

On the Defensive

Lambda Legal offers a crucial line of defense when antigay groups try to take away domestic partner rights, especially in states that ban marriage for same-sex couples—and leave them without basic legal protections.

By Christopher R. Clark, Senior Staff Attorney



Cancer survivor and plaintiff **Kathy Flores** (top, with partner and co-plaintiff **Ann Kendzierski**) says, “It’s imperative my partner’s rights be resolved in case I’m back in the hospital.”

THE 43 RIGHTS LISTED in Wisconsin’s Domestic Partnership Registry do not come close to providing the same protections as the 200 state law rights and over 1000 federal benefits of marriage, but that is what the antigay group Wisconsin Family Action is arguing in an attempt to destroy the Registry. In response, Lambda Legal is doing what we’ve done in other states that have amended their constitutions to prohibit marriage for same-sex couples: We’re working to limit the scope of those amendments by making sure couples have access to basic legal protections for their families. In Wisconsin, we’ve defended this turf not once but twice.

Wisconsin Family Action’s latest effort came in August 2010, when the group re-filed an earlier case arguing that the state’s 2009 domestic partnership law violated the state’s antigay constitutional amendment. Lambda Legal filed a motion to intervene on behalf of

Fair Wisconsin, a statewide organization that advocates for LGBT equality, as well as on behalf of five same-sex couples who need the basic legal protections that the registry provides. Our client, David Koptizke, who has been with his partner, Paul Klawiter, for nearly 40 years, explains: “Paul and I just want to make sure that we can visit each other in the hospital and take care of each other as we grow older.”

This tug of war dates back to November 2006, when Wisconsin passed the constitutional amendment, which not only prohibits marriage for same-sex couples but also bars recognition of any legal status that is “substantially similar” to marriage. Three years later, the state legislature enacted a statewide

domestic partnership registry that gave same-sex couples who register as domestic partners limited, but important, legal protections such as the right to visit each other in the hospital and to take a family medical leave in the event one of them becomes ill. The law also allows for inheritance by one partner if the other partner dies without a will.

It was shortly after the Wisconsin registry went into effect in August 2009 that Wisconsin Family Action filed its first challenge—and attempted to circumvent the usual litigation process by filing the case directly with the Wisconsin Supreme Court. The governor had to appoint special counsel to represent the state in the case because the state’s antigay attorney general refused to defend the registry.

Lambda Legal’s request to the Wisconsin Supreme Court to intervene in the case was

accompanied by an argument that Wisconsin Family Action should not be permitted to bypass the trial court. The Court did weigh in, and the matter was dismissed. But now the challenge is back at the lower court.

THERE IS NO LEGAL OR FACTUAL BASIS

for Wisconsin Family Action’s claim that the domestic partnership registry is unconstitutional. Arguments have been made that the registry creates a legal status “substantially similar” to marriage, but these are absurd. In fact, before the registry went into effect, the independent Wisconsin Legislative Council analyzed the registry and the rights it provided and issued an opinion stating that the registry was not in conflict at all with the ban on marriage for same-sex couples.

Wisconsin Family Action’s attempt to strip same-sex couples of such basic rights as the ability to visit each other in the hospital is a mean-spirited attack on our community that Lambda Legal is determined to combat at every step. Lawsuits like this prove the emptiness of rhetoric from such antigay groups that they are “pro-family.”

LAMBDA LEGAL SUCCESSFULLY

fended off a similar attack on same-sex couples recently in Ohio, which also has a constitutional amendment that prohibits same-sex couples from marrying. Enacted in 2004, it bars the state from recognizing any legal status that approximates marriage, much like Wisconsin’s law. In 2009, the Cleveland City Council voted to create a domestic partnership registry for same-sex couples. While the registry itself conferred no rights on domestic partners, local employers are believed to use the registry as a basis for determining eligibility for health insurance and other company benefits provided to domestic partners.

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Constant Gardener

Nathaniel Wilson, Jr. (right) was a true southern gentleman—warm and dignified, with a keen, dry sense of humor. The Virginian’s life was rich and his experiences varied. He had a life-long love of airplanes, proudly serving his country in the Navy as an aeronautics specialist, and working for years for the Air Transport Association. He lived in Spain for several years while in the Foreign Service, and was fluent in both Spanish and French. During his retirement, Nat regularly traveled to New York, San Francisco, Santa Fe and beyond to share his passions for opera, the symphony and architecture with friends and family.



Nat was a heart transplant recipient. Despite his generally private nature, he was open about the impact that the donation had, giving him 13 additional years to live life to the fullest. Nat’s friends uniformly report the awe and inspiration they felt as they gathered for his annual transplant anniversary celebrations, cheering both the humbling, generous gift and how well Nat used it. He and his friend Larry Slagle, the only people they were aware of who were both gay and heart recipients, formed a mutual support group and were proud to share with others: “Donation works!”

In addition to volunteering as an ESL (English as a Second Language) teacher and for the Association for Retarded Citizens of Virginia, Nat was a long term civil rights activist. He served on the board of the ACLU of Virginia, and volunteered for both the Arlington Virginia Gay and Lesbian

Alliance and as a counselor for youth with Metro DC PFLAG (earning that group’s volunteer of the year award.) “He wanted gay people to have a better life, easier and with more acceptance, than what he went through as a young man,” says one of his best friends, Murray Bond.

“Nat wasn’t a front-page person, not at all splashy,” says his former life partner Stephen Nash. “He was the steady and persistent person willing to work for years to see results.” His good friend and fellow Arlington activist James Fisher adds, “He wanted to put his dollars to a good and effective use, and he went at it in a foundational way—looking for what he could support so that his investment in the organization would grow and mean something over time.” His support was both thoughtful and loyal. “He truly cared, in an ethical and moral way, about the groups he supported,” says Rhonda Buckner, who met Nat when she led

DC PFLAG. His many years of support as a major donor to Lambda Legal reflect that commitment.

One of Nat’s great loves was gardening, and he spent years cultivating a stunning garden surrounding his Arlington home. After Nat’s death, his sister Sue shared some of his plant cuttings with friends. “I now have these lovely Japanese bloodgrass and ferns,” Fisher says. “When you can walk around each year and see something that returns again and again to keep you company, something tied to someone you loved who is gone, it’s a tremendous comfort and wonderful remembrance.”

Nat’s generous bequest of over \$380,000 to Lambda Legal is also a gift that will sustain generations, supporting our fight for full equality for LGBT people and people living with HIV. We thank him, and miss him dearly. —*Judi O’Kelley, Director of Life Planning*

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The Alliance Defense Fund, an antigay legal group, filed a lawsuit against the city saying *any* governmental recognition of same-sex couples was an “approximation” of marriage and thus a violation of Ohio’s constitutional amendment. The trial court dismissed the case because of binding precedent, but the Alliance Defense Fund and their client, a local antigay group called Cleveland Taxpayers for the Ohio Constitution, appealed to the Court of Appeals, Eighth Appellate District. The Court unanimously affirmed the lower court’s dismissal, declaring, “Any legally established relationship bearing less than all the attributes of marriages is constitutional.”

Indeed, Cleveland’s domestic partnership registry is important and meaningful for those who benefit from it, but it cannot approximate marriage unless it provides the extensive legal structure that protects married couples’ families. The state’s antigay amendment should in no way restrict Ohio cities from helping same-sex couples obtain health insurance benefits.

THE CLEVELAND DECISION IS especially important because the Court recognized that the legal status of marriage is “exceptional.” Citing the friend-of-the-court brief that Lambda Legal submitted in defense of the registry, the Court noted the difficulty of arguing that “domestic partnership” could ever equate to marriage:

As stated in our amicus brief, the term “domestic partner” completely lacks the social and emotive resonance of “husband” and “wife.” Domestic partnerships are not given the same respect by society as a married couple, and they share none of marriage’s history and traditions.

This compelling logic has direct application to the domestic partner challenge in Wisconsin. As Lambda Legal advances its defense of the Wisconsin registry, we will urge the Wisconsin court to reach a similar conclusion: that constitutional amendments prohibiting marriage for same-sex couples have no bearing at all on laws providing LGBT families with limited, but important domestic partnership protections. **L**