



May 17, 2016

Via Electronic Mail

Honorable Scott Walker  
Governor of the State of Wisconsin  
Office of Governor Scott Walker  
115 East Capitol  
Madison, WI 53702

Dear Governor Walker:

With the retirement of Justice David Prosser from the Wisconsin Supreme Court, you have the opportunity to appoint a new Justice to the court. As the nation's largest and oldest national legal organization committed to achieving the full recognition of the civil rights of lesbian, gay, bisexual and transgender ("LGBT") people and those living with HIV, Lambda Legal is particularly aware of the importance of access to justice for all people, including the necessity that the judges chosen to decide cases that will come before them are prepared to do so without bias and based solely on evidence and precedent. We would like to share with you our thoughts about considerations we believe need to be taken into account in selecting future judges and respectfully suggest that you consider the following information when making these important decisions.

In recent years, Wisconsin's courts have issued decisions with significant impact for people who are LGBT. For example, in *Appling v. Walker*, 2014 WI 96 (2014), the Wisconsin Supreme Court held that Wisconsin's domestic partnership law, which created legal recognition for same-sex relationships, was constitutional. Lambda Legal argued *Appling* before the Court and achieved a unanimous victory in that case because the members of the Court put aside any personal opinions and biases and faithfully applied the law. Other cases decided by the Court that have impacted members of the LGBT community have included *McConkey v. Van Hollen*, 2010 WI 57, 783 N.W.2d 855 (2010) (holding that an amendment to the Wisconsin Constitution that barred marriage for same-sex couples was properly submitted to the voters) and *In re Custody of H.S.H.-K.*, 193 Wis.2d 649, 533 N.W.2d 419 (Wis. 1995) (holding, in the case of a same-sex couple who had co-parented a child, that "when a parent consents to and fosters another person's establishing a parent-like relationship with a child and then substantially interferes with that relationship," a court may order visitation if it is in the best interest of the child). Wisconsin courts will continue to hear cases that impact the rights of LGBT people and those living with HIV in the future.

When people who enter the courthouse have their fundamental rights hanging in the balance, it is crucial that the judges in whom their rights have been entrusted will treat them fairly. In 2014, Lambda Legal conducted a national community survey to understand how courts and other government institutions are protecting and serving LGBT people and people living



with HIV. The results show some of the ways that the promise of fair and impartial proceedings is compromised by bias against LGBT people and people living with HIV. For example, 19 percent 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. Significantly, only 27 percent of transgender people and 33 percent of LGBT people of color said that they "trust the courts."

Those whose rights are being decided should be assured that their arguments will be seriously considered and understood, and their claims will be resolved without bias against them, or favor for their opponents. Ensuring that Wisconsin's judges are fair-minded and will approach the decisions they make without prejudice is of utmost importance both for our legal system and for the rights of those more vulnerable people whom the legal system has the highest obligation to protect.

Specifically, whomever you appoint should have a demonstrated commitment to render decisions impartially and in accordance with Constitutions and laws of the United States and of Wisconsin, including in cases involving LGBT and HIV-positive litigants. For example, they should be expected to follow the legal precedents established in decisions like *Romer v. Evans*, 517 U.S. 620 (1996); *Lawrence v. Texas*, 539 U.S. 558 (2003); *United States v. Windsor*, 570 U.S. 12, 133 S.Ct. 2675 (2013); and *Obergefell v. Hodges*, 576 U.S. \_\_\_, 135 S.Ct. 2584 (2015). It is of the utmost importance that any nominee to the Wisconsin Supreme Court be prepared to apply *Lawrence's* holding that the United States Constitution's protection of liberty affords lesbians, gay men and bisexuals the same autonomy as heterosexuals in making personal decisions relating to marriage, reproductive choice, family relationships and the raising and education of children. Any nominee to Wisconsin's judiciary should also acknowledge the mandate of *Windsor* and *Obergefell* that the personhood and equal dignity of all citizens should not be disparaged or injured by the State.

In order to seek the highest level of judicial integrity, we also urge you and your staff to seek potential judicial candidates who not only are qualified and thoughtful jurists, but also are reflective of the full range of Wisconsin's diversity. It is critical that the judiciary be composed of judges who truly represent and understand the issues faced by all of its citizens. We respectfully urge you to include qualified LGBT judges, as well as other underrepresented minorities and those with public defender and public interest legal backgrounds, among those you name to the bench.

We urge you, and those you select to assist you, to scrutinize every judicial candidate's record closely and ask pertinent and comprehensive questions to best assess each one's ability to be a fair and impartial jurist.



**Lambda Legal**  
making the case for equality

We sincerely thank you for taking the time to consider our thoughts about the important task of appointing judges that will sustain a fair, impartial, and well-respected judiciary. We would welcome the opportunity for further discussion about this vital issue.

Very truly yours,

A handwritten signature in black ink, appearing to read "Hayley Gorenberg".

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cc: Daniel Sievert, Appointments Director