

## **LGBT Bibliography Updates** **April, 2007**

*This update contains articles, books, and select government documents published between November 1, 2006 and April 9, 2007.*

### **I. General Works on Sexual Orientation and the Law**

#### A. Books

#### B. Symposia

#### C. Reference

### **II. Legal Status of Lesbians and Gay Men**

#### A. General

Brower, Todd. *Multistate Figures: Sexual Orientation Visibility and its Effects on the Experiences of Sexual Minorities in the Courts*. 27 Pace L. Rev. 141-198 (2007).

This article discusses the experiences of sexual minority individuals in their interactions with the courts, both as employees and as court users. The article reviews four empirical studies of LGBT individuals and the courts, one from California, one from New Jersey, and two from the United Kingdom. The differing viewpoints of heterosexual vs. homosexual respondents are also discussed. In general, a significant portion of the survey respondents felt that openly gay employees and court users received unfair treatment in a number of contexts, although this response was stronger among homosexual respondents than among heterosexual respondents.

#### Books

Andersen, Ellen Ann. *OUT OF THE CLOSETS AND INTO THE COURTS: LEGAL OPPORTUNITY STRUCTURE AND GAY RIGHTS LITIGATION*. Ann Arbor, University of Michigan Press (2005).

Andersen considers the history of the Lambda Legal Defense and Education Fund, the development of the “legal opportunity structure” in the U.S. , and their impact on significant cases in the modern gay and lesbian civil rights movement. She provides an in-depth analysis of sodomy-related cases in the periods leading up to *Bowers vs. Hardwick* [478 U.S. 186 (1986)], and then from *Bowers* to *Lawrence v. Texas* [539 U.S. 538 (2003)], and analyzes why the later case was successful when the earlier one had failed. She considers changes in the social milieu, the structure of the Supreme Court, and legal criticism of the *Bowers* decision that were all part of the “legal opportunity structure” that contributed to Lambda’s success in the *Lawrence* case. The later chapters of the book focus on anti-gay initiatives and same-sex marriage, and explore

how the political landscape, or “political opportunity structure” may differ from the legal opportunity structure.

Mezey, Susan Gluck. *QUEERS IN COURT: GAY RIGHTS LAW AND PUBLIC POLICY*. Lanham, Md.: Rowman & Littlefield (2007).

Mezey’s book provides a fairly comprehensive overview of a number of areas of gay and lesbian-related litigation over the past 50 years. The initial chapter provides a general history of gay rights activism, and then is followed by chapters dealing with equality and privacy rights, same-sex marriage, military service, and employment discrimination. Each chapter provides a synopsis of the major cases that have been brought in each area of the law, and explores the progress (or lack thereof) in each. Also included at the end of each chapter is a brief discussion of survey results measuring popular support for the issues discussed in the chapter. Mezey uses this data to discuss whether the judges’ decisions that have been discussed in the chapter can be considered counter-majoritarian or not. She finds that although state supreme court cases may seem to be counter to majority’s will in a given locale, they often match the majority view in the nation as a whole. In some areas, specifically involving military service, she finds that the courts’ unwillingness to invalidate anti-gay legislation is actually contrary to the feelings of a majority of U.S. citizens.

## B. Criminal Law

Smyth, Michael A. *Queers and Provocateurs: Hegemony, Ideology and the “Homosexual Advance” Defense*. 40 *Law & Soc’y Rev.* 903-930 (2006).

This article reviews 14 homicide cases in California from the years 1949 and 2000 that involved a “homosexual advance” defense. The author expostulates “four classic scripts of homosexuality” – the effeminate, the sick or mentally ill, sexually predatory, and violent, and considers how each figured in the homicide cases involving the homosexual advance defense. Finally, the prevalence of the four scripts in the popular press over the same time period is examined, and the author concludes that the scripts have survived longer in the legal setting than in the popular culture.

## D. Constitution

1. General
2. First Amendment
3. Privacy, Equal Protection, Due Process

Perry, Michael J. *The Fourteenth Amendment, Same-Sex Unions, and the Supreme Court*. 38 *Loy. U. Chi. L. J.* 215-244 (2007).

The author begins by considering the appropriate degree of deference the U.S. Supreme Court should use when invalidating a piece of legislation, and determines that they should use a “not

unreasonable” standard in their review. He then reviews the key components of the 14<sup>th</sup> Amendment (due process, equal protection, and privileges and immunities), and concludes that a law will run afoul of the 14<sup>th</sup> Amendment if it is based on a “demeaning view” of a group of people. While he concludes that most anti-same-sex marriage laws are based on a demeaning view of gay men and lesbians, and thus technically unconstitutional, he feels that the Supreme Court should perhaps proceed cautiously in invalidating those laws in deference to the legislative process, and because invalidation could provoke a backlash that prompts an amendment to the Constitution.

#### 4. Full Faith and Credit/DOMA

Koppelman, Andrew. *The Difference the Mini-DOMAS Make*. 38 Loy. U. Chi. L. J. 265-278 (2007).

This author examines some issues that arise under various state “defense of marriage” laws. He identifies a number of issues that aren’t generally covered by those laws, such as persons migrating to the state, individuals attempting to avoid obligations incurred in other states, and litigation related to children of same-sex marriages who are now residing in the state. A number of attempts to deal with those situations, either by denying “contractual rights” to same-sex couples, by refusing to enforce judgments from other states related to same-sex unions, or by “blanket nonrecognition,” are most likely unconstitutional, because they either violate the Equal Protection or Full Faith and Credit clauses of the U.S. Constitution.

Simson, Gary J. *Beyond Interstate Recognition in the Same-Sex Marriage Debate*. 40 U.C. Davis L. Rev. 313-383 (2006).

The author begins with a brief discussion of the federal Defense of Marriage Act, and the Full Faith and Credit Clause of the U.S. Constitution, and finds that neither is dispositive on the issue of whether a same-sex marriage in one state must be recognized in another. He then analyzes the New York state case *In re May’s Estate* [148 N.E.2d 4 (N.Y. 1953)] to see whether a choice-of-law argument might help proponents of same-sex marriage to advance their claims. While the decision in *May’s Estate* would seem to do so, the author finds the case to have been improperly decided. He concludes, however, that the Equal Protection, Due Process, and Establishment Clauses of the U.S. Constitution would require a state to recognize same-sex marriages performed in another state.

#### E. Foreign / International Law

King, Katy A. *The Marriage Amendment Act: Can Australia Prohibit Same-Sex Marriage?* 16 Pac. Rim L. & Pol’y J. 137-165 (2007)

This article compares the U.S. Defense of Marriage Act and the Australian Marriage Amendment Act of 2004, both of which define marriage as between one man and one woman, and prohibit benefits to same-sex partners at the federal level. The author then goes on to consider the ramifications of unsuccessful court challenges to both laws. In the U.S., she finds that the consequences would not be that great because the federal government has limited ability to regulate marriage, hence the states would still be able to allow same-sex marriage. In Australia, in contrast, she believes that an unsuccessful court challenge (i.e., where the Australian Supreme Court upheld the validity of the Marriage Amendment Act) might also be held to preclude the states from allowing same-sex marriage as well because the Australian federal government has more Constitutional authority to regulate marriage than is the case in the United States.

### Books:

Amnesty International. POLAND AND LATVIA: LESBIAN, GAY, BISEXUAL AND TRANSGENDER RIGHTS IN POLAND AND LATVIA. London: Amnesty International (2006). (available from Amnesty International website, <http://web.amnesty.org/library/Index/EngEur010192006>)

Poland and Latvia are both signatories to a number of treaties that are supposed to protect the rights of their gay and lesbian citizens, but as this report documents, both countries have failed to uphold their treaty obligations on a number of occasions. The report begins with a discussion of the relevant provisions of the European Convention for the Protection of Human Rights, and the Charter of Fundamental Rights of the European Union, to which both Poland and Latvia have acceded.

2. International Law / Human Rights
3. Comparative

Wright, Wade K. *The Tide in Favour of Equality: Same-Sex Marriage in Canada and England and Wales*. 20 Int'l J. L. Pol'y & Fam. 249-284 (2006)

The author of this article compares the status of same-sex marriage in Canada vs. England and Wales. In response to court challenges, Canada passed the Civil Marriage Act in 2005, which granted same-sex couples the same right to marry as opposite-sex couples. In England and Wales, in contrast, Parliament passed the Civil Partnership Act in 2004, which gave same-sex couples most, but not all, of the same rights as opposite sex couples. The author considers the factors that gave rise to the differing results in England and Canada, and also considers a number of arguments as to why the UK legislation violates the Human Rights Act of 1998.

4. Immigration / Refugees

### **III. Discrimination**

#### A. Private Employment

1. General
2. Harassment / Title VII
3. Benefits
4. School / Teachers

#### B. Public Employment

1. Military / Campus Recruitment
2. Non-Military

#### C. Hate Crimes

## Government Documents

House of Representatives Committee on the Judiciary, Local Law Enforcement Hate Crimes Prevention Act of 2007, H.Rpt. 110-113 (April 30, 2007).

This report of the Judiciary Committee, together with dissenting views, recommends passage of H.R. 1592 (short title—Local Law Enforcement Hate Crimes Prevention Act of 2007), a bill to “provide federal assistance to states, local jurisdictions, and Indian tribes to prosecute hate crimes...”. The bill would “provide assistance to state and local law enforcement in the investigation and prosecution of hate crimes, and would amend chapter 13 of title 18, United States Code, to make violent crimes against a person motivated by bias against characteristics for which there is a history of such bias-motivated violence a felony. It would also amend the Hate Crime Statistics Act to require the collection of data on violent crimes motivated by bias against the victim’s perceived gender or gender identity, as well as data on crimes committed by and directed against juveniles.”

### D. Housing / Sports

### E. Other

## **IV. Family Issues**

### A. General

### B. Couples

#### 1. General

Wilson, Richard A. *The State of the Law of Protecting and Securing the Rights of Same-Sex Partners in Illinois Without Benefit of Statutory Rights Accorded Heterosexual Couples*. 38 Loy. U. Chi. L. J. 323-348 (2007).

Denied the status of marriage, same-sex couples in virtually every state are left with no alternative other than piece-meal contractual arrangements to protect their rights and interests. The Illinois Supreme Court, in *Hewitt v. Hewitt* [394 N.E. 2d 1204 (Ill. 1979)], adds another barrier to equal rights for same-sex couples in the state of Illinois. The court, “in response to a claim for enforcement of an agreement between two unmarried persons of the opposite sex in a state which did not recognize common-law marriage,” held that public policy in the state of Illinois disfavored “private contractual alternatives to marriage.” The court reasoned that sexual relations could not be part of the consideration for offer and acceptance. *Hewitt* has not been challenged on same-sex contractual relationship grounds, but the author argues that such contractual relationships would not be legal under *Hewitt*.

## Books

Human Rights Watch. *FAMILY UNVALUED: DISCRIMINATION, DENIAL, AND THE FATE OF BINATIONAL SAME-SEX COUPLES UNDER U.S. LAW*. NY: Human Rights Watch: Immigration Equality (2006).

HRW provides a comprehensive report of U.S. immigration law and its effects on same-sex couples in the U.S., illustrated through compelling personal stories. Same-sex bi-national couples do not have the right to marry in the U.S.; consequently, such relationships do not enjoy the same privileges of immigration as their heterosexual counterparts. HRW, while it supports marriage equality, sees immigration equality as a separate issue, and advocates for the passage of the Uniting American Families Act (UAFSA), which would add the category “permanent partner” to the classes of family members entitled to sponsor a foreign national for U.S. immigration. This report explores the history of exclusion from immigration in the U.S. based on gender and sexuality from McCarthyism to the HIV ban, and then reports on the lack of progress that has been made with respect to obtaining visas and immigration status for same-sex bi-national couples. Appendices to the report include the text of the UAFSA, a list of countries protecting same-sex couples’ immigration rights, census information on bi-national same-sex couples in the United States, and a list of organizations that work with LGBT immigrants, asylum seekers, and bi-national couples.

## 2. Marriage

### a. General

Cantor, Donald J. *SAME-SEX MARRIAGE: THE LEGAL AND PSYCHOLOGICAL EVOLUTION IN AMERICA*. Middleton, CT: Wesleyan University Press (2006).

This text takes an interdisciplinary approach to the issue of same-sex marriage, written from the viewpoint of scholars in both law and psychology. The legal scholars begin by tracing the development of the law with respect to adult sexual relations over the past forty years, both at the state and federal levels. The psychology scholars follow with a history of the theories of the origin of homosexuality, and the role that psychologists and psychiatrists have played in shaping public opinion of homosexuals. The text devotes three full chapters to children in queer families, providing empirical evidence in support of gays and lesbians as parents, as well as looking at issues associated with homosexuality and adoption. The book concludes with a review of marriage law in the U.S. and abroad, focusing on the practical benefits of marriage, and ultimately advocates for same-sex marriage.

Chatlani, Hema. *In Defense of Marriage: Why Same-Sex Marriage Will Not Lead Us Down a Slippery Slope Toward the Legalization of Polygamy*. 6 *Appalachian J. L.* 101-133 (2006).

After exploring early Christian views regarding marriage and sexuality, and the historical role of polygamy in the Mormon culture, this article addresses defenses of same-sex marriage under Equal Protection and Due Process grounds. (The author extends Equal Protection doctrine to same-sex marriage, but concludes that Due Process “has not evolved enough to include same-sex marriages.”) After setting the stage, the author then responds to the common “slippery-slope” argument that legalization of same-sex marriage will lead to legalization of other forms of marriage, specifically polygamy. Ultimately, the author concludes that polygamy is distinguishable from same-sex marriage because “the history of plural marriage in the United States reveals a pattern of sexual abuse, incest, child-brides, poverty, and discrimination against women.”

Hill, Matthew C. “*We Live Not on What We Have:*” *Reflections on the Birth of the Civil Rights Test Case Strategy and Its Lessons for Today’s Same-Sex Marriage Litigation Campaign*. 19 Nat’l Black L. J. 175-201 (2007).

Recounting the famous civil rights test cases which led to the “separate but equal” doctrine and eventually the decision in *Brown v. Board of Education of Topeka* overturning that doctrine, this note draws parallels to the same-sex marriage test cases of today. The author begins with a history of support structures—“ organizations with political and financial backing that seek social change using the test case strategy among other tools.” Specifically, the author discusses the Brotherhood of Liberty and the Baltimore NAACP, and compares those organizations to GLAD, the Human Rights Campaign, and Lambda Legal. The author concludes that same-sex marriage test-case litigation has been successful in humanizing the issue, thus garnering public support. The author also encourages support structures to supplement their test-case strategy with “legislative advocacy and public protest to complement the litigation already in progress.”

La Vita, Maria A. *When the Honeymoon is Over: How a Federal Court’s Denial of the Spousal Privilege to a Legally Married Same-Sex Couple Can Result in the Incarceration of a Spouse who Refuses to Adversely Testify*. 33 New Eng. J. on Crim. & Civ. Confinement 243-281 (2007).

In anticipation of a showdown between state and federal law, this author argues that the federal Defense of Marriage Act (DOMA) is unconstitutional in that it usurps state rights, under the Tenth Amendment, to define marriage. The author also explores the Due Process and Equal Protection claims against DOMA. Specifically, the author is concerned that a federal court may not extend the spousal privilege to same-sex spouses, thus requiring one same-sex spouse to testify against the other, or risk being held in contempt of court.

Missirian, David E. *Separate but Equal? Same Sex Couples in New England*. 35 Real Estate Law Journal 558-585 (2007).

This article explores the implications of *Goodridge* (legalizing same-sex marriage in Massachusetts) on real estate law in Massachusetts as compared to other states in the New England region. The author concludes that although same-sex couples can now marry in Massachusetts, they “are not free to hold title as tenants by the entirety and enjoy all of the rights and benefits afforded them as such.” Rather they are joint tenants, which the author argues is an important distinction—as joint tenants, the couple will act as two individuals, whereas in a tenancy by the entirety “the cotenants are intrinsically linked together in their ownership ‘as one person.’” In comparing Massachusetts with other states in the New England area, the author found the laws in Vermont and New Jersey (both of which have civil unions as opposed to marriage) to be much more explicit, extending the rights of tenancy by the entirety to same-sex couples.

Wilson, Justin T. *Preservationism, or the Elephant in the Room: How Opponents of Same-Sex Marriage Deceive Us Into Establishing Religion*. 14 Duke J. Gender L. & Pol’y 561-679 (2007).

Preservationism, as it is discussed in this article, is a term used to describe the evolving rhetoric of those opposed to same-sex marriage. The author argues that although the underpinning reasoning of those opposed to same-sex marriage is almost uniformly based in religious beliefs, the rhetoric has become more secular in an attempt to “couch...arguments in positive-sounding, seemingly un-bigoted terms.” Preservationism as an argument has been used to support the Defense of Marriage Act (DOMA), as well as the numerous “mini-DOMAs” around the nation and the Federal Marriage Amendment. The author applies the “Lemon Test” from *Lemon v. Kurtzman* to arrive at the conclusion that laws banning same-sex marriage violate the Establishment Clause of the First Amendment.

### Books

Gozemba, Patricia A. *COURTING EQUALITY: A DOCUMENTARY HISTORY OF AMERICA’S FIRST LEGAL SAME-SEX MARRIAGES*. Boston: Beacon Press (2007).

With an abundance of photographs alongside personal accounts, this book documents the events leading up to the landmark Massachusetts Supreme Court decision of *Goodridge v. Department of Public Health*, which legalized same-sex marriage in Massachusetts. It also takes a look back at the history of the gay rights movement in Massachusetts and to a lesser extent the nation as a whole.

Hull, Kathleen. *SAME-SEX MARRIAGE: THE CULTURAL POLITICS OF LOVE AND WAR*. NY: Cambridge University Press (2006).

Adapted from a dissertation written by a sociology scholar, this text seeks to capture the cultural debate for and against same-sex marriage. The author examines the debate from a sociological perspective, and places the dialogue into context with interviews from same-sex couples. She argues that the language of the debate on both sides of the issue is deeply rooted in cultural ideology, and draws parallels to show that both sides are using similar arguments to arrive at different conclusions.

Smith, Alison M. SAME-SEX MARRIAGES: LEGAL ISSUES. Washington, D.C.: Congressional Research Service (2006).

Written by a legislative attorney with the American Law Division of the Congressional Research Service, this report provides a comprehensive review of the current state of same-sex marriage laws in the U.S. Beginning with the federal Defense of Marriage Act (DOMA), the author explores potential constitutional challenges, specifically focusing on the Full Faith and Credit Clause, Equal Protection, and Due Process. The report then turns to the states, with a discussion of interstate recognition of same-sex marriage, and individual states' responses to same-sex marriage. The discussion includes so-called mini-DOMAs, state constitutional amendments, and civil union laws. Ultimately, the author concludes that under *Romer v. Colorado* and *Lawrence v. Texas*, it is unclear whether statutes banning same-sex marriage would stand up to a constitutional challenge.

b. Pro

### Books

Carpenter, Dale. THE FEDERAL MARRIAGE AMENDMENT: UNNECESSARY, ANTI-FEDERALIST, AND ANTI-DEMOCRATIC. Washington, D.C.: Cato Institute (2006).

This is a policy paper in opposition to the Federal Marriage Amendment (FMA). The author outlines four arguments against the FMA: 1) it is unnecessary because federal and state laws already make nation wide same-sex marriage unlikely for the foreseeable future, 2) the FMA is anti-federalist, especially in light of the fact that family law has traditionally been reserved for state regulation, 3) the FMA would cut short the democratic process, and 4) the amendment is poorly constructed overreaching, and possibly does not allow state legislatures the constitutional room to offer any form of legal support for same-sex relationships.

Snyder, R. Claire. GAY MARRIAGE AND DEMOCRACY: EQUALITY FOR ALL. Lanham, MD: Rowman and Littlefield Publishers (2006).

Written from the perspective of an associate professor of government and politics, as opposed to a legal scholar, this book presents the political theorists view of same-sex marriage in a democratic society by drawing on the works of John Locke, Immanuel Kant, and John Stuart Mill, among others. The author's central argument is that democracy does not merely allow, but *requires* the legalization of same-sex marriage,

even if the majority of Americans are opposed to it. She reasons that democracy is not merely majority rule, but rather democracy requires equality among citizens. Specifically, the author considers the legal principles of equality, separation of church and state, individual rights and liberties, and personal autonomy. Then, she responds to the opposition from what she calls three different strands of conservatism: religious conservatives, traditionalists, and conservative communitarians. Finally, the author responds to liberal academic critics of same-sex marriage.

Strasser, Mark Phillip. *DEFENDING SAME-SEX MARRIAGE*. Westport, CT: Praeger Publishers (2007).

This is a three-volume treatise with articles written by noted legal scholars. The first volume is titled “Separate but Equal No More: A Guide to the Legal Status of Same-Sex Marriage, Civil Unions, and Other Partnerships.” It includes articles on civil unions, domestic partnerships, the legalization of same-sex marriage in Massachusetts, corporate domestic partnership benefits, lessons learned from San Francisco, the federal Defense of Marriage Act, the federal Marriage Amendment, adoption, custody, and the rights of children.

The second volume is titled “Our Family Values: Same-Sex Marriage and Religion.” The volume includes articles on same-sex marriage and Hindus, Buddhists, Muslims, Lutherans, Presbyterians, Catholics, Unitarians, Pentecostals, Episcopalians, Methodists, Christians generally, Jews, sexuality and the black church, and historical reflections on religion and the freedom to marry in America.

The third volume is titled “The Freedom to Marry Movement: Education, Advocacy, Culture, and the Media.” It includes articles on advocacy and the political movement for same-sex marriage beginning with a history of advocacy and grassroots organizing, and then continues with articles on education and media, including how to deconstruct arguments against same-sex marriage, cyber-organizing, how to influence public opinion, and cultural perspectives of same-sex marriage in the Hispanic-, Native-, and African-American communities. All three volumes include bibliographies and indexes.

c. Con

Alvaré, Helen M. *The Moral Reasoning of Family Law: The Case of Same-Sex Marriage*. 38 Loy. U. Chi. L. J. 349-377 (2007).

This article explores the differences in moral reasoning between what are referred to as the “Abrahamic faiths” (Christianity, Judaism, and Islam), and those who support same-sex marriage. In exploring these differences, the author looks at the role of reason in comparison to emotion, the role of children, and the idea of freedom with respect to sexual unions. Finally, the author explores the consequences of adopting the moral reasoning of those who support same-sex marriage, and concludes that it could be detrimental to religious institutions. The author reiterates questions concerning the “legal severance of the tie between sexual love and new life...public ideals about marital fidelity...[and] the subordinate[ion] of the legal importance of biological ties.” The author also is particularly concerned about negative implications for family law,

specifically the best interests of the child, adoption, custody, child support, and inheritance.

Paprocki, Thomas J. *Marriage, Same-Sex Relationships, and the Catholic Church*. 38 Loy. U. Chi. L. J. 247-264 (2007).

Thomas Paprocki is an Auxiliary Bishop of Chicago and Adjunct Professor at Loyola University Chicago School of Law, and this article is taken from his remarks at a conference on the legal issues of same-sex relationships. Paprocki presents the Catholic viewpoint in opposition to same-sex marriage. He argues that the nature of marriage as a union of one man and one woman is rooted in human history, and that simply because the church supports this status quo, it does not imply a violation of the First Amendment Establishment Clause. He also compares civil law with natural law, while making the claim for the uniqueness of procreation.

### 3. Civil Unions / Domestic Partnership

#### Books

Richards, Steve. *A GUIDE TO THE CIVIL PARTNERSHIPS ACT 2004*. Brighton: Emerald (2006).

This book describes the United Kingdom's Civil Partnerships Act 2004, which recognizes the legal status of same-sex relationships, and examines the Act's provisions and impact in areas such as tax, inheritance and parenting, as well as international aspects and the role of courts in dissolution proceedings.

### 4. Dissolution

#### Books

#### C. Parenting

##### 1. General

Anderson, Linda S. *Protecting Parent-Child Relationships: Determining Parental Rights of Same-Sex Parents Consistently Despite Varying Recognition of Their Relationship*, 5 Pierce L. Rev. 1-29 (2006).

Parent-child relationships are impacted when states take conflicting positions on whether to recognize a same-sex relationship. The author advocates changes to the Uniform Parentage Act to incorporate more gender-neutral principles, to promote consistency in the law, and to "avoid treating children differently based on their parents' marital status."

Goldhaber, Oren. *“I Want My Mommies”*: *The Cry for Mini-DOMAs to Recognize the Best Interests of the Children of Same-Sex Couples*. 45 Fam. Ct. Rev. 287-297 (2007).

Goldhaber considers the impact on children of state Defense of Marriage Acts (“mini-DOMAs”), which deny recognition of the legal status of same-sex couples. It argues these states should allow both biological and non-biological parents in same-sex couples to have visitation/custody rights, when it would be in the best interest of the children.

2. Custody / Visitation

3. Adoption / Fostering

Ball, Carlos A. *The Immorality of Statutory Restrictions on Adoption by Lesbians and Gay Men*. 38 Loy. U. Chi. L. J. 379-397 (2007).

Building on the author’s previous work asserting the morality of gay rights, this article argues that anti-gay adoption statutes in Florida and Oklahoma are immoral because they tangibly harm children (often relegating them to the foster care system) and use children as a means to send a message of disapproval about homosexuality.

Bradley, Richard R. *Making a Mountain out of a Molehill: A Law and Economics Defense of Same-Sex Foster Care Adoptions*. 45 Fam. Ct. Rev. 133-143 (2006).

This article provides an economic analysis of the foster care system and the barriers to entry that same-sex partners must overcome to adopt a child. It argues that providing homosexuals with adoptive and other rights that heterosexuals enjoy would increase demand for adoption and reduce costs of foster care and of social welfare systems.

4. Pregnancy / Insemination

D. Wills, Trusts, Estates / Elders

E. Domestic Violence

Books

## **V. GLBT Youth / Student**

Morey, Maribel. *The Civil Commitment of State-Dependent Minors: Resonating Discourses that Leave Her Heterosexuality and His Homosexuality Vulnerable to Scrutiny*. 81 N.Y.U. L. Rev. 2129-2157 (2006).

The civil commitment process, mental health evaluators, and widely held notions of appropriate sexual behavior jeopardize the personal autonomy of heterosexual girls and homosexual boys in the state's care. This article focuses on the failure of Florida courts to play a watchdog role over diagnoses of "conduct disorder" in civil commitment proceedings, and urges child advocates take action to protect the autonomy of vulnerable minors.

## **VI. Health Issues**

## **VII. Prison(er)s, Corrections, and Criminal Justice**

## **VIII. Gender Identity**

### A. General

### B. Legal Status

### Books

Currah, Paisley, Richard M. Juang and Shannon Price Minter, eds. **TRANSGENDER RIGHTS**. Minneapolis: University of Minnesota Press (2006).

This collection of essays explores legal, historical and political dimensions and implications of the transgender movement, and it anticipates, "a dramatic widening of the cultural and social imagination." Contributors include law professors, attorney advocates, transgender activists and interdisciplinary scholars concerned with gender and sexuality theory.

### C. Discrimination

### D. Family

### E. Health

### F. Prisoners