



## Gay & Lesbian Advocates & Defenders (GLAD)

by Claude J. Summers

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New England's leading public-interest legal organization dedicated to ending discrimination based on sexual orientation, gender identity, and HIV status, Gay & Lesbian Advocates & Defenders (GLAD) provides litigation, advocacy, and educational work in all areas of glbtq civil rights. Along with New York-based Lambda Legal Defense and Education Fund, GLAD is considered one of the two most successful glbtq legal advocacy groups in the United States.

With headquarters in Boston, GLAD concentrates particularly on defending glbtq rights in the six New England states. As GLAD's Executive Director Lee Swislow recently observed, "New England has been fertile territory for the recognition of lgbt equality, yielding successes in every area of importance to our communities."

The organization has been in the forefront of securing marriage equality in Massachusetts and civil unions in Vermont, Connecticut, and New Hampshire and second-parent adoptions and guardianships across the region, as well as in invalidating sodomy laws and winning important rulings on discrimination against the transgendered and people with HIV.

Although GLAD identifies as a regional organization, it also accepts cases that reach far beyond the borders of New England and frequently works with other organizations pursuing similar goals, such as Lambda Legal, the National Center for Lesbian Rights (NCLR), and the American Civil Liberties Union's LGBT Project. It routinely files amicus curiae--or "friend of the court"--briefs in cases that could potentially affect glbtq rights in jurisdictions across the country.

### **Origins and Growth**

GLAD was founded in Boston in 1978 in the midst of anti-gay hysteria precipitated by the entrapment of gay men in public libraries and other venues and the creation by Suffolk County District Attorney Garret Byrne of a hotline to receive anonymous tips about "homosexuals involved with young men."

In this dangerous climate, attorney John Ward, one of only two openly gay lawyers in Boston at that time, brought together a group of community leaders to defend the men arrested, stop the hotline, end the harassment, and launch legal attacks on the archaic laws that were used to intimidate gay men and lesbians.

From an all-volunteer group with an unpaid Executive Director, GLAD has grown into a highly professional organization, its growth spurred in large part by Kevin Cathcart, who served as GLAD's Executive Director from 1984 until 1992, when he left to become Executive Director of Lambda Legal.

With several full-time litigators, development officers, public education specialists, administrative associates, and interns, GLAD is now a significant presence in the legal front of the equal rights struggle in New England. Moreover, it has the ability to call upon an impressive network of cooperating attorneys,

many of whom are willing to do pro bono work for the cause.

As the organization has grown, its scope has also expanded, moving from criminal defense and challenging unjust laws that target same-sex sexual activity to AIDS discrimination, family law, and the rights of the transgendered.

### **Current Focus and Past Accomplishments**

The organization currently focuses on a number of issues, including discrimination in employment, housing, and benefits; transgender issues, including insurance coverage for hormone treatments and a challenge of IRS regulations that deny the tax deductibility of expenses for sex reassignment surgery; glbtq families and relationships, including marriage and parental rights and responsibilities; hate crimes and violence, including domestic violence in glbtq relationships; students and schools, including the right of students to form glbtq student organizations and to be free of harassment; HIV/AIDS discrimination and education, including access to health care, HIV-prevention programs, and privacy and testing concerns; and, to a lesser extent, immigration, prison, and military issues.

Dedicated to practicing "impact litigation" to achieve the widest possible results from its cases, GLAD has been involved in a number of high profile suits, ranging from winning the right of Rhode Island teenager Aaron Fricke to attend his high school prom with a male date in 1980, attaining domestic partnership benefits for employees of the University of Maine in 1996, successfully challenging a Massachusetts Sex Offender Registry Law that targeted gay men who had pled guilty to misdemeanors in 1997, to winning a United States Supreme Court ruling that people with HIV are protected from discrimination under the Americans with Disabilities Act in 1998.

### **Same-Sex Marriage**

But perhaps the most famous cases litigated by GLAD are *Baker et al. v. State of Vermont* (1999) and *Goodridge et al. v. Department of Public Health* (2003), the cases that resulted in civil union in Vermont and same-sex marriage in Massachusetts.

GLAD's strategy in achieving marriage equality was devised and executed by Mary Bonauto, director of the organization's Civil Rights Project. David J. Garrow has compared Bonauto to Thurgood Marshall, the legendary head of the NAACP Legal Defense Fund who argued *Brown v. Board of Education*, which found school racial segregation unconstitutional. Crediting Bonauto with "patient, quietly passionate yet self-effacing advocacy [that] may have as far-reaching an effect on America as did that of Thurgood Marshall," Garrow sees the Massachusetts landmark marriage decision as ushering in a new social era.

Fearful that a negative ruling might establish a damaging precedent that would set back the movement for equality, Bonauto resisted repeated pleas that she sue for marriage rights soon after she joined GLAD in 1990. In 1997, however, she agreed to file the suit that would result in *Baker et al. v. State of Vermont*.

The decision in *Baker* was, in Bonauto's words, "a legal and cultural milestone. For the first time a state supreme court has recognized that gay couples exist and have the same needs for legal protections as other couples." To her disappointment, however, the Vermont Supreme Court left it to the state legislature to decide whether those benefits be conferred through marriage or a parallel institution, "civil unions," in which the legal benefits of matrimony were extended to same-sex couples but the crucial term "marriage" withheld.

When arguing the Goodridge case in Massachusetts, Bonauto beseeched the seven justices of the Supreme Judicial Court not to follow the Vermont precedent, for "when it comes to marriage," she argued, "there

really is no such thing as separating the word 'marriage' from the protections it provides. The reason for that is that one of the most important protections is the word, because the word is what conveys the status that everyone understands as the ultimate expression of love and commitment." To create a separate system for gay people, she told the justices, "would essentially be branding gay people and our relationships as unworthy of this civil institution of marriage."

Four of the justices agreed, and marriage equality has become a reality in Massachusetts. The impact of that reality on gay people in the state, Bonauto has observed, is immeasurable. "It has taken my breath away," she said soon after the ruling, "to have so many people come up to me and say: 'I had no idea all the ways in which I had incorporated my second-class-citizen status and didn't even know it. For the first time I actually realize I am a full and equal citizen, and I didn't even realize all the accommodations I had been making.' That, I think, is what is transformative."

More practically, the achievement of marriage equality in Massachusetts and civil unions in Vermont, New Hampshire, and Connecticut means that in those states many of the legal difficulties typically faced by gay and lesbian couples--including child custody and adoption, health-care benefits, and inheritance--are automatically solved by the protections conferred by marriage and civil union.

### **United States Supreme Court Cases**

In 1995, GLAD founder John Ward became the first openly gay attorney to argue a case before the United States Supreme Court. Representing the Irish-American Gay, Lesbian & Bisexual Group of Boston (GLIB), which had been excluded from marching under its own banner in Boston's annual St. Patrick's Day Parade, Ward framed the dispute between GLIB and the organizers of the parade (the South Boston Allied Veterans Council) as a public accommodations issue.

The parade, Ward argued, was an open recreational event, taking place on the public streets and boardwalks of Boston, and the defendants had discriminated against GLIB in violation of the Massachusetts public accommodations law and the Constitution's First Amendment by excluding it from this public event.

Although Ward's approach was successful at the state level, it did not prevail at the federal level. In a unanimous ruling, the Supreme Court reversed the findings of the state courts and ruled on narrow First Amendment grounds that the Veterans group had a right to exclude GLIB from the parade.

Justice Souter framed the controversy this way: "The issue in this case is whether Massachusetts may require private citizens who organize a parade to include among the marchers a group imparting a message the organizers do not wish to convey. We hold that such a mandate violates the First Amendment."

However, as GLAD cooperating attorney Gretchen Van Ness has observed, "The Supreme Court's description of the case was devoid of all of the difficult, fact-sensitive questions about what this Parade was, and why GLIB was excluded; questions that had properly occupied the state courts." The decision, in effect, rested on a misinterpretation of the evidence, which clearly showed that the parade was not organized by private citizens, but by the city of Boston.

Another GLAD case before the U. S. Supreme Court, *Bragdon v. Abbott*, had a happier outcome. Bennett Klein, GLAD's AIDS Law Project director, represented a woman with asymptomatic HIV infection, who was refused care in a dentist's office. The Supreme Court's 5-4 decision in 1998 established that people with HIV are protected against discrimination by the Americans with Disabilities Act even if they do not have full-blown AIDS.

### **Other Services**

In addition to litigating on behalf of glbtq clients and filing amicus curiae briefs in appropriate cases, GLAD also takes seriously its mission to educate both the general public and the glbtq community.

Its Public Education Program is devoted to increasing public awareness of glbtq legal issues and disseminating information to enable individuals to exercise their rights. The organization sponsors public education forums and provides technical training for attorneys, governmental agencies, and professional groups.

GLAD also publishes a wide variety of material, including informational brochures, fact sheets, briefs and memoranda for attorneys, and both technical and general articles.

In addition, GLAD maintains an informative website, which includes a Legal Infoline on which individuals in New England may submit questions and request information. It also operates a toll-free hotline and a lawyer referral service.

### **Conclusion**

Now a respected member of New England's legal community, GLAD has helped move glbtq citizens closer to equality. As Lee Swislow has remarked, "Our legal victories have changed the landscape of the law regarding sexual orientation, HIV status, and gender identity and expression. But more importantly, they have made a difference in the day-to-day lives of countless individuals."

Despite GLAD's numerous successes, however, the group remains vigilant, acutely aware that many of the gains that have been made in recent years are precarious and under assault by well-financed enemies of equal rights.

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