

Fair Courts Project

Preserving Judicial Independence. Promoting Judicial Diversity. Securing Access to Justice.

Fair Courts Project

Lambda Legal's **Fair Courts Project** works to expand access to justice for LGBT and HIV-affected communities by educating the public about the important role that courts play in safeguarding our rights. The Fair Courts Project works to eliminate harmful anti-LGBT and HIV-related bias in the courtroom, promote judicial diversity, and defend against anti-LGBT attacks on the courts that threaten judicial independence.

Preserving Judicial Independence

The primary purpose of a strong and independent judiciary is to protect the constitutional and legal rights of those who are not in the majority and ensure that the government treats *everyone* with respect. Unfortunately, when courts rule on important civil rights cases, they often come under attack from special interest groups and politicians whipping up frenzy about how the public must, as Justice Scalia wrote in his dissent in *United States v. Windsor*, “guard their right to self-rule against black-robed supremacy.”

Rule against us, and you will be next...

In 2009, the Iowa Supreme Court issued a unanimous decision in Lambda Legal's lawsuit [Varnum v. Brien](#), striking down Iowa's marriage ban and extending the freedom to marry to same-sex couples. In response, antigay groups took their anger out on the Court, spending nearly \$1 million on attack ads and a bus tour during the 2010 judicial retention race where they succeeded in defeating three justices who participated in the *Varnum* decision. In 2012, antigay groups were at it again, spending \$466,000 in an attempt to oust a fourth justice for his vote in the ruling.

Fortunately, in 2012, Iowa voters rejected this assault on justice by standing up and protecting the courts. However, with 38 states holding some form of judicial election, and the current increase in spending on these races, there is every reason to believe that special interests will persist in their attempt to influence the courts.

Political attacks on the courts stemming from rulings affecting the rights of LGBT people are nothing new. However, a flood of money is now dramatically altering judicial elections, blurring the line between justice and politics. Lambda Legal joined an amicus brief in *Williams-Yulee v. Florida Bar*, urging the U.S. Supreme Court to uphold reasonable restrictions on judicial campaign conduct. The recent victory in that case will help to guard against a public perception that justice is for sale.



Promoting Judicial Diversity

The Fair Courts Project works with partners in key states to promote a more diverse judiciary with judges that represent a broad range of identities, perspectives and experiences. True judicial diversity serves to improve the quality of justice and strengthen public confidence in the court system.

Out lesbian justice on Puerto Rico high court

Days before retiring from the Puerto Rico Supreme Court, Chief Justice Federico Hernández Denton reflected on his years of service and concluded that one of the decisions he most regretted was his vote in a 2005 case that prevented individuals who are transgender from amending their birth certificates to reflect their true identities.

In April 2014, Lambda Legal sent Governor García Padilla a letter urging that when nominating a new justice to the Court or making any other judicial nominations, he ensure that the judicial philosophy of his nominees includes a commitment to rule fairly and impartially in cases involving LGBT litigants and to seek thoughtful jurists who reflect Puerto Rico's rich diversity. In June 2014, Maite Oronoz Rodríguez was made Associate Justice to the Puerto Rico Supreme Court, marking the first time that an openly lesbian judicial nominee was confirmed to the high court.

Securing Access to Justice

"Equal Justice Under Law"—These words are engraved above the U.S. Supreme Court as an announcement of one of the basic principles of the American justice system. Unfortunately, for many LGBT people and people living with HIV, equal treatment in the courtroom and full access to justice are promises that remain unfulfilled.

BIAS IN COURT

"When I went to the court to file my divorce, the clerk tried to require proof of my transgender spouse's birth, forcing me to out her as a trans person. When I said this, the MA state employee began telling me I needed to submit proof of birth to make sure I wasn't lying. This happened in front of a whole packed lobby full of people."

—Linda



Protected and Served?

In 2012, Lambda Legal, with the help of over 50 supporting organizations, completed a national survey to assess whether courts and other government institutions are properly protecting and serving LGBT people and people living with HIV. The resulting publication was based on the results of 2,376 respondents. The results show some of the ways the promise of fair and impartial proceedings is tainted by homophobia, transphobia, and HIV bias.

- Nineteen percent (19%) of respondents reported hearing a judge, attorney or other court employee make *negative comments about a person's sexual orientation, gender identity or gender expression*.
- Sixteen percent (16%) of respondents reported feeling their own *sexual orientation or gender identity was raised when it was not relevant*.
- Fifteen percent (15%) of respondents reported having their *HIV status raised when it was not relevant*.

Transgender Access to the Courts

Transgender people must often deal with judges, attorneys and other court employees who refuse to acknowledge and respect their gender identity, do not use their preferred names and pronouns, and in the case of judges, may even issue rulings that force transgender people to deny their gender identity.

Overt transphobia in the courtroom is all too common. For instance, a transgender woman in drug court in Georgia, who had turned her life around, was told by the judge to complete drug testing – and not to come back in “my courtroom unless you are dressed as a man.” In another case, a judge in New York would only issue visitation/custody rights to a transgender parent if she agreed not to follow through with her plans for gender transition surgery.

Criminalization of LGBT People and People with HIV

Longstanding practices contribute to the criminalization of LGBT people and people living with HIV, such as the targeting of gay men in bar arrests or sex stings, as well as the focus on condom possession as evidence of sex work. In addition, laws criminalizing “exposure” to HIV – which are based on misunderstandings about the actual routes and risks of HIV transmission, ignorance as to the current-day consequences of an HIV diagnosis, and a desire to disavow the shared responsibility for maintaining sexual health – all contribute to uncertainty among many LGBT and HIV-affected people that they will be treated fairly in courts.

Overall Trust in Courts Compared to Schools, Police, and Prisons/ Jails

LGBT and HIV-affected survey respondents revealed a general lack of trust in the court system, falling below overall trust of schools and police, while coming out ahead of trust in prisons/jails.

Respondents Who Generally Trust the Schools, Police, Courts, and Jails/Prisons

