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## GLAD Files Challenge to Massachusetts Sodomy Laws

### GLAD Seeks To Overturn The Last Sodomy Statutes In New England

Since the United States Supreme Court's infamous 1986 ruling in the case of *Bowers v. Hardwick* upholding Georgia's sodomy law, ten states have thrown out their sodomy statutes either by judicial decision or legislative repeal. Only one state, Louisiana, has upheld its law when challenged. In the upcoming months, Massachusetts citizens will learn on which side of this line our laws will fall.

On Wednesday, July 12, 2000, GLAD filed suit in the Massachusetts Supreme Judicial Court to overturn the archaic sodomy laws still on the books in the Commonwealth. Three defendants are named in the suit: Attorney General Thomas Reilly, the state's chief law enforcement officer, who had campaigned for office on a platform that disavowed the appropriateness of the continued existence of the sodomy laws; District Attorney Martha Coakley of Middlesex County; and District Attorney Ralph Martin of Suffolk County. Both Suffolk and Middlesex Counties have seen charges of sodomy filed in the past year.

The subject of the lawsuit is two Massachusetts statutes, General Laws Chapter 272, Sections 34 and 35. Section 34 criminalizes the "abominable and detestable crime against nature, either with mankind or with a beast." For the uninitiated, these words mean anal intercourse and bestiality. The statute, by its terms, applies to everyone – gay or not, married or not. Of course, people have rather consistently assumed that these laws are meant to outlaw homosexuals and nothing more. Violation of Section 34 is a felony subject to a potential of 20 years imprisonment.

Section 35 criminalizes "unnatural and lascivious acts with another person." Over time, these words have come to include all types of oral and anal intercourse, "involving a part of a person's body or other object." *Commonwealth v. Gallant*, 373 Mass. 577, 584 (1977). Like Section 34, this law applies to everyone and is also a felony subject to a potential of 5 years imprisonment and a \$1,000 fine.

What do these statutes mean today? As most of us recognize, a large majority of people, both gay and non-gay, engage in conduct prohibited by Massachusetts sodomy laws. We do so resting comfortably with the knowledge that there are no standing "bedroom" police prowling neighborhoods and looking to charge people with violations of these statutes.

At the same time, everyone – and particularly gay people – remains at risk of a prosecutor's discretion to use these laws. Interestingly, in *Bowers v. Hardwick*, Michael Hardwick was charged under Georgia's sodomy law when police officers found their way into his bedroom, looking for him on an unrelated matter. And just recently, in June 2000, in a Texas case,

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## GLAD is Growing to Better Serve All of New England: Regional Director of Development is Hired With a New Staff Attorney Soon to Follow

*The year 2000 is turning out to be a year of substantial organizational growth at GLAD. We began the year with a full-time staff of 12, and we will soon increase that number to 15.*

### GLAD's New Regional Director of Development

First, after more than a year of careful planning and consideration, the GLAD Board of Directors voted at the very end of 1999 to expand to put additional staff resources at work throughout GLAD's entire New England region and, specifically, outside of Eastern Massachusetts.

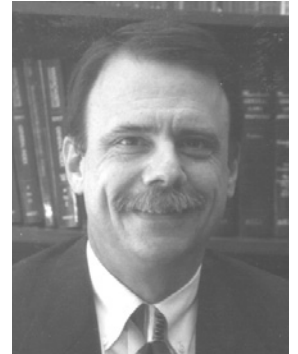
As most of you know, GLAD has consistently done impact litigation and policy work in all 6 New England states. In addition, GLAD has provided legal support to community organizations and leaders in all of the New England states; and GLAD staff has spoken on legal issues in every corner of the region. (GLAD's most recent 1999 Annual Report focuses on GLAD's work in each of the 6 New England states. I hope you have seen and enjoyed it!)

It is also important to note that GLAD's legal information Hotline serves all of New England with an "800" number [1-800-455-GLAD]. Moreover, over the past 2 years, GLAD has worked hard to increase the number of lawyers participating in GLAD's Legal Referral Service so that everyone in New England might have at least one available, local, legal resource.

Nonetheless, GLAD has a goal to be a vibrant, visible organization known by, and accessible to, every member of the LGBT community in New England and our many non-gay supporters. We also want our opponents to know that GLAD is prepared to take up any challenge to our community's dignity and equality anywhere in New England.

To that end, GLAD has hired a new Regional Director of Development to bring GLAD's name and presence to every corner of New England. His name is Buzz Harris, and he came on board officially July 5, 2000. (Buzz introduces himself to all

of you elsewhere in this newsletter.) If you live outside of Eastern Massachusetts, I believe you can expect to see or hear about Buzz in your neighborhood in the months ahead; and I hope you will consider offering your assistance to Buzz as he devises plans to make GLAD a "household name" and a favorite organization in your area.



GLAD's Executive Director Gary Buseck, Esq.

### GLAD to Hire New Staff Attorney

At the same time that the GLAD Board was deciding to expand near the end of December 1999, GLAD received news of a court decision in a GLAD case that would change our world in the United States forever. Specifically, on December 20, 1999, the Vermont Supreme Court ruled that committed same-sex couples were entitled to all the benefits, protections and responsibilities of the law accorded to married couples. As you undoubtedly know, that decision led to the Vermont legislature's creation, in April 2000, of the status of "civil union" to provide same-sex couples with all the same benefits, protections and obligations of marriage. (Elsewhere in this newsletter you will find an update about Civil Unions – which became available in Vermont on July 1, 2000.)

Having worked for years on the freedom to marry in Vermont – that is, GLAD's Mary Bonauto and co-counsel, Beth Robinson and Susan Murray of the Vermont firm of Langrock, Sperry & Wool – GLAD realized that this golden moment also represented an opportunity and a challenge to take the message and the legal work of Vermont to every other state in New England.

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# Civil Unions are a Reality — What does It Mean to You?

*On Saturday, July 1, 2000, history was made in the State of Vermont when Vermont towns clerks began issuing civil union licenses and a number of same-sex couples were officially joined as spouses in civil unions before the end of the day. A new era has dawned and with it many, many questions – for example:*

- ▲ What exactly is a “Civil Union”?
- ▲ What are the “Nuts and Bolts” of getting a civil union license in Vermont?
- ▲ What can I do to insure the maximum legal protection for my family even if my partner and I decide to enter into a civil union?
- ▲ What implications might it have for my public and private life if we enter into a civil union – such as military status, the ability to adopt as a “single” person, government assistance, spouse’s creditors, etc.?
- ▲ What is my and my spouse’s legal status if, as Vermonters, we enter into a civil union?
- ▲ What is my and my spouse’s legal status if, as non-Vermonters, we travel to Vermont and enter into a civil union – that is, what can we expect when we come back home?
- ▲ Would my civil union be affected if my state has an anti-gay, anti-marriage law (a so-called “mini-DOMA”)?
- ▲ What meaning does my civil union have under federal law for such things as federal income tax, Social Security benefits and immigration?
- ▲ How do we fight discrimination against our civil union?

In order to address these questions, GLAD’s Civil Rights Director, Mary Bonauto, took the lead in authoring a publication that has been issued by GLAD together with Lambda Legal Defense and Education Fund, the National Center for Lesbian Rights and the ACLU Lesbian and Gay Rights Project.

The publication is available on GLAD’s website ([www.glad.org](http://www.glad.org)). If you cannot access the Internet, please give GLAD a call [(617) 426-1350 or (800) 455-GLAD (outside the 617 area code)]; and we will be happy to send you a copy of the pamphlet in the mail.

Ultimately, whether you are a Vermonter or not, if you have carefully considered the consequences of the decision and if it comports with your and your partner’s wishes and intentions for your lives, by all means enter into a civil union.

If you are non-Vermonters (or Vermonters leaving Vermont), there are no clear answers on how your home state (or new home state) will treat your civil union. However, the civil union commitment deserves legal respect; and GLAD believes that spouses in a civil union should be accorded the rights, protections and responsibilities accorded by state law to spouses, families, dependents and next of kin under each state’s laws. GLAD also hopes and expects that many private



Mary Bonauto, Civil Rights Project Director, receiving recognition at the Maine Honors Mary Dinner in May.

entities – such as employers, schools and banks – will treat civil unions like they treat marriages.

At the same time, we know that couples in civil unions are bound to encounter discrimination; and there are no quick fixes for that discrimination. GLAD and the other lgbt legal organizations do not believe that every act of discrimination should mean a lawsuit. Rather, legal actions need to proceed carefully with the best cases, in the best places and at the best times. Strategic actions will produce the best long-term results.

It is not necessary to be a plaintiff in a lawsuit for a couple in a civil union to be doing the work of social change. Just being in a civil union is part of the process – being a witness to the quality and dignity of lesbian and gay lives and families. Moreover, sharing one’s experiences – both good and bad – of how one has been treated as a civil union spouse can change the hearts and minds of legislators and citizens.

Together we will take the victory in Vermont to the rest of New England and beyond. Please contact GLAD for more information.

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**NOTE** Watch for an upcoming GLAD publication addressed to Employers and Employees concerning the effect of civil unions on employee benefits! ▼



Vermont Plaintiffs, Nina Beck (L) & Stacy Jolles (R), honored at GLAD’s Winter Party, also shown is their infant son Seth and Mary

## Massachusetts Sodomy Law

continued from page 1

*Lawrence and Garner v. State of Texas*, the police discovered Lawrence and Garner “engaged in sodomy” when they entered the couple’s home in response to a report of an armed intruder.

In addition, every year hundreds of gay men are arrested and charged with felonies for engaging in consensual sexual behavior with other adults in areas that would be considered “Lover’s Lanes” if the lovers were not gay. While such conduct in Massachusetts is very often not technically a crime, arrests and, often, convictions continue. Sections 34 and 35 provide powerful tools in the police arsenal of tactics – often harassing – to use against gay men.

Beyond the sexual arena, sodomy laws get misused or misconstrued by others as part of the oppression of gay and lesbian people. In the recent challenges to city and town domestic partnership plans in Massachusetts, Pat Robertson’s American Center for Law and Justice has argued that such plans are contrary to state law because they conflict with the state’s public policy set forth in the sodomy laws. Likewise, many educated people think marriage for same-sex couples cannot be appropriate given the existence of sodomy laws (forgetting in both cases that the Massachusetts sodomy laws criminalize non-gay couples, regardless of whether they are married, as well).

Countless times, courts throughout the country have asserted that some protection, benefit or legal right sought by a gay or lesbian person (e.g., the right to visitation or custody with one’s children) cannot be recognized because the sodomy laws render us “unapprehended felons.” When the U. S. Supreme Court in *Romer v. Evans* found that Colorado could not place a state constitutional ban on all laws protecting against sexual orientation discrimination, Justice Scalia argued in dissent that, if a state can criminalize sodomy, it should be able to engage in any other discrimination based on sexual orientation.

Sodomy laws are dangerous in and of themselves; they work as roadblocks to advancement of gay and lesbian people in other areas of the law; and they are, quite frankly, simply an affront to the dignity of every gay and lesbian person.

Despite that fact, Sections 34 and 35 still exist. Although Section 35 has been construed by the highest Massachusetts court not to reach private, adult, consensual conduct; that ruling has not been explicitly extended to Section 34.

Moreover, as noted above, the laws are still used against gay men even when the conduct is outdoors but legally private.

For a number of years, GLAD and community activists were concerned that the Massachusetts Supreme Judicial Court would not be receptive to a legal challenge to the

sodomy laws. Therefore, efforts were made in many legislative sessions – including the most recent – to repeal the sodomy laws in the Legislature. Those efforts have never really left the starting gate.

Now, the composition of the highest court has changed; and there is a growing movement throughout the country to do away with the remaining sodomy laws. As a result of this nationwide movement, Massachusetts stands alone in the Northeast as having a prohibition against sodomy. Even Georgia, the state where *Bowers v. Hardwick* began, has declared its sodomy law violates the state constitution.

State by state, sodomy laws have been overturned. In addition to Georgia, courts in Michigan (1990), Kentucky (1992), Tennessee (1996), Montana (1997), Maryland (1999) and Texas (2000) have thrown out their sodomy laws. The legislatures of Nevada (1993), Rhode Island (1998), and New York (2000) have done the same. Moreover, challenges are pending in Arkansas, Puerto Rico and Minnesota.

In addition, outside the United States, there has been progress in decriminalization of sodomy, most notably in late 1998 in South Africa where that country’s Constitutional Court ruled that its sodomy law violated the principles of privacy and dignity enshrined in South Africa’s new Constitution. *National Coalition for Gay and Lesbian Equality v. The Minister of Justice*.

Given all of these developments, the time is ripe to call upon the Massachusetts courts to expunge these odious laws. In GLAD’s lawsuit,

the parties seek a declaration that Sections 34 and 35 violate the Massachusetts Constitution. Specifically, the plaintiffs allege that these laws violate their constitutional right to privacy; interfere with their rights of free expression; violate principles of equal protection due to their unequal effect on gay people; and constitute cruel and unusual punishment due to their monstrous potential penalties.

The plaintiffs ask the court to strike these laws in their entirety. It is important to note that such action would not leave prosecutors without the statutory means to appropriately prosecute criminal sexual conduct. For example, without Sections 34 and 35, Massachusetts retains powerful laws on non-consensual sex, e.g., rape and indecent assault; sexual acts involving children; prostitution; indecent exposure; public sexual exposure; incest; and animal cruelty.

In short, these Massachusetts laws serve no useful purpose and, indeed, have caused – and have the potential to continue to cause – grave harm to our community. GLAD is committed to erasing this blot of ignorance from Massachusetts law, and we hope this lawsuit will bring that result. ▼

**SODOMY LAWS ARE DANGEROUS IN AND OF THEMSELVES; THEY WORK AS ROADBLOCKS TO ADVANCEMENT OF GAY AND LESBIAN PEOPLE IN OTHER AREAS OF THE LAW; AND THEY ARE, QUITE FRANKLY, SIMPLY AN AFFRONT TO THE DIGNITY OF EVERY GAY AND LESBIAN PERSON.**

## Notes from the Executive Director

*continued from page 2*

We need to educate society at large; we need to litigate for the freedom to marry where appropriate; and we need to support legislative action where appropriate.

Of course, there is no way GLAD could do all of that as well as work on all the other legal issues of importance to our communities (see all the other legal news in this GLAD Briefs) with our current resources. Therefore, as the year 2000 began, GLAD devised a plan to create a Marriage Initiative Project to bring the work of Vermont to all of New England.

The gist of the plan was simple – to obtain the seed money to hire a new lawyer and an administrative support person by seeking partial funding from foundations that have previously been supportive of GLAD’s work and that care specifically about the marriage issue.

In June, we learned that both the Gill Foundation (a 2-year grant) and the Boston Foundation (a 1-year grant) would be funding the Marriage Initiative; and one other foundation appears poised to support the initiative with a 2-year grant at the end of 2000. With this seed

money, the GLAD Board voted to take the financial risk of adding again to the Staff, believing that the financial risk was outweighed by the risk of simply not doing everything possible to build on the momentum of Vermont.

Therefore, I am proud to announce that, for the second time in a little more than two years, GLAD will be adding another Civil Rights Attorney to its staff. (Jennifer Levi celebrates two years at GLAD on August 1, 2000.) With luck, we should have a new attorney on board by the Fall.

Sustaining this new legal position financially in the years ahead will be a challenge for GLAD, but I am confident that, as in the past 22 years, GLAD’s record of accomplishments ahead will more than justify continued investment in GLAD’s work.

As always, thank you for your generous support. And, when you meet Buzz in the days and months ahead, please help him meet new potential GLAD supporters. ▼

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## Public Education Department Has Legal Inequality Ever Ruined Your Day?

**H**ave you ever been turned away at a place of public accommodation like a restaurant, doctor’s office, realtor, campground or highway rest stop because of your sexual orientation, gender expression or HIV-status? Has being gay, lesbian, bisexual, transgender or HIV-positive kept you from being hired or advancing at your job? If you are HIV-positive, have your disability insurance benefits been threatened because new medications have stabilized your health? Are you trying to establish legal protections for your family or looking for information about Vermont civil unions? Do your kids get harassed at school because their parents are gay or because your kids are glbt themselves? Thousands of people turn to GLAD each year with these questions and more. Through our Legal Information Hotline, we help people find out exactly what legal rights and options they may have; refer callers to experienced, gay-friendly attorneys; and distribute GLAD’s free publications on over 50 different legal topics. The Hotline is free within New England at the toll free number: (800) 455-GLAD. With services in both English and Spanish, our trained and supervised volunteers work from 1:30pm to 4:30pm Monday through Friday to answer your calls and make sure that you know how to protect your legal rights anywhere in Maine, New Hampshire, Vermont, Massachusetts, Connecticut or Rhode Island. ▼



Public Education Director,  
Andrea Hildebran

# AIDS Law Project Report Update



AIDS Law  
Project Director,  
Bennett H. Klein, Esq.

## Protecting Youth Privacy at HIV/Sex Education Workshop

GLAD obtained a court order in May prohibiting the right wing Parents Rights Coalition from distributing to the public a secret tape recording of an HIV/AIDS prevention and sexuality education workshop conducted at a conference held at Tufts University in March. The Executive Director of the Parents Rights Coalition, 25 year-old Scott Whiteman, attended the workshop and secretly recorded it in violation of Massachusetts wiretapping and privacy laws. The Parents Rights Coalition then began distributing the tape to the media and in other public forums. The Order protects the privacy rights of the youth attendees who believed that they were in a confidential and safe environment to ask questions about sexuality issues and get frank, honest answers. GLAD will continue to fight against the illegal tactics used by groups such as the Parents Rights Coalition, which want to eliminate sound HIV education and dismantle the Safe Schools Program of the Department of Education – a program looked to nationwide as a model for ensuring the safety of gay, lesbian, bisexual, transgendered and questioning youth in our schools. GLAD’s lawsuit is continuing in Suffolk Superior Court.

**GLAD WILL CONTINUE TO  
FIGHT AGAINST THE ILLEGAL  
TACTICS USED BY GROUPS  
SUCH AS THE THE PARENTS  
RIGHTS COALITION, WHICH  
WANT TO ELIMINATE SOUND**

**HIV EDUCATION...**

## Ensuring Strong Disability Antidiscrimination Laws in Massachusetts

In August, GLAD filed a brief in the Supreme Judicial Court in a case which, like the case of *Bragdon v. Abbott* in the U.S. Supreme Court, addresses the critical question of who is protected from discrimination under disability antidiscrimination laws. In this case, *Dabill v. Boston Police Department*, the Mass. Supreme Judicial Court is deciding whether Massachusetts law prohibits discrimination in employment, housing and public accommodations against individuals whose disability has been corrected or mitigated by medications or other corrective measures (e.g., a person who wears a hearing aid, or who takes medications to control a condition like diabetes or epilepsy). While people with HIV are clearly protected from discrimination under these laws, ongoing advancements in the treatment of HIV disease make it critical to ensure that people who have chronic or treatable disabilities are still protected from job discrimination under disability antidiscrimination laws. The brief was filed on behalf of a wide range of disability, civil rights, and civic organizations, including the American Association of Retired Persons, Catholic Charities, AIDS Action Committee, D.E.A.F., Inc., and the Epilepsy Foundation of Mass.

## Case Against OB/GYN Who Turned Away HIV+ Pregnant Woman Goes to Federal Appeals Court

Briefing in the Federal Court of Appeals has been completed in GLAD’s case against a Leominster, Mass. obstetrician who terminated a patient’s care after she tested HIV-positive in the fourth month of her pregnancy. GLAD’s appeal is supported by a strong friend of the court brief from the Massachusetts Department of Public Health, which argued that there was no medical basis for the doctor’s termination of care. Importantly, the Department highlighted for the Court that allowing such discrimination against HIV-positive pregnant women will harm the public health by discouraging pregnant women from being tested for HIV. GLAD is appealing a decision against us by the federal district court in January, 2000 which ignored the medical evidence in the case and misapplied disability antidiscrimination laws.

## HIV Legal Challenges Continue

GLAD’s AIDS Law Project continues to work on a wide range of legal challenges facing people living with HIV. A sample of recent matters:

- ▲ Advocating for a person who has been charged by Middlesex District Attorney Martha Coakley with assault with intent to kill for throwing feces at a probation officer. Such

conduct, while inexcusable, is not a mode of HIV transmission. These types of prosecutions serve no purpose other than to spread fear and hysteria about HIV among judges, jurors and the public at large.

- ▲ Advocating for two HIV-positive men who were approved as foster parents by the Department of Social Services, but then were told that they were limited to an HIV-positive foster child and have been subjected to unfair standards not imposed upon other foster parents.
- ▲ Continuing our work for people whose long-term disability insurers have abruptly terminated benefits, even though these individuals remain debilitated by advanced HIV disease and unable to work.

- ▲ Negotiating a change in the practice of the Nashua Housing Authority in New Hampshire which had been illegally demanding private medical information about individuals living in subsidized housing.
- ▲ Continuing to challenge doctors who discriminate against patients with HIV based on the still too-common irrational fears of HIV transmission, including most recently at the Boston University Center for Cosmetic and Laser Surgery which turned away a patient with HIV based on unfounded concerns that HIV can be transmitted through the air. ▼



(L to R) Michelle, Gavi, Gary, Mark, David & Chad at Statehouse Youth Pride Rally

## Bayard Rustin Community Breakfast

Gavriel Wolfe, GLAD's Bilingual Client Advocate, served on the planning committee for the 11th Annual Bayard Rustin Community Breakfast held on April 29th. Gavi introduced the keynote speaker, A. Coruelius Baker, who is the Executive Director of the Whitman-Walker Clinic in Washington, DC. The Breakfast, sponsored by AIDS Action Committee, brings together gay men, lesbians, bisexuals and transgendered people from communities of color in Massachusetts to recognize and honor their experience in the face of the AIDS epidemic. The event is part memorial, part celebration, and part call to action. GLAD's participation in this year's Breakfast helped to highlight the links between civil rights struggles around sexual orientation, race and disabilities and to play a role locally in fighting a unified battle. ▼

# Civil Rights Docket



Civil Rights Project  
Director  
Mary Bonauto,  
Esq.



Staff Attorney  
Jennifer Levi, Esq.

## **GLAD et al. v. Attorney General Thomas Reilly et al.**

GLAD filed suit on behalf of itself and several individual gay and non-gay plaintiffs, challenging the constitutionality of the Massachusetts sodomy laws. Our complaint alleges that the sodomy laws (including a 20-year felony for anal sex and 5-year felony for oral and anal sex) violate Massachusetts constitutional guarantees of privacy, equal protection, free speech, and freedom from cruel and unusual punishment. The case was filed in the Supreme Judicial Court of Suffolk County rather than Superior Court with the hope of this matter proceeding in a streamlined way. The case comes after many failed attempts to repeal archaic sex laws in the Massachusetts Legislature and on the heels of legislative repeals and judicial decisions striking down sodomy laws throughout the country including in Kentucky, Maryland, Montana, Tennessee, Nevada, Rhode Island, New York, Texas, Georgia, and Michigan. Massachusetts currently is the last of the 6 states in which GLAD focuses its work to have a sodomy prohibition. Scott Pomfret and Harvey Wolcott of Ropes & Gray are cooperating attorneys. (See article on pg. 1)

## **Boy Scouts of America v. Nancy Wyman, Comptroller of the State of Connecticut, et al.**

With New Haven attorney Maureen Murphy, GLAD has sought to intervene on behalf of itself, the Connecticut Coalition for LGBT Civil Rights and the Connecticut Women's Educational and Legal Fund in a suit filed by the Boy Scouts against the State of Connecticut Comptroller. This case was brought after GLAD, along with several other groups, successfully obtained a ruling from the Connecticut Commission on Human Rights and Opportunities ("CHRO") that including the Boy Scouts in the state employee charitable campaign violated Connecticut nondiscrimination laws concerning the use of state facilities. After the CHRO issued its ruling, the campaign informed the Boy Scouts that it could not participate in the upcoming campaign and would not receive any funds from the 1999 campaign. In the Boy Scouts' suit, the federal district judge has ruled that no money may be distributed to the Boy Scouts before this matter is resolved. Following the United States Supreme Court's reversal in *Dale v. BSA*, the New Jersey decision that the Boy Scouts may not exclude a gay

scout, the CHRO is revisiting its earlier determination of whether the Boy Scouts must be excluded from the state charitable campaign. GLAD has argued to the Connecticut federal court—and will argue to the CHRO—that *Dale* has no bearing on whether the state must exclude an anti-gay organization like the Boy Scouts from the charitable campaign.

## **Leslie Brett & Carolyn Gabel, Ann Levie & Stephen Haynes, Mark Melanson & Michael Antisdale, Gloria Mengual & Graciela Quinones-Rodriguez, Sharon Heyman & Barry Zitser v. City of West Hartford, Ct.**

The Town of West Hartford municipal pool, also known as the Cornerstone Aquatics Center, offers family discounts to married couples only, or parents which are defined to include step-, legal, and adoptive parents but which excludes gay and lesbian co-parents or someone who parents a child of their non-marital heterosexual partner. For most unmarried families, the difference in rate is several hundred dollars.

Together with New Haven Attorney Maureen Murphy, GLAD sued and won a reasonable cause finding at the CHRO that the town's policy discriminates on the basis of sexual orientation and marital status in a place of public accommodation. The Town of West Hartford then sought to avoid a public hearing by removing the case to superior court. GLAD successfully opposed the Town's efforts before the CHRO. The hearing is currently scheduled for October.

## **Rosa v. Park West Bank**

GLAD represents a transgender person in Western Massachusetts who was denied the opportunity to apply for a bank loan because of appearing too feminine (our client was assigned male at birth). In June, GLAD won a precedent-setting victory in the Federal Court of Appeals allowing the claim to proceed. (See article p. 15) In this case, our client Rosa asked a bank officer at Park West Bank for a loan application and, after producing photo identification, was told to go home and change and come back appearing like one of the photographs in which our client looked more traditionally masculine. After the Federal District Judge dismissed the case stating that the issue was not Rosa's sex but the manner in which she appeared when applying for a loan, GLAD successfully argued before the Federal Appeals Court that sex stereotyping is

prohibited sex discrimination. The case now goes back to the Federal District Court for a trial on the merits.

### **Germaine Beger v. Division of Medical Assistance**

GLAD successfully appealed a denial by MassHealth to pay for medically necessary breast reconstruction for our client, a transsexual woman who completed sex-reassignment surgery over 25 years ago. (See article at p. 10)

### **T.T. v. Jay Roper, DDS**

GLAD represents a woman in New Hampshire who was denied treatment by her dentist because she is a lesbian. Our client had been treated by this dentist for nearly three years without incident. Prior to a recent visit, she was asked to fill out a standard office form. On it she put the name of her female partner above the line marked “spouse.” When she arrived for her appointment, the dentist said that had he known she had a female partner, he never would have treated her in the past and now refused to provide her with dental care. To our knowledge, this case is one of first impression regarding sexual orientation discrimination in a public accommodation under New Hampshire’s state non-discrimination law. It is currently pending before the New Hampshire Human Rights Commission.

### **In the Matter of J.D. (intervention)**

GLAD intervened in discussions with a Western Massachusetts high school on behalf of a lesbian student who was assaulted by a number of her peers outside of her high school. The attack was the culmination of months of anti-gay harassment since the student came out to friends, family and other students. During the course of negotiations, GLAD secured the school’s agreement to do mandatory teacher and student trainings to ensure the safety of all GLBT students. The first of the mandatory teacher trainings took place at the end of June. The student training will be integrated throughout the curriculum and will begin next fall.

### **Doe v. Kelley (State Police)**

GLAD filed a complaint against the Massachusetts State Police for preventing our client, a gay man, from using public rest areas. Our client, known in court papers as “John Doe,” alleged that a particular State Trooper, with support from his superiors, harassed him based on a stereotyped view that Doe, because he is a gay man, was likely to engage in public sexual behavior. In this matter, GLAD argued that our client, like every other citizen, has the right to use public facilities whenever he wants to, without state interference regardless of his sexual orientation.

We filed our complaint in state court requesting only that the State Police comply with the law, i.e., that they not roust our client from public areas. After a preliminary injunction

hearing, the judge ruled in our favor, issuing an order against the State Police prohibiting the police from continuing to harass our client. A trial on the merits is set for October.

### **In re John/Jane Doe (request for declaratory ruling)**

GLAD has intervened in a request for a declaratory ruling filed at the Connecticut Commission on Human Rights and Opportunities (“CHRO”) by Stamford attorney Bruce Goldberg. Although the initial request was for the CHRO to declare that Connecticut’s sex discrimination law covers transsexual people, GLAD broadened the analysis to whether the law covers all gender-nonconforming people. This request was further broadened by the Connecticut Attorney General to ask whether the Connecticut disability discrimination law also covers transgender people. GLAD filed briefs on all of these questions on behalf of itself, the Connecticut Coalition for LGBT Civil Rights, the Connecticut Women’s Educational and Legal Fund, the Human Rights Campaign, National Center for Lesbian Rights, FTM International and Gender PAC.

### **Conferences and Publications**

With GLAD’s Mary Bonauto acting as principal author, GLAD has released a joint publication along with Lambda, NCLR and the ACLU entitled “A Historic Victory: Civil Unions for Same-Sex Couples, What’s Next!”. This publication addresses many questions regarding Vermont’s Civil Unions Law including the legal issues couples should consider before entering into a civil union. The publication is widely available including on GLAD’s website at [www.glad.org](http://www.glad.org).

Jennifer Levi’s article “Massachusetts’ Domestic Partnership Challenge: Hope for a Better Future” was published in the recent Volume 9 of the *Journal of Law & Sexuality* published by Tulane Law School.

In addition, along with Shannon Minter of NCLR, Jennifer co-authored an article, “Female to Male, Nine to Five: It’s Tricky Being Trans in the Workplace,” that appeared in the June 2000 issue of *Girlfriends Magazine*.

GLAD’s “Protecting Families: Standards for Child Custody in Same-Sex Relationships,” appears in the recent Volume 10 of the *UCLA Women’s Law Journal*.

Mary, along with Lambda attorney Evan Wolfson, is authoring a chapter “The Freedom to Marry for Same-Sex Couples in the United States of America,” for a forthcoming book to be published by Hart Publishing. The book will contain a compilation of papers from the King’s College, London Conference on International Recognition of Same-Sex Relationships.

Jennifer’s article, “Paving the Road: A Charles Hamilton Houston Approach to Securing Trans Rights” will appear in a forthcoming edition of the *William & Mary Journal of Women and the Law*. She presented this paper at a symposium at William & Mary Law School last spring. ▼

# GLAD Breaks New Legal Ground for Transgender People

**T**his past spring, GLAD won two landmark victories for ensuring that the law protects transgender people. In *Beger v. the Division of Medical Assistance*, a Suffolk Superior Court ordered the state to pay for a surgical procedure it denied to a transsexual woman but would have provided for a non-transsexual woman. In *Rosa v. Park West Bank*, GLAD's efforts secured a first-of-its-kind ruling from the United States Court of Appeals that transgender people may be covered by federal sex discrimination laws. Both of these rulings evidence the cutting edge work that GLAD is doing on behalf of transgender people and are part of the reason we are viewed as being among the nation's leading authorities on transgender legal issues.

## **Beger v. Division of Medical Assistance**

Germaine Beger is a 50-year-old Medicaid recipient who completed sex-reassignment surgery over 25 years ago. As part of her sex-reassignment surgery in 1975, she received breast implants. In 1999, she sought treatment for a possible cyst in her right breast and learned that she needed the implants

removed and follow-up breast reconstruction surgery. The state approved the implant removal but denied the breast reconstruction surgery relying on a state regulation that excludes Medicaid coverage for any procedure related to sex-reassignment surgery. During the appeals process, the state refused to make any individualized consideration of medical necessity, as it would for a non-transsexual woman in similar circumstances, stating simply that the law excludes transsexual women from receiving even basic health care coverage for treatments relating to being female.

Suffolk Superior Judge Maria Lopez rejected the state's characterization of its own regulation. Agreeing with GLAD, Judge Lopez explained that the state could not refuse to pay for the procedure simply because Ms. Beger is transsexual. She recognized that such an interpretation would lead to absurd results. For example, in the state's view, a person who is legally, medically, and factually a woman could be denied routine gynecological care simply because she was assigned the designation of

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## **Building Support Across New England**

**O**n July 5th GLAD hired longtime progressive gay activist and fundraiser Buzz Harris as its first Regional Director of Development. Buzz will work with GLAD's staff, board and volunteers to develop a broad donor base across all six New England states to support our ongoing legal work on behalf of GLBT people and those with HIV/AIDS. Many people across the region support our fight for equal justice under the law, and now we are in an excellent position to work with them to build a stronger, better-resourced GLAD than ever before.

Buzz comes to GLAD from the New England field office of National Gay and Lesbian Task Force (NGLTF) where he served as an assistant conference director for the Creating Change Conference and a field organizer involved in political projects in several northeastern states. He served for four years as co-chair of the SpeakOut board of directors and chaired their successful fundraising campaign in the early 1990's. He has also worked as a development consultant for the Center for Campus Organizing, Bromfield Street Educational Foundation/Gay Community News and other small and medium-size nonprofit organizations. Currently Buzz serves as development committee chairperson on the board of the Bisexual Resource Center in Boston.

Those of you living outside of Eastern Massachusetts may well see our new Regional Director's little red Honda pulling into your town sometime soon. Buzz would love to hear from donors and friends of GLAD in Rhode Island, Vermont, Maine, New Hampshire, Western Massachusetts and Connecticut who have an interest in working with him to increase support for GLAD. Call him at (617) 426-1350 or email [bharris@glad.org](mailto:bharris@glad.org). Thank you! ▼



Regional Director of Development, Buzz Harris

# Development Report

## A New Era

**T**hanks to all of you who have supported GLAD and brought us into a new century and a new era. GLAD is positioned as never before to advance equal justice for lesbians, gay men, bisexuals and people living with HIV. Your support has allowed GLAD's Board of Directors and our Executive Director, Gary Buseck, to hire and retain a formidable staff with three full-time attorneys- and soon to be four- and give them the necessary tools, technological and otherwise, to maximize productivity and effectiveness in combating a larger and far better-funded opposition. The results of your investment are never more evident than in GLAD's thirteen victories in 1999, highlighted by the recognition of the "common humanity" of our families in the Vermont freedom-to-marry case and the recognition of a lesbian mom as a "de facto" parent in the *E.N.O.* case in Massachusetts.

The number of your fellow supporters of GLAD continues to increase as more and more people recognize the importance and impact of GLAD's work. In the last three years the number of GLAD's essential Partners has more than doubled from 112 to 237; and the overall number of donors has increased by more than 50%. And we need those numbers to continue to grow to meet the needs and challenges created by our own successes and by the intense opposition those successes generate as our opponents realize they are losing the battle.

As a GLAD supporter you have helped make history. And make no mistake each of you is a part of the history of the gay civil rights movement because you took action when action was needed. GLAD's staff, Board of Directors, volunteers and clients want to thank all of our supporters for taking action by investing in GLAD and making a difference in our struggle for "equal justice under law". ▼



Director of Development & Finance  
Mark A. Enselman, Esq.

## Using Appreciated Stock To Support GLAD

### A Win-Win Situation

With the stock markets more unpredictable, you may be thinking of selling some stock to lock in some of the gains you've made. As you know, if you sell appreciated securities, you typically will be hit with two tax liabilities - Federal and State - on the value of the stock that exceeds your initial purchase price.

Donating these same stocks to GLAD, a 501(c)(3) nonprofit, provides you an opportunity to:

- ▲ Make a larger donation at a significantly reduced cost to you,
- ▲ Eliminate Federal and State taxes on the appreciated value (if you transfer instead of sell the stocks), and
- ▲ Secure a significant tax deduction.

Please consider the donation of appreciated securities. We are ready and prepared to make the process painless. Just contact Mark Enselman, Development and Finance Director, at (617) 426-1350 for assistance.

### Ways to Support GLAD

- ▲ Hosting a House Party
- ▲ Volunteer at an Event
- ▲ Donating Office Furniture and Equipment
- ▲ Asking your Employer about Matching Gifts
- ▲ Transferring Appreciated Stock (with added benefits to you)
- ▲ Become an Ongoing Monthly Donor
- ▲ Make a Planned Gift to GLAD
- ▲ Become a GLAD Partner or Associate

For more information on how you can help support GLAD please contact Mark Enselman, Development and Finance Director at (617) 426-1350 or email us at [gladlaw@glad.org](mailto:gladlaw@glad.org).

**RECENT GLAD EVENTS**

**2000  
Winter  
Party**



Honorees "The Hat Sisters" John Michael Gray & Timothy O'Connor



Vermont Plaintiff Honorees Stan Baker & Peter Harrigan



Margaret Williams, Nan Dumas, Donna Turley, Elyse Cherry & Carolyn Fischel

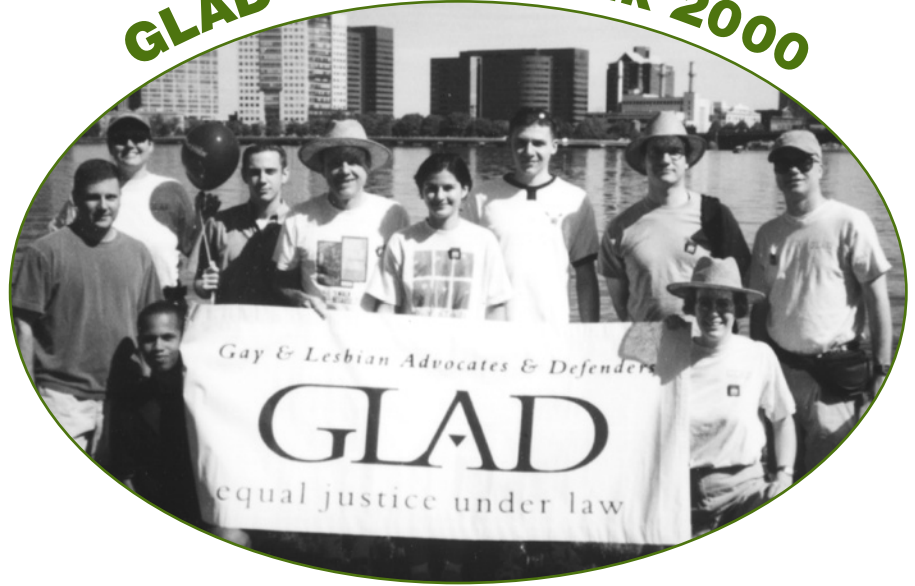


Vermont Co-counsel Honorees Beth Robinson, Esq. & Susan Murray, Esq.

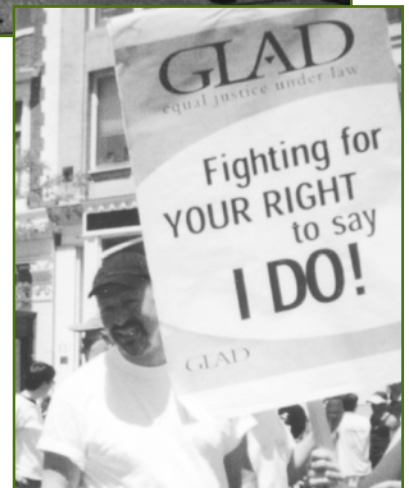
Margaret Williams, David Dixon, Reggie Stanley, Joseph Alexander, Jr.



# GLAD at AIDS Walk 2000



## GLAD at Pride



## New Legal Ground for Transgender People

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male at birth, and the care would “relate to” her sex-reassignment surgery. This the law could not abide.

It is important to note that this case marks simply a starting point towards ensuring fair treatment for transgender people in health care and is but a part of GLAD’s broader work to ensure fair access to health care for LGBT people and people with HIV/AIDS. Both state and federal laws exclude medical coverage for certain basic health care needs of transgender people. In addition, transsexual people are explicitly excluded from coverage under the Americans with Disabilities Act. Although the outcome in Germaine Beger’s case means state law cannot be interpreted to deny coverage for treatment simply because a Medicaid recipient is transsexual, it does not change the specific exclusion for medically necessary procedures for some transgender people including sex-reassignment surgery (“SRS”).

The way in which this exclusion from coverage of SRS and related treatments and procedures has been abused by the state to deny coverage for otherwise necessary surgeries or treatments has parallels to the way in which discriminatory health insurance caps for coverage have been used against people with HIV/AIDS. Though the practice is declining, some private health insurers have imposed caps for coverage of medically necessary treatment for people with HIV/AIDS. As a result, the same medical care necessary to treat pneumonia, for example, could be covered for someone without HIV/AIDS but not covered for someone with HIV/AIDS if the insured individual had exceeded the capped amount of coverage.

Similarly, an individual who is diagnosed with gender dysphoria, has a history of gynecological problems, and requires a hysterectomy, may be denied coverage for the medically necessary surgery simply because of a clinical diagnosis. A non-transsexual woman with the same history of gynecological problems and facing a required hysterectomy would not be denied coverage. Like the person with HIV/AIDS, an individual may be denied coverage for necessary medical care simply because of having a clinical diagnosis, in this case gender dysphoria.

Discriminatory access to health care remains a high priority for GLAD — for gay, lesbian, bisexual people, people with HIV/AIDS, and those who are transgender. GLAD has a long history and a proven track record for working on this issue. Germaine’s case is another step on a long road to full equality for GLBT people in health care.

## Rosa v. Park West Bank

In a precedent-setting decision with major implications for the business community, the United States Court of Appeals for the First Circuit confirmed that sex discrimination laws reach situations where individuals are discriminated against because of their failure to conform to stereotypes of how men and women are supposed to look and act. This past June, the federal court decided that a federal law prohibiting sex discrimination in lending protects our client, Lucas Rosa — a transgender person who appears female but was assigned the sex designation of male at birth — who was told when applying for a bank loan to go home and change to appear more traditionally masculine.

In this case, GLAD brought suit on behalf of our client under the federal Equal Credit Opportunity Act as well as under Massachusetts laws prohibiting discrimination because of sex and perceived sexual orientation in lending and public accommodations. Park West Bank asked the federal district judge to dismiss the case in reliance on a long line of federal employment discrimination cases which said that transsexual people are excluded from the law that provides pro-

tections because of sex. Despite the intervening United State Supreme Court case, *Price-Waterhouse v. Hopkins*, which makes clear that enforcing sex stereotypes is impermissible sex discrimination, the federal district judge dismissed the case saying that the issue was not Rosa’s sex but how she chose to dress when applying for a loan.

The Federal Appeals Court reversed with lightning speed. In a decision which took just three weeks to issue, the Court ruled that our client may be able to prove a case of sex discrimination and remanded the case for trial.

This case has significant implications for both state and federal law and well beyond the lending context because the federal lending law is construed as being consistent with Title VII, a federal law prohibiting sex discrimination in employment. In addition, most states look to interpretations of the federal employment law for construing their own state statutes. This case also has tremendous significance for both GLB people and those who are transgender because the root of much of our shared oppression is the enforcement of stereotypical notions of how “real men” and “real women” should look and act. This case creates a key legal building block for arguing that discrimination because of a person’s failure to meet widely shared normative beliefs about gender — whether that person is gay, lesbian, bisexual, or transgender — is prohibited sex discrimination.



Germaine Beger with Jennifer Levi,  
GLAD Staff Attorney

## GLAD Happenings!

### Thanks!

GLAD would like to thank those who attended the following events and especially the individuals whose names follow for hosting the events

**The 17th Annual Winter Party** ~ Thanks to our honorees, the plaintiffs for the Vermont marriage case, Lois Farnham & Holly Puterbaugh, Stan Baker & Peter Harrigan and Nina Beck & Stacey Jolles; our Vermont co-counsel, Susan Murray, Esq. and Beth Robinson, Esq.; and also The Hat Sisters, Timothy O'Connor & John Michael Gray for their charitable work and the joy they bring to the greater Boston area. Hosted by the GLAD Board of Directors at the Boston Ballet Building

**A Special Celebration in Maine honoring Mary Bonauto** ~ Hosted by Brenda Broder, Maggie Fournier, Jodi Nofsinger, and Pat Peard at the Harraseeket Inn in Freeport, Maine.

**The GLAD Women's Event**~ Hosted by Elyse Cherry in her home in Brookline, Massachusetts.

**Rick McCarthy & Gary Bailey** ~ Rick and Gary hosted a house party at Rick's home in the South End of Boston. GLAD gained many new friends!

**Some Like It Hot 4 – An evening of sizzling Broadway Show Music** ~ Performed to benefit GLAD's AIDS Law Project by Jim Ansart, Donald Baillargeon, Beth Cushing, Kerry Dowling, Carol Gallagher, Steven Littlehale, Robert A. Mackie, Ceit Mc Caleb, Kimberly Palson, Kristen Palson, Sheila Duffy Rehrig, Richard Repetta, Bret Silverman, Seth Teter, and Britton White. Produced by Jim Ansart, Steven Littlehale and Jim Torres.

**Lawlapalooza** ~ A concert benefiting GLAD held at The Milky Way/Bella Luna in Jamaica Plain, Massachusetts. Performing that night were Pamela Means, Meghan Toohey, Jane LeCroy, Adrienne Gonzalez and the MC was Jaclyn Friedman.

**The Rhode Island Party** ~ At the home of Barry Field and Kurt Weidman in North Kingstown, Rhode Island. Barry Field and Marc Paige, both GLAD Rhode Island board members, hosted the event. The students and faculty advisors of the Gay/ Straight Alliance (GSA) of South Kingstown High School were honored for their work with GLAD to have their group recognized by their school.

## Mark your calendars! -----> Upcoming GLAD events

**The Ogunquit Party** ~ At the Black Boar Inn of Ogunquit, Maine, on Thursday, August 24th. Hosted by Tim Stein and Wayne Fette.

**GLAD's Spirit of Justice Dinner** ~ Celebrating Mary Bonauto's 10 years of service to GLAD and our community ~ At the Royal Sonesta Hotel in Cambridge, Massachusetts, on Friday, September 22nd. GLAD will be honoring Civil Rights Director Mary Bonauto for her 10 years of exceptional service to GLAD and her impact on our community in New England and nationally.

If you want to help honor Mary you can become a table captain or volunteer for the event. In addition, you can sponsor individually at the Patron level for \$250, the Benefactor level for \$500, or the Underwriter level for \$1,000+. Individual seats are \$125 per person. For more information or to volunteer please call Michelle Rediker of GLAD at (617) 426-1350.

**Coming Soon to a Neighborhood Near You**~GLAD is planning events in the following communities: **Newburyport, Northampton, and Royalston, Massachusetts, and in New Hampshire.**

If you would like to get involved or volunteer in some way for these upcoming events, interested in hosting a GLAD party or have any questions about these events, call our Development Office at (617) 426-1350. You can also visit our website at <http://www.glad.org>



### GAY & LESBIAN ADVOCATES & DEFENDERS

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