

Articles

Harold Hongju Koh, *Standing Together*.

Harold Hongju Koh, who serves as both Dean and Professor of International Law at Yale Law School, reflects on the progress of the LGBT legal movement in his acceptance speech upon receiving the 2005 Allies for Justice Award soon after *Lawrence v. Kansas* was decided. He reminds the audience of the progress that has been made in the struggle for LGBT rights over the last twenty years and brands this movement the fight of this era.

Tonja Jacobi, *Sharing the Love: The Political Power of Remedial Delay in Same-Sex Marriage Cases*.

Jacobi examines the intent behind, and effect of, remedial delay in *Goodridge v. Department of Public Health* by comparing the use of this practice in *Baker v. State*. The author points out that although the justifications for the remedial delay in the two cases differed, the states' judiciaries both used the practice to reduce public opposition to same-sex marriage. Jacobi further argues that due to this tempering of public opinion, it is wrong to characterize Bush's win in the 2004 election as a result in a nation-wide backlash against same-sex marriage.

Hollis V. Pfitsch, *Homosexuality in Asylum and Constitutional Law: Rhetoric of Acts and Identity*.

Pfitsch seeks to challenge Michael Scaperlanda's dual theory that U.S. asylum law is particularly sympathetic to LGBT asylum applicants and this consideration will, in turn, affect constitutional law. Instead, the author suggests, the courts persistent morality-driven desire to regulate homosexual conduct has slowed the progression of constitutional law after *Lawrence*. Pfitsch argues that this hindrance will hamper the advances made in LGBT asylum law.

Rebecca Mann, *The Treatment of Transgender Prisoners, Not Just an American Problem—A Comparative Analysis of American, Australian, and Canadian Prison Policies Concerning the Treatment of Transgender Prisoners and a “Universal” Recommendation to Improve Treatment*.

The author takes a critical look at the current policies concerning treatment of transgender prisoners in the United States, Canada, and Australia. Mann evaluates the health and safety issues that are raised and/or addressed by the differing treatment of transgender prisoners in these three nations and concludes with a “universal” recommendation for the placement and treatment of transgender prisoners.

NLGLA Michael Greenberg Writing Competition

Deborah A. Morgan, *Not Gay Enough for the Government: Racial and Sexual Stereotypes in Sexual Orientation Asylum Cases*.

Drawing on Critical Race Theory, Morgan argues for a multidimensional analysis of LGBT asylum law. The author points out that the racist and heteronormative history of immigration law has led to a narrow standard of what is “gay enough” for a foreign national to qualify for asylum based on sexual orientation. Morgan argues that rather than requiring the applicants to fit into a stereotype based on an upper-class, white American model of what it means to be gay, judges should instead evaluate evidence from a culturally neutral perspective by considering culturally specific evidence of persecution.

Case Notes

Zachary Bromer, *Note*, Boer-Sedano v. Gonzales: *The Increasing Influence of HIV/AIDS Status on Asylum Claims Based on Homosexual Identity*.

Bromer looks at this Ninth Circuit’s decision, which found that an HIV positive, gay Mexican national qualified for asylum based on sexual orientation. The court considered the applicant’s HIV/AIDS status in determining whether relocation to his country of origin was reasonable. The author believes that cases such as this will expand protection for asylum seekers with HIV and AIDS while also laying the groundwork for the addition of HIV status as a protected group category under the INA.

Tracy Hoskinson, *Note*, Etsitty v. Utah Transit Authority: *Transposing Transsexual Rights Under Title VII*.

Hoskinson examines this District of Utah decision, which held that Title VII does not protect transsexual employees claiming wrongful termination based on their gender-nonconforming behavior. The court reasoned that the Supreme Court’s prohibition of discrimination based on sex stereotypes from *Price Waterhouse v. Hopkins* was not applicable to this case because transsexualism is more than merely a failure to conform to sex stereotypes. Hoskinson criticizes this decision, and decisions like it, arguing that despite many cases decided in favor of protections for transsexuals, each time this issue arises the courts are free to interpret it anew leaving these individuals without clear guidance as to their legal options when they are faced with discrimination.