

## Articles

Sandi Farrell, *Reconsidering Gender-Equality Perspective for Understanding LGBT Rights*.

Farrell examines the importance of gender equality arguments in employment and family litigation. She offers an introduction that traces the historical development of gender-based models of sexuality and examines both conservative and liberal arguments in support of gender-based accounts of sexual orientation. Farrell argues that despite criticism from both the left and the right, gender based models of sexuality are the appropriate paradigms for advocates to use in court because they avoid the difficulty of libertarian based arguments for freedom of sexuality, promote the notion of gays and lesbians as being members of a suspect class and bind homosexuals and heterosexuals together in the common cause of fighting gender based discrimination.

## NLGLA Writing Competition

Keith J. Hilzendeger, *Walking Title VII's Tightrope: Advice for Gay and Lesbian Title VII Plaintiffs*.

Hilzendeger examines the paradox facing gay and lesbian plaintiffs in gender based workplace discrimination suits under Title VII of the Fourteenth Amendment. Underlying Hilzendeger's analysis is the guidance given by the Ninth Circuit in *Rene v. MGM Grand Hotel*. Hilzendeger discusses the facts and rationale behind the *Rene* decision as well as addressing the elements of successful and unsuccessful Title VII claims brought by gay and lesbian employees in other cases. Hilzendeger concludes that in order to survive summary judgment in Title VII actions, gay and lesbian plaintiffs must focus their discrimination complaints on incidents where they were harassed because of their failure to adhere to traditional gender stereotypes rather than harassment aimed at their sexual orientation.

## Case Notes

Jeffrey Goehring, *Note, Lawrence v. Texas: Dignity, A New Basis for Substantive Rational Basis Review*.

Goehring looks at this Supreme Court decision that found a Texas law banning homosexual sodomy was an unconstitutional violation of the Substantive Due Process clause of the Fourteenth Amendment. The court held that anti-sodomy laws can not pass rational basis review because such laws serve only to demean and stigmatize a certain segment of the population and promote no legitimate government interest. In a concurring opinion, Justice O'Connor viewed the law as unconstitutional on narrower Equal Protection grounds because it singled out homosexuals. While the author feels that the majority opinion is an important advancement in holding that laws whose only purpose is to belittle and stigmatize can not survive rational basis review, he feels that Justice O'Connor's equal protection argument may have broader implications and should be used by homosexual litigants in future suits.

Margi Joshi, *Note*, *K.B. v. National Health Service Pensions Agency and the Secretary of State for Health: The Influence of Human Rights Law in Protecting Transsexuals from Employment Discrimination*

Joshi examines this European Court of Justice decision that found that European Community law on sex discrimination prohibits legislation that prevents transsexuals from obtaining the marital status necessary to be beneficiaries of spousal employment benefits. The court relied upon a combination of Court of Justice and Court of Human Rights case law in determining that the denial of benefits to an employee's transsexual partner constituted sex discrimination. The author feels that this case demonstrates that human rights law can be a powerful tool in the fight to gain legal protection and recognition for sexual minorities.

Ann-Yu Wang, *Note*, *Flores v. Morgan Hill Unified School District: Behind the Specter of Qualified Immunity - Applying the Appropriate Standard for Summary Judgment under Equal Protection*

Wang scrutinizes this Ninth Circuit decision that found that the failure of school administrators to discipline students, or to properly train school personnel regarding sexual orientation based harassment presented sufficient evidence of a constitutional violation at the time of harassment to survive a motion for summary judgment. The court used relaxed standards for establishing a constitutional violation that allowed the plaintiff's case to move beyond the summary judgment phase. The author feels that this case is significant because it shows that the notion of equal rights for homosexuals is well established and puts people on notice that anti gay discrimination may violate the Constitution. However, Wang also warns that the Ninth Circuit is perceived as being more receptive to homosexual discrimination suits and more conservative courts may use a stricter standard of review than the court in this case.