

# OUT Side Influence

## In this issue

- 02** Another Tragedy Reminds Us that the LGBTQ+ Community Continues to be Discriminated: A Call to Completely End the FDA's Ban on Homosexual Blood Donations
- 04** Fair Housing Act Developments Supporting LGBTQ Civil Rights
- 06** Notice of FBA Webinar

## Message from the Chair



The fight for LGBTQ rights continues to arise in the federal courts, with gender identity and transgender issues at the forefront. On April 12, 2019, the United States military implemented its ban on transgender troops, barring transgender individuals from serving openly in the armed forces, and denying servicemembers medical care for gender reassignment. Military academies will similarly ban transgender individuals from attending the schools under the implemented policy. Four lawsuits will continue to challenge the policy on its merits.

Following a remand from the Supreme Court in 2017, the case of Gavin Grimm, a transgender male student who sought bathroom access under the Fourteenth Amendment and Title IX of the U.S. Education Amendments of 1972, is currently before the district court on a motion for summary judgment.

Additionally, the Supreme Court recently decided to hear cases raising the question of whether “sex” as used in Title VII the Civil Rights Act of 1964 encompasses discrimination based on an individual’s sexual orientation, and whether the term “sex” includes “gender identity,” highlighting a conflict between the Equal Employment Opportunity Commission, which has said the 1964 act does guarantee such protections, and the Trump Administration, which takes the contrary view.

---

Continued on page 5

---

## LGBT Law Section Officers

### **Chair**

Chirag Badlani  
Hughes Socol Piers Resnick & Dym, Ltd.

### **Programs Chair**

David Boyles  
Dinsmore & Shohl, LLP

### **Secretary**

Brandon King  
Baker & McKenzie LLP

### **YLD/Membership Chair**

Christine Dieter  
Hinckley Allen & Snyder LLP

### **Treasurer**

John Sellner  
Winthrop & Weinstine PA

### **Chair, Standing Committee on Publications and Public Relations**

F. Michael Carrillo  
The Carrillo Law Firm PLLC

# Another Tragedy Reminds us that the LGBTQ+ Community Continues to be Discriminated: A Call to Completely End the FDA's Ban on Homosexual Blood Donations

By Candelario Saldana

On October 2, 2017, America woke up to news of yet another tragedy: a shooting in Las Vegas<sup>1</sup> that left fifty-nine people dead and hundreds injured.<sup>2</sup> The following day, Las Vegas Mayor Carolyn Goodman urged the community to donate blood to aid victims.<sup>3</sup> Answering her call, residents rushed to donation centers and patiently waited in block-long lines for hours.<sup>4</sup> However, due to the Food and Drug Administration's ("FDA") policy, Recommendations for the Prevention of Human Immunodeficiency Virus Transmission by Blood and Blood Products, banning men who have sex with men from donating blood,<sup>5</sup> these donation centers were forced to turn away many healthy members of the LGBTQ+ community,<sup>6</sup> similar to what took place after the Orlando PULSE shooting,<sup>7</sup> and after the Stoneman Douglas High School shooting.

In 1983, the onset of the AIDS crisis, the FDA implemented a lifetime ban on blood donations from men who had ever had sex with another man.<sup>8</sup> Although little was known about the disease in the early 80's, HIV was believed to be a gay disease.<sup>9</sup> In 2014, the FDA announced its intentions to make a change to its policy. LGBTQ+ organizations called for a total elimination of the ban.<sup>10</sup> To their dismay, in December 2015, the FDA simply shortened the length of the ban.<sup>11</sup> The new policy prohibits men from donating blood if they have had sex with another man within the last twelve months.<sup>12</sup> The FDA claims that it considered alternative criteria instead of the twelve-month deferral.<sup>13</sup> Ultimately, the FDA decided to implement the deferral due to concerns with the reliability of self-reports of monogamy,<sup>14</sup> along with statistics demonstrating that men who have had sex with another man accounted for 70% of new HIV infections in the U.S.<sup>15</sup> However, even though HIV rates remain high among homosexuals, there are effective, non-discriminatory alternatives to addressing the FDA's concerns. For instance, prescreening measures such as using nucleic acid tests, which detect HIV within ten days of being infected,<sup>16</sup> and individual risk factor assessments can ensure safe blood donations.<sup>17</sup>

Although there has not been a challenge to the ban in federal courts, in light of recent court decisions addressing other discriminatory practices by states and the federal government, it might be time to challenge the FDA's ban. Starting with *Romer v. Evans* in 1996,<sup>18</sup> the Supreme Court has accepted that homosexuals as a class fall under the protection of the Equal Protection Clause. In *Lawrence v. Texas*, the Court held that having laws criminalizing same-sex intimacy demeans homosexuals and are therefore unconstitutional.<sup>19</sup> In *United States v. Windsor* and *Obergefell v. Hodges*, the Court held that marriage laws that defined marriage exclusively for heterosexuals were also unconstitutional.<sup>20</sup> The Court has also clearly stated that states cannot "engage in—and have the authority to prohibit—discriminatory conduct that 'demeans or

stigmatizes' LGBT people."<sup>21</sup> Therefore, one could argue that other laws, regulations or policies—such as the blood ban—that either on their face discriminate against homosexuals or have the effect of discriminating against them could possibly be found unconstitutional if an Equal Protection analysis were applied.<sup>22</sup>

One of the challenges with using an Equal Protection argument, however, is that the ban does not specially name homosexuals or bisexual men.<sup>23</sup> Instead of being discriminatory against a class that the Supreme Court has recognized as deserving Equal Protection, the ban instead ban's men who have had sex with men in the past 12 months, it prohibits conduct instead of identity. Therefore, the policy might not be found to facially target a protected class. However, the Court has held that laws that are facially neutral but have a discriminatory effect or impact a protected class can still be analyzed using an Equal Protection lens.<sup>24</sup> Here, the ban claims to target men who have sex with men; however, the targeted conduct is closely associated to gay men,<sup>25</sup> gay men by definition are men who have sex with men. The history of the ban, stemming from the AIDS crisis in the 80's also has a history that implicates that the policy is aimed at gay men.<sup>26</sup> However, even if courts do not find that the intent was to discriminate, it is quite likely that a court would find that the effect is discriminatory. Furthermore, the effect is not only discriminatory, but there are other ways to achieve the legitimate interest of keeping the blood donations safe without being discriminatory towards homosexual men.

It is time that men like myself—gay and willing to donate—are not turned away from blood donation centers simply because we have sex with other men. After every tragedy hundreds if not thousands of gay men are forced to sit on the sidelines. Although we are trying to perform a selfless act, we are discriminated against because of the discriminatory policy implemented by the FDA. Although we are HIV-negative and willing to donate, we are not allowed, even when trying to help our own people, it's time to say #EndtheGayBloodBan.

## Endnotes:

<sup>1</sup>See Las Vegas shooting what we know, CNN (Oct. 3, 2017, 8:44 AM), <http://www.cnn.com/2017/10/02/us/las-vegas-shooting-what-we-know/index.html>; Susan Miller, Las Vegas shooting now tops list of worst mass shootings in U.S. history, CNN (Oct. 2, 2017, 6:12 PM), <https://www.usatoday.com/story/news/2017/10/02/worst-mass-shootings-u-s-history/722254001/>.

<sup>2</sup>Las Vegas shooting updates: Portraits of the victims emerge, L.A. Times (Oct. 5, 2017, 9:45 AM), <http://www.latimes.com/nation/la-las-vegas-shooting-live-updates-death-toll-rises-to-59-investigators-1506983486-htmlstory.html>.

<sup>3</sup>Sarah Glover, 'Please Donate Blood': Las Vegas Mayor Following Mass Shooting, NBC L.A. (Oct. 3, 2017), <https://>

[www.nbclosangeles.com/news/national-international/Las-Vegas-Mayor-Concert-Shooting-Donate-Blood-449080253.html?\\_osource=taboola-recirc](http://www.nbclosangeles.com/news/national-international/Las-Vegas-Mayor-Concert-Shooting-Donate-Blood-449080253.html?_osource=taboola-recirc) (internal quotations omitted).

<sup>4</sup>See Jessie Bekker, et. al, Donors overwhelm blood banks after Las Vegas Strip massacre, *Las Vegas Review-Journal* (Oct. 2, 2107, 12:49 PM), <https://www.reviewjournal.com/local/the-strip/donors-overwhelm-blood-banks-after-las-vegas-strip-massacre/>; Gene Haagenson, Response at blood centers in the Valley, *ABC 30* (Oct. 2, 2017), <http://abc30.com/health/response-at-blood-centers-in-the-valley/2481201/>.

<sup>5</sup>U.S. Food and Drug Admin., Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products – Questions and Answers, <https://www.fda.gov/biologicsbloodvaccines/bloodbloodproducts/questionsaboutblood/ucm108186.htm> (last visited Oct. 6, 2017); Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products [hereinafter Revised Recommendations], Dec. 2015.

<sup>6</sup>Adam Eickmeyer, Keeping a Finger on the PULSE of Blood Donation Policy After Orlando, *Health Affairs Blog* (Sept. 1, 2016), <http://healthaffairs.org/blog/2016/09/01/keeping-a-finger-on-the-pulse-of-blood-donation-policy-after-orlando/>; Sheena McKenzie, Gay men outraged over continued ban on blood donation, *CNN*, (June 14, 2016, 4:10 PM), <http://www.cnn.com/2016/06/13/health/orlando-shooting-gay-men-donate-blood/index.html>; Sylvia Cunningham, Florida Man Feels ‘Helpless’ After Failed Blood Donation Attempt, *NBC News*, (Feb. 9, 2017, 6:09 PM), <https://www.nbcnews.com/feature/nbc-out/florida-man-feels-helpless-after-turned-away-donating-blood-n591346>.

<sup>7</sup>Adam Eickmeyer, Keeping a Finger on the PULSE of Blood Donation Policy After Orlando, *Health Affairs Blog* (Sept. 1, 2016), <http://healthaffairs.org/blog/2016/09/01/keeping-a-finger-on-the-pulse-of-blood-donation-policy-after-orlando/>; Sheena McKenzie, Gay men outraged over continued ban on blood donation, *CNN*, (June 14, 2016, 4:10 PM), <http://www.cnn.com/2016/06/13/health/orlando-shooting-gay-men-donate-blood/index.html>; Sylvia Cunningham, Florida Man Feels ‘Helpless’ After Failed Blood Donation Attempt, *NBC News*, (Feb. 9, 2017, 6:09 PM), <https://www.nbcnews.com/feature/nbc-out/florida-man-feels-helpless-after-turned-away-donating-blood-n591346>.

<sup>8</sup>Mathew L. Morrison, Note, Bad Blood: An Examination of the Constitutional Deficiencies of the FDA’s “Gay Blood Ban”, 99 *Minn. L. Rev.* 2363, 2364 (2015).

<sup>9</sup>Stephanie Gallman, FDA Lifts Lifetime Ban on Gay Men Donating Blood, *CNN* (Dec. 21, 2017, 8:28 PM), <http://www.cnn.com/2015/12/21/health/fda-gay-men-blood-donation-changes/index.html>.

<sup>10</sup>Sabrina Tavernise, F.D.A. Easing Ban on Gays, to Let Some Give Blood, *N.Y. Times* (Dec. 23, 2014), <https://www.nytimes.com/2014/12/24/health/fda-lifting-ban-on-gay-blood-donors.html>; see also FDA Blood Donation Ban Change Still Unacceptable [hereinafter HRC Press Release], Human Rights Campaign (May 12, 2015), <https://www.hrc.org/press/fda-blood-donation-ban-change-still-unacceptable>.

<sup>11</sup>See Amanda Terkel, The FDA’s Blood Donor Policy Is Still Homophobic: Gay men in sexually active monogamous relationships will still be banned, *Huffpost* (Dec. 21, 2015, 1:34 PM), [https://www.huffingtonpost.com/entry/fda-gay-blood-ban\\_us\\_567832cde4b014efe0d61e96](https://www.huffingtonpost.com/entry/fda-gay-blood-ban_us_567832cde4b014efe0d61e96); AIDS United, 1-Year Blood Donation Deferral Policy a Step in the Right Direction, Still Needlessly Discriminates Against Gay and Bisexual Men, <https://www.aidsunited.org/news/Default.aspx?id=1120> (“While removing the lifetime ban is a step forward, even the one-year deferral continues to perpetuate discrimination against gay and bisexual men.”) (last visited Oct. 6, 2017).

<sup>12</sup>Terkel, *supra* note 11; see also Revised Recommendations, *supra* note 5, at 11 (“FDA concludes that the available evidence most strongly supports a change from the indefinite deferral to a one-year blood donor deferral policy for MSM . . .”).

<sup>13</sup>Susan Scutti, Lawmakers urge FDA to lift blood ban for gay men, *CNN* (June 28, 2016, 5:32 PM), <http://www.cnn.com/2016/06/28/health/fda-gay-men-blood-donation/index.html>.

<sup>14</sup>*Id.*

<sup>15</sup>HIV Among Gay and Bisexual Men, Center for Disease Control and Prevention (CDC), <https://www.cdc.gov/hiv/group/msm/index.html> (last visited Oct. 14, 2017).

<sup>16</sup>HIV Testing, CDC, <https://www.cdc.gov/hiv/testing/index.html> (last visited Oct. 14, 2017).

<sup>17</sup>Keeping Blood Transfusions Safe: FDA’s Multi-Layered Protections for Donated Blood, FDA, <https://www.fda.gov/BiologicalBloodVaccines/SafetyAvailability/BloodSafety/ucm095522.htm> (last visited Oct. 15, 2017).

<sup>18</sup>*Romer v. Evans*, 517 U.S. 620, 631 (1996) (“[I]f a law neither burdens a fundamental right nor targets a suspect class, [the court] will uphold the legislative classification so long as it bears a rational relation to some legitimate end.”)

<sup>19</sup>*Lawrence v. Texas*, 539 U.S. 558, 575 (2003).

<sup>20</sup>See generally *United States v. Windsor*, 133 S. Ct. 2675 (striking down a key portion of the Defense of Marriage Act (DOMA), because it discriminated against homosexuals as a class); see also *Obergefell v. Hodges*, 135 S. Ct. 2584 (finding that law prohibiting same-sex couples from marrying violated a fundamental right, and discriminated against homosexuals as a class).

<sup>21</sup>Brief of Amici Curiae Services and Advocacy for Gay, Lesbian, Bisexual and Transgender Elders and American Society on Aging in Support of Respondents at 5, *Masterpiece Cakeshop v. Colorado Civil Rights Com’n*, 137 S. Ct. 2290 (2017).

<sup>22</sup>See Morrison, *supra* note 8, at 2389.

<sup>23</sup>*Id.*

<sup>24</sup>*Id.* at 2390 (referencing *Yick Wo v. Hopkins* 118 U.S. 356 (1886) which held that although a law that is facially neutral, the law could still impose “purposeful discrimination if it is administered in a discriminatory way”).

<sup>25</sup>Dwayne J. Bensing, Comment, Science or Stigma: Potential Challenges to the FDA’s Ban on Gay Blood, 14 *Journal of Constitutional Law* 485, 498-99 (Dec. 2011).

<sup>26</sup>See Morrison, *supra* note 8, at 2390.

# Fair Housing Act Developments Supporting LGBTQ Civil Rights

By Alison Slagowitz

Seven days after the assassination of Rev. Dr. Martin Luther King, Jr., President Lyndon Johnson signed the Civil Rights Act of 1968.<sup>1</sup> This Act expanded the protections of the Civil Rights Act of 1964 to housing discrimination. Title VIII of the Civil Rights Act of 1968 is also known as the Fair Housing Act of 1968 (“FHA”).<sup>2</sup> The current iteration of the FHA is known as Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.<sup>3</sup>

The present-day text of the FHA protects against discrimination in most private and public housing based on a person’s “race, color, religion, sex, handicap, familial status, or national origin.”<sup>4</sup> Congress added “sex” as a protected class on August 22, 1974<sup>5</sup> —a day Congress designated “Women’s Equality Day.”<sup>6</sup> In 1988, Congress added “handicap” and “familial status” as protected classes.<sup>7</sup>

Although Congress has not enacted any major revisions or amendments to the FHA since 1988,<sup>8</sup> the judiciary and executive branches have begun to reassess prior interpretations proscribing FHA protections against sex discrimination based on sexual orientation and gender identity.

In July 2010, the U.S. Department of Housing and Urban Development (“HUD”) announced a new guidance at HUD’s LGBT Pride Month Celebration that treats “gender identity” discrimination as “gender” discrimination under the FHA.<sup>9</sup> HUD also announced that it will retain jurisdiction, jointly investigate, or refer LGBT claims to state, regional, or local governments that have enacted legal protections specifically prohibiting discrimination against LGBT individuals.

In a 2015 Memorandum Opinion, the U.S. District Court for the Northern District of Alabama, Southern Division, ruled that HUD has jurisdiction over FHA discrimination claims based on gender non-conformity as a permissible reading of “sex.”<sup>10</sup> Additionally, HUD has promulgated regulations prohibiting recipients of HUD funding and HUD-insured housing from discriminating on the basis of actual or perceived sexual orientation, gender identity, or marital status.<sup>11</sup> HUD also revised its definition of “family” to include gender neutral terms and variables beyond the traditional nuclear family.<sup>12</sup>

Similarly, in 2015, the Equal Employment Opportunity Commission took the position that sex discrimination includes discrimination on the basis of sexual orientation.<sup>13</sup> Soon after, two federal Courts of Appeals sitting *en banc* held that Title VII of the Civil Rights Act of 1964<sup>14</sup> prohibits employment discrimination on the basis of sexual orientation as a form of gender stereotyping.<sup>15</sup>

In 2017, the U.S. Court of Appeals for the Seventh Circuit ruled the plaintiff’s Title VII sex discrimination claim on the basis of her sexual orientation survived her former employer’s Rule 12(b)(6) dismissal motion.<sup>16</sup> In *Hively v. Ivy Tech Community College of Indiana*,<sup>17</sup> the Court found that “sex” includes sexual orientation discrimination under U.S. Supreme Court precedents prohibiting sex discrimination

under either a comparative theory of gender nonconformity<sup>18</sup> or a theory of association.<sup>19</sup>

Likewise, in 2018, the U.S. Court of Appeals for the Second Circuit ruled sexual orientation discrimination claims are actionable under Title VII.<sup>20</sup> In *Zarda v. Altitude Express, Inc.*, the Court primarily relied on the comparative theory prohibiting discrimination based on gender stereotyping<sup>21</sup> and reinforced the argument with associational discrimination theory.<sup>22</sup> (In April, the Supreme Court granted certiorari in *Zarda*, and will be addressing this issue next term.)

These Title VII rulings are important for claims arising under the FHA, because Title VII and Title VIII (the FHA) are equivalent in function, construction, and application. For this reason, courts often rely upon Title VII precedents to inform FHA decisions.

For example, in 2018, the U.S. Court of Appeals for the Seventh Circuit relied on its 2017 ruling in *Hively*,<sup>23</sup> discussed above, and found a senior living center violated the FHA by failing to protect a lesbian resident, Marsha Wetzel, from violence and harassment by other tenants.<sup>24</sup> The ruling in *Wetzel v. Glen St. Andrew Living Community, LLC*<sup>25</sup> is important for two reasons. This is the first ruling by a U.S. Court of Appeals prohibiting sexual discrimination on the basis of sexual orientation under the FHA. The ruling also reinforces a landlord’s liability under the FHA for tenant-on-tenant discrimination when the landlord has notice of the harassment yet fails to take reasonable steps to stop the harassment.

Of note, in 2017, a U.S. District Court in Colorado abandoned the Tenth Circuit’s anti-LGBTQ rights precedents in Title VII cases and denied a landlord’s unopposed Rule 56 motion for summary judgment against a housing discrimination claim under the FHA and Colorado law.<sup>26</sup> In *Smith v. Avanti*,<sup>27</sup> the landlord refused to rent a residence to a family consisting of a married couple, transgender woman and woman, with two children, because children make “noise” and the married couple’s “unique relationship.”<sup>28</sup> Previously, the Tenth Circuit expressly ruled Title VII does not prohibit discrimination on the basis of sexual orientation or based on a person’s status as a transsexual.<sup>29</sup> The *Smith v. Avanti* Court, however, interpreted a Title VII precedent’s footnote as opening the door to extend the FHA to prohibit sex discrimination to discrimination on the basis of gender stereotypes.<sup>30</sup> This Court then applied its own FHA analysis to extend the sexual discrimination protections of the Colorado Anti-Discrimination Act.<sup>31</sup>

Additionally, in 2018, the Human Rights Campaign Foundation reported twenty-two (22) states have protections against discrimination for sexual orientation in employment and housing and twenty-one (21) states protect against discrimination based on gender identity.<sup>32</sup>

On a national scale, the Human Rights Campaign

announced its imminent reintroduction of the Equality Act to the House of Representatives.<sup>33</sup> The bill proposes to expand anti-discrimination statutes and the Civil Rights Act of 1964 to protect against discrimination on the basis of gender identity and sexual orientation.<sup>34</sup> The bill is supported by over one-hundred sixty (160) corporations from all fifty (50) states.<sup>35</sup> Should this bill pass, federal courts are likely to expand the protections of the FHA based on Congress' express extension of Title VII protections against gender identity and sexual orientation discrimination.

*Alison Slagowitz is an Equal Justice Works Georgia Housing Corps Fellow hosted by the Savannah Regional Office of the Georgia Legal Services Program, where she focuses on preservation of affordable and safe housing for low-income tenants. Prior to this, Alison served as Contract law Clerk for the Affirmative Civil Enforcement Unit in the Civil Division for the United States Attorney's Office for the Southern District of Georgia. Alison graduated summa cum laude and Order of the Oak from Savannah Law School in May 2016. Alison received her undergraduate Bachelor's Degree in Liberal Arts from Sarah Lawrence College.*

#### Endnotes:

- <sup>1</sup>Pub. L. No. 90-284, 82 Stat. 73 (1968).
- <sup>2</sup>42 U.S.C. §§ 3601–3619.
- <sup>3</sup>42 U.S.C. §§ 3601 et seq.
- <sup>4</sup>42 U.S.C. § 3604.
- <sup>5</sup>Pub. L. No. 93-383, 88 Stat. 633 (1974).
- <sup>6</sup>Pub. L. No. 93-382, 88 Stat. 633 (1974).
- <sup>7</sup>42 U.S.C. §§ 3601–3619 (amended Sept. 13, 1988).
- <sup>8</sup>42 U.S.C. §§ 3601–3619 (amended Sept. 13, 1988).
- <sup>9</sup>Press Release, U.S. DEPT HOUS. & URBAN DEV. NO. 10-139, HUD ISSUES GUIDANCE ON LGBT HOUSING DISCRIMINATION COMPLAINTS (2010), available at <https://archives.hud.gov/news/2010/pr10-139.cfm>.
- <sup>10</sup>*Thomas v. Osegueda*, 2015 U.S. Dist. LEXIS 77627 at \*11 (Ala. D. Ct. June 16, 2015).
- <sup>11</sup>24 C.F.R. §§ 5.105(a)(2), 5.106 (2016).
- <sup>12</sup>24 C.F.R. § 5.403 (2012).

<sup>13</sup>*See Baldwin v. Foxx*, EEOC Appeal No. 0120133080, 2015 EEOPUB Lexis 1905 (July 15, 2015).

<sup>14</sup>42 U.S.C. 2000e-2(a)(1), et seq.

<sup>15</sup>*Zarda v. Altitude Exp., Inc.*, 883 F.3d 100 (2d Cir. Feb. 26, 2018) (en banc); *Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339 (7th Cir. 2017) (en banc).

<sup>16</sup>*Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339 (7th Cir. 2017) (en banc).

<sup>17</sup>853 F.3d 339 (7th Cir. 2017) (en banc).

<sup>18</sup>*Hively*, 853 F.3d 346-347 (citing *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Oncale v. Sundowner Offshore Svcs, Inc.*, 532 U.S. 75 (1988); *Philips v. Martin Marietta Corp.*, 400 U.S. 542 (1971)).

<sup>19</sup>*Hively*, 853 F.3d 347-49 (citing *Loving v. Virginia*, 388 U.S. 1 (1967) (ruling anti-miscegenation statutes violate the Equal Protection Clause)).

<sup>20</sup>*Zarda v. Altitude Exp., Inc.*, 883 F.3d 100 (2d Cir. Feb. 26, 2018) (en banc).

<sup>21</sup>*Id.* at 116-23.

<sup>22</sup>*Id.* at 124-28.

<sup>23</sup>*Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339 (7th Cir. 2017) (en banc).

<sup>24</sup>901 F.3d 856 (7th Cir. 2018).

<sup>25</sup>*Id.*

<sup>26</sup>*Smith v. Avanti*, 249 F. Supp. 3d 1194 (D. Colo. 2017).

<sup>27</sup>*Id.*

<sup>28</sup>*Id.* at 1197-98.

<sup>29</sup>*Id.* at 1200 (citing *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1222 (10th Cir. 2007)).

<sup>30</sup>*Id.* at 1200-01.

<sup>31</sup>*Id.* at 1202-03.

<sup>32</sup>Sarah Warbelow, Cathryn Oakley & Collen Kutney, 2018 State Equality Index, HUM. RTS. CAMP. FOUND. 44 (2018).

<sup>33</sup>Matt Tracy, Equality Act Introduced in Congress, GAY CITY NEWS (Mar. 13, 2019).

<sup>34</sup>*Id.*

<sup>35</sup>Matt Tracy, Equality Act Has 161 Major Corporate Endorsers, GAY CITY NEWS (Mar. 8, 2019).

Continued from page 1

While much of LGBTQ equality is fought for at the state and local level, these cases underscore the role the federal courts play in determining how agency action, federal statutes and the constitution affect individual rights of LGBTQ people.

To that end, we are very excited to have our Section's first webinar on June 12, 2019 at 2:30pm EDT, featuring two leading and nationally recognized attorneys fighting for LGBTQ equality: Mary Bonauto, Civil Rights Project Director at GLBTQ Legal Advocates & Defenders (GLAD), and Shannon Minter, Legal Director of the National Center for Lesbian Rights (NCLR). The webinar, "Understanding the Trump Administration's Transgender Military Ban:

How We Got Here and What Comes Next," will discuss the Trump Administration's transgender military ban, from the beginning to the present, including how the ban works, how it affects transgender people, the contested claimed justifications for the ban, and the routes forward in the courts, the Congress and with public opinion. We hope that you will join us and spread the word.

Our Section and its Board have continued to grow over the last few months, and we are excited to see where the remainder of 2019 takes us.



# Federal Bar Association

**The LGBT Law Section of the FBA is pleased to present a webinar featuring nationally prominent LGBTQ rights attorneys.**

This panel will discuss the Trump Administration's transgender military ban, from the beginning to the present, including how the ban works, how it affects transgender people, the contested claimed justifications for the ban, and the routes forward in the courts, the Congress, and with public opinion. 1 CLE Credit (Pending).

**Date:** Wednesday, June 12th, 2019

**Time:** 02:30PM – 3:30PM

**Location:** Webinar

**Register:** <https://cc.readytalk.com/r/pdtxy5x2ds51&eom>

**Introduction:**

Brandon King – Moderator

**Speakers:**

Shannon Minter – Legal Director of the National Center for Lesbian Rights (NCLR)

Mary Bonauto – Civil Rights Project Director at GLBTQ Legal Advocates & Defenders (GLAD)