all families equally.

Brett & Gable, et al. v. Town of West Hartford, Cornerstone Aquatic Center

PARENTAL RIGHTS FOR NON-BIOLOGICAL PARENTS – MAINE

Imagine this scenario: you and your partner jointly decide to have a child, with your partner as the birth mother. You draft legal papers in advance of the birth and change your surnames so that, all three of you will have the same name. When the child was born in 1994, you and your partner send out a joint birth announce-

ment, sign a shared parenting agreement and agree to continue co-parenting, including financial support, even if you separate. Powers of attorney and a co-guardianship are created to attempt to secure your legal relationship with your child. You act as a full, equal parent in every way for five years – at which point your partner moved out of the family home for another relationship. Your child continues to live with you but then a year later, your former partner files a suit to terminate your co-guardianship.

GLAD, with cooperating counsel Patricia Peard and Ken Altschuler, is representing a non-biological mother who finds herself in this situation. In the lawsuit, GLAD asserts that this mother is entitled to parental rights as a de facto parent. Maine law recognizes a de facto parent as someone who lives with a child for at least two years, forms a parent-child relationship with the legal parent's consent, often performing caretaking functions as least as great as that of the legal parent.

This summer, the trial court ruled in favor of GLAD's client, finding that the non-biological mom had more than met Maine's requirement to be a de facto parent and that there was no reason to refuse to extend de facto parenthood to same-sex partners. As a result, the court declared that GLAD's client be "granted the rights and responsibilities of any parent under the laws of the State of Maine, including shared custody of J.E.W."

The biological parent has appealed to the Maine Supreme Judicial Court where GLAD will continue to defend the rights of non-biological de facto parents.

C.E.W. v. J.E.W.

PARENTAL RIGHTS FOR NON-BIOLOGICAL PARENTS – NEW HAMPSHIRE

In a case raising issues similar to those in the C.E.W. v. J.E.W. case in Maine, GLAD is assisting Attorney Lizabeth MacDonald in the representation of a non-biological mother who is seeking visitation with her child.

Here, after the couple separated, the biological mother denied her former partner any contact with the child they had jointly raised for three and a half years. The non-biological mom (K.P.) filed a petition for visitation, and the biological mother responded with a motion to dismiss, arguing that the court had no power to recognize K.P. as the child's parent. The trial court judge denied the biological mother's motion to dismiss finding that the court did have the power to decide what would be in the child's best interests. The judge then ordered interim visitation for K.P. until the case is finally resolved.

The biological mother attempted to get the New Hampshire Supreme Court to intervene to overturn the interim orders, and GLAD prepared papers for the Supreme Court urging the court to summarily affirm the trial court's order.

The New Hampshire Supreme Court declined to review the case and let stand the trial court's decision that it had the power to recognize the parental relationship between K.P. and her child. The case will now proceed to a hearing on whether K.P.'s visitation claim is ultimately in the child's best interest.

K.P. v. K.B. ▲

The Faces of GLAD

GLAD is nothing if not its people – Board, staff, volunteers and donors. In this issue of GLAD Briefs we want to highlight just a few faces at GLAD.

Dr. Thomas Bombardier and John Kirby Fowler

MARYANN CHAISSON



Tom (left) and John, at the Ogunquit Party.

Tom Bombardier and John Fowler have been GLAD supporters since 1998 when they were formally introduced to GLAD by Tim Stein at the first GLAD Ogunquit Party. Tom and John have a special interest in family issues as they are the proud new fathers of two children they have adopted from Guatemala.

Believing very deeply in the importance of families and, particularly, in stabilizing and increasing the legal support structure for gay and lesbian families, John and Tom delighted all of us at GLAD by establishing in September 2002 the Fowler-Bombardier Family Charitable Fund at GLAD and committing \$125,000 to it in the period 2002-2004. The Fund will be used to support GLAD's marriage and family work, which has been one key component of GLAD's work over the course of our history. Particularly in recent years, as more and more gay and lesbian couples have been forming families with children, this work has become ever more critical to protecting and supporting our families.

We are tremendously grateful to Tom and John for this extraordinary gift, which allows so much important work to continue.

Wayne R. Fette

This year we had to say goodbye to two Board members from Maine: Pat Peard, who had been on the Board for many years and who remains an important cooperating attorney on GLAD's legal work; and Brenda Buchanan who served a year on the Board.

We didn't have to look hard to find our first Maine replacement. Since 1998, Wayne Fette and his partner, Tim Stein, have been hosting what has become the most delightful (and successful) regional GLAD event – the Ogunquit Party at The Black Boar Inn, which is owned by Tim and Wayne.

Wayne is actively involved in the Ogunquit community, serving both the general community and the LGBT and HIV communities. Beyond his ties to the Maine community, Wayne brings to the board many technological and artistic skills. Welcome Wayne!



Wayne (left) and Tim, hosts of the Ogunquit Party.

MARYANN CHAISSON

Jamie Pierce



GLAD would not be where it is today without its volunteers who provide so much valuable service to the organization. One area is computer technology, and we would be remiss not to mention Robert DeBenedictis and Don Picard, a couple who gave GLAD its first taste of technological maturity during the past five years or so.

Today, Jamie Pierce, who has been working tirelessly on some key projects, is now carrying that torch. First, over the past few months, Jamie has worked with our Public Education Director Gavi Wolf, to completely revamp our Legal Information Hotline database. Through Jamie's work, our hotline workers can now enter all calls directly into the database and access all our resource lists such as the Lawyer Referral Service. This replaces a system where all Hotline data was first recorded by hand and then later entered into the database by a staff person. The result is phenomenal in reducing errors and freeing staff for other needed work.

Jamie has now turned to the task of assisting in the continued improvement of our website. Through his efforts, all the briefs filed in GLAD's Massachusetts marriage case on November 8th were available online by the end of that business day.

Jamie and his partner Rick Cresswell have also been loyal donors to GLAD since 1990. Jamie even agreed to wear a tie to the Spirit of Justice Dinner in September!

Alexis D'Arcy

We are pleased to welcome to the staff Alexis D'Arcy as our Spanish Speaking Client Advocate/Public Educator. In this position, which is part of the AIDS Law Project, Alexis is responsible primarily for GLAD's educational outreach on HIV issues to communities of color throughout the Commonwealth of Massachusetts. The position is funded by a grant from the Massachusetts Department of Public Health.

Alexis arrived at GLAD in October, 2002 fresh from a four-month stretch as a community outreach worker and organizer for the Massachusetts gubernatorial campaign of Robert Reich. Alexis is a 2002 graduate of Brandeis University. She aspires to a career in the law. ▲



Need help?

Have a legal question for GLAD?

Call our **Legal Information Hotline** any weekday afternoon!

1-800-455-GLAD

GLAD's Docket

GLAD's docket includes a great many matters from around the New England states. Here are four cases that represent some of our current efforts:

THE BOY SCOUTS – CONNECTICUT

Despite the United States Supreme Court decision ruling that the Boy Scouts of America (BSA) were free to discriminate and flaunt their exclusion of gay scouts and leaders, it was clear that that decision would not end the struggle for change at the BSA.

Around New England, the LGBT community has been working within local communities and with many allies to change BSA policy. One high-profile effort has involved the BSA's inclusion in the employee charitable giving campaign in Connecticut. There, led by GLAD's legal work, the state concluded that it would violate Connecticut's anti-discrimination law to allow the BSA access to the employee giving campaign when the BSA refused to sign the State's required statement of non-discrimination. The BSA then sued in federal court and LOST. The court ruled that, although free to discriminate, the BSA was not entitled to privileges offered by the state if they did so.

The case is now on appeal to the U.S. Court of Appeals for the Second Circuit where GLAD will once again be setting forth its legal arguments.

Boy Scouts of America v. Wyman

DOMESTIC PARTNERSHIP – HEALTH INSURANCE – CONNECTICUT

A group of teachers and school administrators in Manchester, Connecticut – like workers everywhere – know that health insurance benefits are a significant portion of their compensation.

Marriage Case continued from page 1

- ▲ the history of the liberty and equality provisions in the Massachusetts Constitution mean that gay people cannot be excluded from marriage (from a group of state constitutional law scholars); and
- ▲ the court's role is to decide controversial constitutional issues and then provide an appropriate remedy for constitutional violations (from 20 law professors).

This incredible show of support, both local and national, demonstrates the strength of our position. More and more people see the inequality faced by gay and lesbian couples and families and are committed to abolishing it.

As you read this, the Attorney General is preparing to file his brief in support of the current marriage laws. GLAD will have an opportunity to reply to his position in January, and the Supreme Judicial Court should hear oral argument in the case in either February or March of 2003. After that, we hope for a decision as early as the Summer of 2003.

For a full text of all the briefs that have been filed as well as other materials on marriage, including profiles of the seven plaintiff couples, visit www.glad.org. ▲

They have applied for, and been denied, these benefits for their same-sex partners. The result is simple – unequal pay for equal work. GLAD is representing this group of employees in asserting claims that the denial of these insurance benefits violates Connecticut's law prohibiting discrimination based on sexual orientation and marital status. GLAD is working to persuade the Board of Education that this denial of benefits is illegal.

Brindamour, et al. v. Manchester, CT Board of Education

NEEDLE EXCHANGE – MASSACHUSETTS

On Thursday, October 10, 2002, the Massachusetts Supreme Judicial Court heard argument in Maria Landry's case about her possession of a hypodermic needle. Maria had received that needle from an approved needle-exchange program in Cambridge, MA and had then traveled to Lynn, MA with the needle. There she was arrested in a jurisdiction where the District Attorney believes that those needles stop being legal when she steps outside the city or town that has a state-approved exchange program even though state law says that possession of a program needle "shall not be a crime."

GLAD believes that needle exchange is a key component of HIV prevention and that the District Attorney's position would undermine the viability of a proven public health strategy to prevent disease and death.

GLAD filed a friend-of-the-court brief on behalf of 30 state and national medical, public health, substance abuse and AIDS service organizations. GLAD also authored a second amicus brief on behalf of law enforcement officials, including five police chiefs, arguing that needle exchange programs do not undermine law enforcement and actually create a safer environment for police.

Commonwealth v. Landry

RECOGNITION OF VERMONT CIVIL UNIONS – CONNECTICUT

As we all know, Vermont made history in 1999, when its Supreme Court ruled that it violated the Vermont State Constitution to deny committed same-sex couples access to the rights afforded by the state to married couples. That ruling led to the creation of Civil Unions in Vermont. As of today, nearly 5,000 couples have entered Civil Unions. Of those couples, approximately 35% reside in New England.

One major question flowing from these events is how Civil Unions will be treated in other states. One situation sure to arise is when couples seek to terminate their civil union, i.e., get divorced. They can surely do that in Vermont, but you have to be a resident of Vermont for one year in order to seek a dissolution of a Civil Union there.

A case has now arisen in Connecticut where a state resident asked the Connecticut courts to dissolve a Civil Union he entered with his partner on December 31, 2000. Both the Superior Court and the intermediate appellate court have ruled that the Connecticut courts simply have no jurisdiction to entertain such a lawsuit. The matter is now on appeal to the Connecticut Supreme Court, and GLAD is working to coordinate a briefing strategy on this important issue.

Rosengarten v. Downes ▲