

Why Federal Courts Matter to the LGBT Community

Addressing Courtroom Vacancies and Increasing Diversity on the Bench

THE FEDERAL JUDICIAL VACANCY CRISIS AND THE IMPACT ON THE LGBT COMMUNITY

Our democracy is under attack. This country depends upon the shared balance of power between three co-equal branches of government – executive, legislative and judicial. An attack on the judiciary is an attack on all three. The conservative right's escalating assaults on the judiciary and unprecedented obstruction of judicial confirmations threaten the very foundation of our government. Court-bashing by political candidates continues to draw national attention, the Senate relentlessly blocks the confirmation of qualified nominees, and a judicial vacancy crisis plagues our federal court system.

Every day federal courts across the nation resolve important cases that affect every aspect of our lives – for example, health care, immigration, employment discrimination and marriage equality.

In fact, one in ten federal judgeships currently remain vacant and many have been designated “judicial emergencies” by the U.S. Courts. This vacancy crisis has resulted in crowded dockets making it impossible for more than 250 Americans who live in a district without enough judges to have their cases heard without facing substantial delays.

As a legal organization committed to using impact litigation to achieve full recognition of the civil rights of lesbian, gay, bisexual and transgender people and those living with HIV, Lambda Legal relies on a fair and impartial judiciary that is adequately staffed with qualified jurists from the trial courts to the Supreme Court. When too few judges are available to hear a growing number of cases, justice is inevitably delayed and denied to many Americans.

FEDERAL COURTS PROTECT OUR RIGHTS: A Spotlight on Some of Lambda Legal's Cases

Discrimination and Harassment in Schools:
Pratt v. Indian River Central School District, et al.



Charlie Pratt endured many years of harassment while he was a student in the Indian River Central School District. Students attacked him relentlessly with antigay and sexist slurs, often in the presence of teachers and school employees who failed to intervene. Students also pushed him into walls and lockers, threatened him, threw food and other objects at him, spat on him and vandalized his locker with antigay slurs. Staff members at the high school even joined the harassment by ridiculing Charlie with stereotypically effeminate gestures in front of other students. School officials including then-principal James Kettrick—now the district's superintendent—repeatedly failed and refused to take appropriate action.

The years of harassment and abuse ended for Charlie not because of the actions of any school official, but only after his parents withdrew him from school. Later, when Charlie's sister, Ashley Petranchuk, requested permission to start a GSA, she was turned down by the assistant principal and principal, who said that such a club would bother parents and students.

Lambda Legal sued the district and several of its employees in 2009, in the U.S. District Court for the Northern District of New York, asserting claims for illegal and unconstitutional discrimination, harassment and censorship. Just days after the suit was filed, the district stated that it would allow Ashley to form a GSA. After the lawsuit was filed, the school district and the other defendants filed a motion to dismiss and for summary judgment, setting forth myriad arguments.

In 2011, the District Court denied the defendants' motion nearly in its entirety. The Court refused to dismiss any of the plaintiffs' federal claims, and its order allows nearly all of their claims under New York law to proceed. The Court's ruling cleared the way for the lawsuit to continue to move forward.

Marriage Equality in Nevada: *Sevcik v. Sandoval*



In 2012, Lambda Legal filed a federal lawsuit in the U.S. District Court for Nevada on behalf of eight same-sex couples challenging Nevada's constitutional ban on marriage equality, which relegates them to only a second-class status. The lead plaintiffs, Beverly Sevcik, 73, and Mary Baranovich, 76, of Carson City, have been together for nearly 41 years and committed their lives to each other in October, 1971. Together, they raised three children, and they are now proud grandmothers of four grandchildren. The lawsuit challenges the Nevada constitutional amendment barring same-sex couples from marriage for violating the Equal Protection Clause of the U.S. Constitution.

Employment Discrimination: *Lopez v River Oaks*



In September 2005, Izza Lopez, a 26-year-old transgender woman, accepted a job as a scheduler with River Oaks Imaging and Diagnostic, a medical imaging company in Houston. After resigning from her position with her then-current employer, Lopez received a call from River Oaks rescinding the job offer because of her “misrepresentation” of herself as a woman. Lopez was unable to get her previous job back and was without employment for several months. Lambda Legal filed a lawsuit on Lopez's behalf in the Southern District of Texas in the Fifth Circuit of the federal court system. *Lopez v. River Oaks* charges that River Oaks violated Lopez's rights under Title VII of the Civil Rights Act of 1964, the federal law prohibiting sex discrimination in employment.

The case ultimately settled at the trial level, but a ruling on a summary judgment motion set forth a valuable legal framework for Title VII sex stereotyping claims involving transgender individuals. Unlike other courts, this court saw the connection between cases concerning an “effeminate male” or “macho female” and a transgender litigant who fails to conform to traditional gender stereotypes. The court stated that one's transgender identity does not preclude a sex-stereotyping claim, contributing to an emerging line of precedent protecting transgender employees in the workplace.

JUDICIAL DIVERSITY MATTERS

America's judicial system is charged with safeguarding our cherished rights and liberties and providing all people with access to fair and impartial justice. Today, it is more important than ever that our courts reflect the growing diversity of our country. A legal system that represents a diverse range of perspectives and experiences will improve the quality of justice and builds public confidence in the courts.

Over the years there has been a significant increase in the level of diversity achieved among those nominated and confirmed to federal judgeships. Over the years there has been a significant increase in the level of diversity achieved among those nominated and confirmed to federal judgeships. Nearly 40 percent of the nominees to the federal bench during the Obama Administration have been people of color and nearly half have been women.

Last summer, President Obama nominated Michael Fitzgerald, the President's third out LGBT appointee, to fill a vacancy in the U.S. District Court for Central District of California. After a hearing, Fitzgerald was confirmed by a vote of 91-6, joining openly gay and lesbian federal judges Paul Oaken, Alison Nathan and Deborah Batts.

However, despite the appointment and confirmation of out LGBT judges and increased diversity in federal courts, there is still a great deal of work that must be done to ensure that our courts are more inclusive and just.

WHEN FEDERAL COURTS LACK JUDGES OUR ACCESS TO JUSTICE IS THREATENED!

Trial courts like the District Court for the Northern District of New York, Nevada, and the Southern District of Texas provide a gateway for achieving broader civil rights protections for vulnerable communities. By ignoring the vacancy crisis at the trial level, gateways are clogged, denying justice too many Americans. As time goes by, memories fade, people get sick or die, or witnesses

become otherwise unavailable, and the financial and emotional burdens exacerbate the sting of injustice.

The federal appellate courts like the U.S. Court of Appeals for the Fifth Circuit are also vitally important to our justice system, as they often provide the final word in the most important cases of our time. This delay of justice, stemming from the backlog of cases, directly harms plaintiffs and denies the civil rights of individuals whose interests remain in legal limbo.

Without the timely confirmation of federal judges, the more than 250 million Americans currently living in a district with a courtroom vacancy are effectively denied access to justice. The vacancy crisis must be addressed if we hope to preserve the fair and impartial judiciary that is a hallmark of the American system of government.

TAKE ACTION!

We can all let our U.S. Senators and other elected officials know that we care about preserving a fair and impartial judiciary and a confirmation process that works. Learn more about how each of us can demand action on the federal judicial vacancy crisis by visiting www.lambdalegal.org/issues/fair-courts-project

