Greetings! With this issue coming out in June, when many celebrate LGBTQ+ Pride, we want to recognize the efforts and courage of the many people across our community who created and sustain the movement for our community.

We have had a busy time since our last issue, as LGBTQ+ issues in Pennsylvania and around the country have taken center stage. The hard and excellent work of our Transgender Name Change Task Force, chaired by Ellen Fischer, culminated in successful action at the May 2021 PBA House of Delegates Meeting, where our Recommendation and Report for a name change procedural rule was approved by the body. Co-chair Thomas Ude made the presentation to the House on behalf of the committee and is working with PBA leadership to transmit the report to the Procedural Rules Committee.

Also at the Midyear Meeting, Thomas Ude was awarded the 2021 David M. Rosenblum LGBTQ+ Public Policy Award. We congratulate Thomas for his award and commend him for the accomplished career reflected by it.

Since January, the new presidential administration has reversed many of the policies and practices hostile to the LGBTQ+ community, including reversals of rules permitting or encouraging healthcare discrimination, recognition of birthright citizenship to children of same

Continued on page 2

Dr. Rachel Levine, M.D., Secretary of Health and Human Services

On March 24, the U.S. Senate confirmed our Commonwealth’s own Dr. Rachel Levine as Assistant Secretary of Health, Department of Health and Human Services. She is the first openly transgender federal official. Gov. Wolf nominated Dr. Levine to be Pennsylvania’s physician general, a role she held from 2015 to 2017. She then served as Secretary of the Pennsylvania Department of Health from 2018 to 2021, helping address the opioid crisis and the COVID-19 pandemic. Dr. Levine has specialized training in pediatric and adolescent medicine and has dedicated her career to education and to serving and protecting LGBTQ+ individuals and other medically vulnerable populations. We Pennsylvanians are grateful for her service.
sex couples born abroad, equity in housing for homeless or incarcerated trans individuals, and equity and access to education for trans children (just to name a few!) President Biden and Vice President Harris recognized Pride Month by joining a march in D.C. in public statements of support. Unfortunately, the federal Equality Act still languished. In Pennsylvania, a February proposal to include LGBTQ+ equality through legislation has a long way to go. As of this writing, Pennsylvania legislators have not proposed as many anti-LGBTQ+ bills as have their peers in numerous other states. However, there is a pending bill that seeks to exclude transgender and nonbinary students from girls’ sports, and much work remains to be done, more firmly to secure access to health care for both minors and adults, as well as access to LGBTQ+-affirming housing, education and employment in Pennsylvania. Pennsylvania also needs to secure LGBTQ+ rights in adoption, criminal justice, credit rights and more.

A new working group has formed to look at legal and policy issues in Pennsylvania and elsewhere: the Title IX Transwomen & Athletes Study Group, chaired by Sharon López. The group has three areas of focus relating to Trans Women and Girls in school sports: medicine and science; psycho-social experience, especially relating to sports; and law and policy relating to participation in sports. The group is examining the substantive issues and strategizing about opportunities for educating lawyers and the greater community.

Just after we arrived at the one-year anniversary of the Bostock decision, we received the decision by the Supreme Court in Fulton v. City of Philadelphia; like Bostock, our editors are planning a special issue of Open Court to discuss Fulton and the issues it raises, many of which might chart the course of upcoming activities. The Philadelphia LGBTQ+ Bar Association is also planning a CLE on Fulton on June 29.

We welcome your voice in our committee: at our meetings, in a working group or on a new project that will help advance LGBTQ+ rights. And we look forward to the continued work of our committee as we continue to navigate forward.

Co-chair Chatter
Continued from page 1

Pride Dispatches

Christion Smalley and his husband, Devin Miller, are working on adopting a child. Smalley’s employer, American Airlines, and Miller’s employer offer adoption benefits, to help with the costs of the process. They see their journey, and their employers’ assistance, as a Pride element, showing the advances in equal rights for LGBTQ+ persons and a celebration of their supportive allies. https://news.aa.com/american-stories/american-stories-details/2021/Taking-pride-in-the-pursuit-ofparenthood/default.aspx. Airlines in general have long been pro-LGBTQ+. This month, almost all major domestic (US) carriers have rainbows on their social media venues, and provided other celebrations. https://www.airlines.org/blog/u-s-airlines-are-flying-with-pride/. Alaska Airlines put a special livery (décor) on one of its planes, with “FLY WITH PRIDE,” small planes in rainbow colors, and rainbows on the engines. https://onemileatatime.com/news/alaska-airlines-pride-plane/.

For Pride Month, Asia Brown, of Washington’s Youth Sexual Health Project, addressed the challenges of Native LGBTQ+ youth, whose teachers and textbooks fail to appropriately address their identities, behaviors and experiences, especially in sex education. Brown supports youth-friendly, inclusive sexual health
content, and is a member of We R Native, an organization that promotes holistic health and positive growth. Sherenté Harris, a cultural educator, artist and activist, is the subject of “Being Thunder,” which documents the challenges of this two-spirit, gender-queer teenager, and Brown University student, from the Narragansett tribe in Rhode Island. https://indiancountrytoday.com/newscasts/06-08-21-asia-brown.

The following link provides short reviews and publication information for 13 books (think beach or other Summer reading), including romance novels, parenting topics, memoirs and other nonfiction. 13 New LGBTQIA+ Books That Are Perfect for Pride Month Reading (and Beyond) (msn.com).

Through Aug. 8, Petco will donate 10% of every purchase of Pride-themed merchandise to The Trevor Project, in addition to a starting donation of $100,000, https://mail.google.com/mail/u/0/#inbox/FMfcgzGkXxkFkigfrWhvMsGrzhsR-kDq. Petco’s Diversity, Inclusion and Belonging program: https://corporate.petco.com/Diversity-Inclusion-Belonging.

The Jacksonville (Florida) Transportation Authority (JTA) planned to light the Acosta Bridge in rainbow colors. The Florida Department of Transportation (FDOT) stated that that plan was not compliant with JTA’s permit. Details of the issue’s background and resolution are unclear, but FDOT announced it approved the lights. Jacksonville ordered to turn off bridge’s Pride Month rainbow lights. A day later, they’re lighted again. (msn.com).

A neighbor reported the rainbow flag flying at the home of Memo Fachino and his husband, Lance Mier, to their homeowners’ association (HOA). The HOA told them that, under HOA rules, only the official United States flag could be flown. The pair replaced it with rainbow-colored floodlights; the story and photographs were posted on the internet to great response. Fachino is on the neighborhood board, and said that the couple has not experienced difficulties and that neighbors have been positive in response. Wisconsin homeowners told to remove LGBTQ Pride flag find a clever loophole: Rainbow flood lights (msn.com).

Virgin Radio UK has launched Virgin Radio Pride UK, to cover Pride events around the United Kingdom all summer. Topics will include legal issues, family issues, working with allies and partners, festivals and celebrations, and music. The Virgin Group has a 50-year history of supporting the LGBTQ+ community. https://www.virgin.com/about-virgin/latest/virgin-radio-pride-uk-launches-for-lgbtq-community.

Several Pinellas County, Florida, middle school students were suspended after a lunchtime fight began when a group of students put Pride flags on their table and one wore a Pride flag. Other students came over and removed some of the flags. A tug of war began and escalated into violence. The County Sheriff’s Office is investigating. Florida middle school students suspended over Pride flag clash (msn.com).

In Saskatoon, Saskatchewan, Canada, a motorist was arrested after he parked his car, shouted homophobic and racial slurs at volunteers painting a crosswalk in Pride colors, and tried to remove their safety barricade. The volunteers reported that other motorists honked their horns in approval of their painting project; the racial slurs apparently resulted because at least one volunteer was a First Nation (native or indigenous peoples) member. ‘Homophobic Cowboy’ Rails Against Pride Crosswalk in Viral Video (msn.com).

Kaylea Calhoun, of Columbia, Tennessee, took pictures at a Pride event in the town square. Three days later, someone painted “fag” and “go to hell” on her car. Calhoun, the mayor and a police lieutenant variously condemned the incident and stated that such actions are not common in Columbia; police are investigating. Tenn. woman’s car spray-painted with homophobic slur; police investigating ‘concerning’ incident (msn.com).
Bills and executive orders to limit the rights and opportunities of transgender persons in various areas have been introduced all over the country. This article examines the recently introduced Pennsylvania bill, other bills and cases affecting transgender rights in Pennsylvania, bills across the country and their underlying evidence, major athletic organizations’ current policies, and possible avenues of policy craft.

**Fairness in Sports?** On April 5, Rep. Barbara Gleim, as prime sponsor, introduced HB 972, the Fairness in Women’s Sports Act, which provides, in part, “Interscholastic, intercollegiate, or club athletic teams or sports that are sponsored by a public primary or high school, a public institution of higher education, or any school or institution where students or teams compete against a public school or institution where students or teams compete against a public school or institution of higher education must be expressly designated as one of the following based on biological sex.”

https://www.wgal.com/article/pennsylvania-lawmakers-introduce-bill-to-block-transgender-girls-from-competing-in-womens-sports/36029409#. Even if the bill languishes in committee until the session ends, its introduction highlights two critical issues that underpin the heated battleground over transgender athletes in scholastic sports.

The first issue is that there is a lack of unified policy among scholastic, youth club, and collegiate athletic programs on transgender athletes. Pennsylvania’s Interscholastic Athletic Association (PIAA) gives no direct guidance, leaving the decision as to what team on which an athlete may compete to the school principal, whose decision PIAA will accept.

The bill is unlikely to become law. As of this writing, it is in the Education Committee, and Gov. Tom Wolf has already stated he will not sign it. See Pennsylvania.gov says he’ll veto ban on transgender athletes in women’s sports | TheHill; https://blog.usasf.net/parents/inclusion-youth-athletes. On the collegiate level, the Pennsylvania State Athletic Conference (PSAC), a National Collegiate Athletic Association (NCAA) Division II organization that includes 18 institutions in Pennsylvania, supports an inclusive policy, but Division III programs, such as the one at Alvernia University, have no policy, although Alvernia sets forth its nondiscrimination policy including sex and gender. Title IX | Alvernia University.

The lack of cohesive policy, and the failure of Pennsylvania collegiate associations to exert influence on athletic policy at the club and scholastic levels, has left a power vacuum.
that threatens to be filled by an unexpected and uneasy alliance of religious conservatives and women who claim to want to defend women's sports. Of the 42 representatives who sponsored HB 972, at least three of the women representatives, Valerie Gaydos, Dawn Keefer and Martina White, were collegiate athletes. Gaydos was a Division III lacrosse player, White played field hockey for Elizabethtown College, and Keefer was a scholastic athlete. All have cited protecting women's and girls' opportunities under Title IX and their own athletic participation. See, e.g., Dawn Keefer: Ban transgender girls from scholastic sports in Pa. (ydr.com); Borowicz, others seek to ban transgender girls from sports | News, Sports, Jobs - The Express (lockhaven.com); Pennsylvania Governor Tom Wolf Vows to Block Transgender Sports Bill | [your]NEWS (yournews.com). Some of the sponsors are also open about their conservative views. For example, another sponsor of HB972, Stephanie Borowicz, was one of the 26 Pennsylvania House Republicans who called for the de-certification of the 2020 electoral results, despite the fact that every case brought by the Trump campaign alleging election fraud was dismissed for lack of evidence, 26 Pa. House Republicans call for withdrawing certification of presidential electors - pennlive.com, while Gleim is a member of the Conservative Leaders for Education, a conservative advocacy group. PA State Rep. - About Barb (repgleim.com).

HB 972 is not, however, the first time that the rights of transgender youth in the commonwealth and other states have faced discriminatory efforts.

**Locker Room, Bathroom or Battleground?** Between 2013 and 2016, 24 state legislatures considered or passed “bathroom bills,” restricting access to sex-segregated restroom facilities on the basis of sex assigned at birth; all but one failed at the legislative level or were turned aside by governors. In 2017, 16 states revisited the matter, with the same results. [https://www.ncsl.org/research/education/-bathroom-bill-legislative-tracking635951130.aspx#2](https://www.ncsl.org/research/education/-bathroom-bill-legislative-tracking635951130.aspx#2). The Commonwealth never considered a bathroom bill, but that did not prevent the overarching issue from being litigated.

On May 28, 2019, the U.S. Supreme Court denied certiorari to the petitioners in *Doe ex rel. Doe v. Boyertown Area School District*, 897 F.3d 518 (3rd Cir. 2018), cert. denied (2019), *Doe v. Boyertown Area School District - SCOTUSblog*. This left in place the Third Circuit Court of Appeals’ decision in favor of the school district, in turn leaving in place an unwritten district policy, implemented in the 2016-2017 school year, letting transgender students use facilities corresponding to their gender identity. Both the district and Third Circuit Courts ruled that the policy did not implicate a privacy concern for cisgender students, because no one was required to share a restroom or locker room with a transgender student, and that it passed strict scrutiny because the school district had a compelling interest in protecting transgender students, and did so with a policy narrowly tailored to meet that interest. While the Third Circuit decision and the denial of certiorari do not make settled law, *Doe v. Boyertown* nonetheless provides a model for Pennsylvania schools in the very unsettled area of transgender students’ rights. See Three Rs for Transgender Students, *Open Court*, Winter 2018, p. 9; OpenCourtWinter2018.pdf (pabar.org).

*Doe v. Boyertown* is at root a novel case centered in a small school district, litigated in federal courts by powerful advocacy groups. Unlike most of the scenarios that are the focus of anti-transgender restroom bills, Joel Doe was a male student who complained to school and district administration about a transgender boy using the boys’ locker room. Litigating the case for Doe was the conservative advocacy group Alliance Defending Freedom (ADF), an organization that describes itself as Christian and seeks donations to help the donor “stand up to government overreach and help protect your religious freedom,” with the goal “to ensure that religious freedom thrives”; in the past five years ADF has been a guiding force behind bills to curtail transgender student athletes’ participation in sports. See [Standing for Religious Freedom | Alliance Defending Freedom (adflegal.org)](http://adflegal.org).

On the other side were not just the school district, but intervenors Aidan DeStefano, a transgender student, and the Pennsylvania Youth Congress, a coalition of LGTQIA youth leaders and youth organizations, including the Boyertown Area Senior High School Gay-Straight Alliance. The American Civil Liberties Union

Continued on page 6
The American Civil Liberties Union (ACLU) represented the intervenors. The ACLU has made LGBTQ+ rights a major issue, bringing "more LGBTQ rights cases and advocacy initiatives than any other national organization does." LGBTQ Rights | American Civil Liberties Union (aclu.org).

This pattern of advocacy groups using the specific and highly emotionally charged circumstances of youths in the educational setting as a place to circumscribe or redefine gender boundaries is not unique to Pennsylvania. **Title IX Defense or Illegal Discrimination?** The Boyertown School District's brief in opposition to Doe's certiorari petition included a photo of Aiden DeStefano in his high school track uniform, visceral evidence for the district's decision to permit transgender athletes to use the boys' locker room and restrooms. https://www.supremecourt.gov/DocketPDF/18/18-658/81130/20190118153927364_37377%20pdf%20Brown.pdf, p. 9. The focus on this particular party perhaps foreshadowed the next battle waged over the rights of transgender students: school athletic participation.

In March 2020, a seeming avalanche of state bills pertaining to athletic participation by transgender students began. Idaho was the first to pass a bill specifically mandating that interscholastic, intercollegiate, intermural and club sports teams for women and girls were not open to biological males. https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2020/legislation/H0500E1.pdf. While there is no definitional section of the bill, just like the Pennsylvania bill Idaho's bill provides that "biological sex" refers to reproductive anatomy or sex assigned at birth, rather than identity. Following that bill's speedy passage, numerous other state legislatures took up the same debate. Mississippi's SB 2536, the Mississippi Fairness Act, was signed into law in March 2021; other than its title, its text is virtually the same as that of the Idaho bill. http://billstatus.ls.state.ms.us/documents/2021/html/SB/2500-2599/SB2536IN.htm. Arkansas' SB 354, now Act 461, mirrors the language of the previous bills. SB354, Bill Information - Arkansas State Legislature. Tennessee's bill, a nearly carbon copy of the other bills, was signed into law three days after the Arkansas bill. TN SB0228 | 2021-2022 |

These bills not only define sex in the same way, they all provide a private cause of action for students who claim they have been "deprived of an athletic opportunity or suffers a direct or indirect harm as the result of a violation," or "whose bodily privacy is violated" because that student encountered a "person of the opposite sex" in a facility "traditionally designated for the exclusive use of members of one sex." The latter cause of action is clearly related to the initial complaint in **Doe v. Boyertown**, but the former specifically relates to a controversy in Connecticut, in which two transgender male-to-female track runners won multiple state titles in girls’ races. There, the district court dismissed the plaintiffs’ complaint for a preliminary injunction on procedural grounds, but, significantly, District Judge Robert N. Chatigny noted, “Courts across the country have consistently held that Title IX requires schools to treat transgender students consistent with their gender identity.” Soule v. Connecticut Association of Schools, Case No. 3:20-cv-00201 (D.Conn., April 25, 2021), slip op. p. 28 (citations omitted), soule ruling.pdf - Google Drive; Federal judge dismisses Connecticut lawsuit seeking to block transgender athletes from women's sports - JURIST - News - Legal News & Commentary. The plaintiffs, represented in part by ADF, have appealed to the Second Circuit Court of Appeals. SouleAppealNotice.pdf (windows.net).

That these bills are all near copies of each other is not because all of the legislators were inspired by a genuine controversy. Rather, it appears that Idaho's bill is the model. Montana's transgender athlete bill originated in Idaho - Missoula Current; Idaho transgender athlete legislation, the blueprint for the nation (msn.com). However, Idaho's bill did not go into effect. In **Hecox v. Little**, District Judge David Nye granted a preliminary injunction. Hecox v. Little, Case 1:20-cv-00184-DCN (D.Idaho, Aug. 17, 2020), Hecox v.
Little - Decision Granting Preliminary Injunction | American Civil Liberties Union (aclu.org). His ruling was appealed, Nos. 20-35813 and 20-35815 (9th Cir.); on May 3, the Ninth Circuit Court of Appeals heard oral argument. 20-35813 Lindsay Hecox v. Bradley Little - YouTube.

A Positive Policy Path? Pennsylvania’s Fairness in Women’s Sports Act will most likely not pass, and, even if it does, Gov. Wolf is not likely to sign it. Even if he did, a veto override might fail. If HB972 becomes law, it might just as likely be enjoined as was the Idaho law, also likely with appeal to the Third Circuit, keeping in mind that court’s decision in Doe v. Boyertown. However, there is a positive path for interscholastic, intercollegiate and intramural athletic participation policy in the commonwealth. PIAA policy could be aligned with the policies of the largest and most influential athletic organizations, the International Olympic Committee (IOC) and NCAA, which take a decidedly middle course among the several options. See Transgender_Handbook_2011_Final.pdf (ncaa.org); https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf. In Hecox, District Judge Nye noted that Idaho’s law starkly contrasted with both IOC and NCAA policies. Hecox, slip op. at 72. Both the NCAA and the IOC have an accepted a policy with the same guidelines:

1. Those who transition from female to male are eligible to compete in the male category without restriction.
2. Those who transition from male to female are eligible to compete in the female category under the following conditions:
   • The athlete has declared that her gender identity is female. The declaration cannot be changed, for sporting purposes, for a minimum of four years.
   • The athlete must demonstrate that her total testosterone level in serum has been below 10 nmol/L for at least 12 months prior to her first competition (with the requirement for any longer period to be based on a confidential case by case evaluation, considering whether or not 12 months is sufficient length of time to minimize any advantage in women’s competition).
   • The athlete’s total testosterone level in serum must remain below 10 nmol/L throughout the period of desired eligibility to compete in the female category.

Compliance with these conditions may be monitored by testing. In the event of non-compliance, the athlete’s eligibility for female competition will be suspended for 12 months. https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf.

Conclusion. Ultimately, these various state laws might fail in court, given the record so far, as noted by District Judge Chatigny in Soule. Furthermore, they are for the most part unnecessary, because there is current guiding policy. That this policy is effectively already upheld by all Division I and most Division II and III Pennsylvania colleges and universities, and by club sports that train athletes for Olympic gymnastics and for other generally non-scholastic sports, suggests that young athletes will hopefully be accommodated if they continue past childhood participation. Outside the courtroom, medical evidence has been published suggesting that transgender girls and women do not have the biological advantage over their cisgender peers frequently claimed by the bills’ proponents. In Hecox, District Judge Nye noted the lack of evidence that transgender girls and women were creating inequality, including this evidence. Slip op., p. 67-72; see also Wave Of Bills To Block Trans Athletes Has No Basis In Science, Researcher Says : NPR. More extensive studies, supporting this, would hopefully convince enough legislators that transgender girls and women are not unfair risks to their cisgender competitive peers. (A light note on sex and gender in competition: recall the Billie Jean King-Bobby Riggs tennis match, and consider equestrian sports, where athletes of both sexes and two species compete and, in any given event, any combination can win.)

Interestingly, regarding the political issue, it is noteworthy that most Republican voters favor equal rights for trans-

Continued on page 8
Girls’ and Women’s Sports
Continued from page 7

Gender persons and oppose these laws. Transgender Sports Bills Largely Opposed By Republicans And Democrats: NPR. Regarding fairness, a word often used in these state bills, Pennsylvania’s proposed Fairness Act for all LGBTQ+ persons was reintroduced in the House on June 15. Bill Information - House Bill 300: Regular Session 2021-2022 - PA General Assembly (state.pa.us). However, the nationwide trend continues into the current sessions. Legislative Tracker: Anti-Transgender Student Athletics - Freedom for All Americans: Freedom for All Americans. Nonetheless, given the number of state bills that are pending or have become law and the potential for differing results among the federal Courts of Appeal, it is foreseeable that this latest issue of transgender, student and youth rights will find its way to the Supreme Court.

Dr. T. Elizabeth Timberlake-Newell is an attorney with Dolan Ray Law LLC, in Pottstown, a volunteer cheerleading and tumbling coach, and proud graduate of Boyertown Area Senior High School. She has degrees from Pennsylvania State University, West Chester University, University of Glasgow, and her law degree from Northeastern University School of Law.

Hear Ye! Hear Ye!

This feature provides up-to-date, brief bulletins addressing LGBTQ+ issues that might be relevant to readers’ lives or practices. Contributions from committee members and allies are welcome. Send the editors an item or an alert to the item.

Lavender Law 2021 Conference and Career Fair

This year’s conference will take place virtually from Wednesday, July 28, through Friday, July 30; the Career Fair will be on Friday, July 30. To register: https://lgbtbar.org/annual/registration/2021-advance-registration/.

Federal Law

The Equal Employment Opportunity Commission (EEOC) has provided a new resource on its website about sexual orientation and gender identity for employers, employees and employment applicants. It features a new landing page, which consolidates information about applicable laws and the EEOC’s role, and provides documents and links for further material on various employment topics, for federal, state and local, and private sector employment, including details and “how-tos.” Landing page: https://www.eeoc.gov/sexual-orientation-and-gender-identity-sogi-discrimination.

Rolfingsmeyer v. Office of Personnel Management, No. 20-1735 (Fed. Cir.). The Biden Administration must decide whether the Office of Personnel Management may deny survivor benefits to same-sex spouses of federal employees and/or service members. A Pennsylvania widow is leading the fight against current policy. Patricia Rolfingsmeyer and Tina Sammons married in Maryland, prior to same-sex marriage becoming legal in Pennsylvania. Sammons was a U.S. Air Force veteran and longtime U.S. Postal Service employee; she died of breast cancer shortly after their marriage and before Obergefell v. Hodges, 576 U.S. 644, 135 S.Ct. 2584 (2015), established marriage equality. Oral argument in Rolfingsmeyer’s case was postponed, and the administration is considering whether to continue the policy. Rolfingsmeyer v. Office of Personnel

Continued on page 9
Hear Ye! Hear Ye!
Continued from page 8


On June 9, the U.S. Senate unanimously passed legislation declaring Pulse, the Orlando, Florida, nightclub, the National Pulse Memorial. Text - S.1605 - 117th Congress (2021-2022): A bill to designate the National Pulse Memorial located at 1912 South Orange Avenue in Orlando, Florida, and for other purposes. | Congress.gov | Library of Congress. President Biden has signed the bill. The Senate also unanimously passed S.Res. 265, recognizing the fifth anniversary of the Pulse mass shooting on June 12, 2016, when Omar Mateen killed 49 people and wounded 58. Sen. Rick Scott, then governor, introduced the resolution, calling the attack an “act of terrorism designed to divide us as a nation and strike fear in our hearts and minds.” On May 12, the House of Representatives passed its own bill to designate the Memorial. H.R.49 - 117th Congress (2021-2022): To designate the National Pulse Memorial located at 1912 South Orange Avenue, Orlando, Florida, 32806, and for other purposes. | Congress.gov | Library of Congress. This vote occurred after recent decisions by current Gov. Ron DeSantis that have negatively affected Florida’s LGBTQ+ community. Ahead of Five Year Anniversary of Attack on Pulse Nightclub, Senate Passes Rubio, Scott Resolution and Legislation to Honor the 49 Innocent Victims - Press Releases - U.S. Senator for Florida, Marco Rubio; https://www.nbcnews.com/nbc-out/congress-votes-make-pulse-nightclub-national-memorial-rcna1170.

On May 10, 2021, the U.S. Department of Health and Human Services (HHS) updated its interpretation of Section 1557 of the Affordable Care Act, 42 U.S.C. §18116(a), to recognize that federal laws forbidding sex discrimination in health care also protect LGBTQ+ people, reversing the Trump Administration’s definition of “sex” to mean gender assigned at birth. HHS’ Office of Civil Rights specifically addressed the Supreme Court’s recent decision in Bostock v. Clayton County, Georgia, 140 S.Ct. 1731 (2020). Secretary Xavier Becerra issued a statement recognizing that “[f]ear of discrimination can lead individuals to forego care, which can have serious negative health consequences.” Assistant Secretary for Health Dr. Rachel Levine also issued a statement, noting, “The mission of our Department is to enhance the health and well-being of all Americans, no matter their gender identity or sexual orientation.” The American Medical Association supported the policy update. https://www.hhs.gov/sites/default/files/ocr-bostock-notification.pdf; https://www.hhs.gov/about/news/2021/05/10/hhs-announces-prohibition-sex-discrimination-basis-sexual-orientation-gender-identity.html.

On April 22, 2021, the U.S. Department of Housing and Urban Development (HUD) withdrew its proposed rule that would have permitted taxpayer-funded homeless shelters to deny services to transgender people. According to HUD’s press release, the “Equal Access Rule ensures that all individuals – regardless of sexual orientation or gender identity – have equal access to the Department’s Office of Community Planning and Development programs, shelters…” Secretary Marcia L. Fudge noted that transgender and gender non-conforming individuals report more instances of housing instability and homelessness than cisgender individuals. The proposed rule’s withdrawal effectively reversed the previous administration’s attempt to permit “shelter programs and operators to subject transgender individuals to inappropriate and intrusive inquiries, deny them accommodations, and subject them to greater harassment.” https://www.hud.gov/press/press_releases_media_advsiories/HUD_No_21_069.

In the Keystone State:

Hear Ye! Hear Ye!
Continued from page 9

causes of action against the Commonwealth, Department of Human Services, Highmark Health Insurance and the Pennsylvania Employee Benefits Trust Fund, including denial of coverage for his gender confirmation surgery. The defendants moved to dismiss all claims. District Judge Christopher C. Connor rejected the defendants’ claim that some causes of action were time barred, where the Affordable Care Act’s anti-discrimination provision provides a four-year statute of limitations. Judge Connor did find that the Commonwealth defendants were protected by sovereign immunity and that Doe’s claims under Title VII and the Pennsylvania Human Relations Act could only be brought against Doe’s employer. The remaining defendants are thus the Employee Benefits Trust Fund, which sets the terms of the employee benefits plan, and Highmark, which denied coverage. https://www.pamd.uscourts.gov/sites/pamd/files/opinions/19-V-2193.pdf.

Jane Doe v. Genesis Health Care, 2:21-cv-00551-CMR (E.D.Pa., April 23, 2021). Jane Doe, a transgender woman, moved to proceed in her employment discrimination action under the pseudonym “Jane Doe,” which motion District Judge Cynthia M. Rufe granted, recognizing that the circumstances of a case, “particularly where litigants may suffer extreme distress or danger from their participation in the lawsuit, may justify a party to proceed under a pseudonym.” Slip op. at 3 (citing Doe v. Univ. of Scranton, No. 19-1486, 2020 WL 1244368, at *1 (M.D. Pa. 2020)). In 1997, the Third Circuit Court of Appeals articulated a non-exhaustive list of factors to consider when reviewing anonymity. See Doe v. Provident Life and Acc. Ins. Co., 176 F.R.D. 464, 467-68 (E.D. Pa. 1997). Addressing transgender individuals specifically, Judge Rufe recognized that courts within the Third Circuit have allowed anonymity due to the private and intimate nature of being transgender as well as the widespread discrimination, harassment and violence they face. See slip. Op. at 4. As such, and based on the record, she conditionally granted Doe’s motion to proceed anonymously, noting that, if circumstances change, the court will reevaluate the anonymity factors. https://www.paed.uscourts.gov/sites/paed/files/opinions/21D0439P.pdf.

On June 8, H.B.1582 was referred to the House Judiciary Committee. The bill would amend the Crimes Code, Title 18, to prohibit the gay-panic defense. It was introduced by Rep. Benjamin V. Sanchez of District 153 (part of Montgomery County) and has 25 cosponsors. Bill Information - House Bill 1582; Regular Session 2021-2022 - PA General Assembly (state.pa.us).

On May 6, Philadelphia City Council member Katherine Gilmore Richardson, along with several cosponsors, introduced a resolution asking Pennsylvania legislators to oppose Pennsylvania House Bill 972, which would prohibit transgender athletes from participating in high school and college sports that correspond to their gender. City Council approved the resolution on May 13. https://philalegistar.com/LegislationDetail.aspx?ID=4938346&GUID=7228674F-EA29-4589-ABA8-ABBE87E42EF3&Options=ID|Text|&Search=transgender.

Around the country:
Arkansas Governor Asa Hutchinson vetoed a bill that would have banned doctors from providing transgender minors with gender-affirming treatments such as puberty blockers, hormone therapies and transition-related surgery. He stated that, if the bill became law, it would interfere with physicians and parents “as they deal with some of the most complex and sensitive matters involving young people.” Both the American Academy of Pediatrics and American Psychiatric Association opposed this legislation. Notably, it appears that Arkansas citizens convinced the governor to veto the bill, as he heard from both transgender individuals and doctors. Nonetheless, the legislature overrode his veto, and the bill became law as Act 626. HB1570 Bill Information - Arkansas State Legislature; https://www.msn.com/en-us/news/us/arkansas-governor-vetoes-bill-banning-medical-treatments-for-transgender-youths/ar-BB1fkaK4?ocid=mssgntp. The law is already being challenged: Brandt v. Rutledge, Case No. 4:21-cv-450-JM (E.D.Ark., filed May 25, 2021); Complaint: Brandt et al v Rutledge et al - Complaint | American Civil Liberties Union (aclu.org).

Florida Governor Ron DeSantis signed the Fairness in Women’s Sports Act, barring transgender girls and women from
Hear Ye! Hear Ye!
Continued from page 5

playing on girls’ and women’s teams at public schools. The bill states that girls’ or women’s teams “may not be open to students of the male sex” and authorizes an allegedly adversely affected student to sue a school for violating the act. Senate Bill 1028 (2021) - The Florida Senate (flsenate.gov). The law will be effective July 1. Many LGBTQ+ organizations, including the Trevor Project and Equality Florida, the NCAA and several Florida lawmakers decried the act as unconscionable. https://www.npr.org/2021/06/02/1002405412/on-the-first-day-of-pride-month-florida-signed-a-transgender-athlete-bill-into-l. Several advocacy organizations announced their intent to file suit against the law. Lawsuit filed over Florida’s ‘Fairness in Women’s Sports Act’ (winknews.com).

On May 23, Oregon Governor Kate Brown, the country’s first out bisexual governor, signed unanimously approved legislation making Oregon the 14th state to ban the “panic defense.” Oregon faced the “panic defense” when Aja Raquell Rhone-Stevens, a black transgender woman, was killed while attending a vigil for another murdered individual in 2020. In amending Oregon State Code 163.135(4), the legislature revised the affirmative defenses to murder in the second degree to provide: “The discovery of, knowledge about or potential disclosure of the victim’s actual or perceived gender, gender identity, gender expression or sexual orientation, including but not limited to circumstances in which the victim made a romantic or sexual advance that was unwanted but did not involve force toward the defendant, does not constitute a reasonable explanation for an extreme emotional disturbance under this section.” (Italics supplied.) As State Rep. Karin Power stated, the bill sends a “strong and proactive message that the perpetrator…will not be able to excuse the crime simply based on who their victim is.” https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB704/Enrolled; https://www.lgbtqnation.com/2021/05/oregons-governor-signs-bill-banning-gay-trans-panic-murder-defense.

Virginia Governor Ralph Northam signed legislation to establish a 26-person advisory board to advise him on issues “regarding the economic, professional, cultural, educational, and governmental links between the Commonwealth and the LGBTQ+ community in Virginia.” The advisory board will be composed of 21 people appointed by the governor, including at least 15 who identify as LGBTQ+, and five members from the governor’s cabinet. https://lis.virginia.gov/cgi-bin/legp604.exe?211+ful+HB2130.


Around the World:

The Inter-American Commission on Human Rights (IACHR), issued Report No. 400/20, regarding Jamaica’s Offences Against the Person Act, passed in 1864, criminalizing sexual relationships between adults of the same sex. Relying on several countries’ high court decisions, including the
United Kingdom, United States, Ireland, South Africa, India, Belize, Trinidad and Tobago, the IACHR found that Jamaica’s “buggery” law violates the American Convention on Human Rights. RSQ-24-2.indd (cartercenter.org). In September 2019, the IACHR issued its initial findings, recommending that Jamaica repeal the Act’s sections criminalizing private consensual sexual activity between same-sex adults. Jamaica challenged the recommendation. Upon review, the IACHR again recommended abolishing the law. By November 2020, Jamaica had taken no steps to repeal the law. The IACHR concluded that Jamaica violated five separate sections of the Convention, and again recommended repeal, with reparations in the form of material and nonpecuniary dimensions, and training for public officials concerning LGBTQ+ persons. https://www.human dignitytrust.org/wp-content/uploads/resources/2020.02-GH-SE-v-JAM-IACHR-final-decision.pdf.

Hear Ye! Hear Ye!
Continued from page 11

Just for the record, what is your full name?

Dr. T. Elizabeth Timberlake-Newell, Esq.

Tell us about your background, education and employment as an attorney.

Despite that I have wanted to be an attorney since my dad took me to “visit” the Constitution in 1988, I’ve only been an attorney since 2019, first working in debt collections compliance and now working in family law, estate planning/administration and some contracts.

I took the long way home, so to speak, as after a non-impressive run of small-time jobs I went back to school to earn my Masters and then my PhD in history (my specialty is medieval history), but while I was completing the dissertation, I took up journalism first as a volunteer and then worked my way up to editor-in-chief. I worked as a graduate teaching assistant for University of Glasgow and as an adjunct professor of history at University of Glasgow in the Adult and Continuing Education program, at Penn Highlands Community College in Ebensburg, Pa., and then at Coastal Carolina University in Myrtle Beach, South Carolina. I taught medieval history at U of Glasgow, and history from the birth of civilization to 1600.

I still love history and always will,

Continued on page 13
but I had to answer my true calling — law. So, I packed up, left “the beach” in 2015, and finished my JD at Northeastern University School of Law in 2018.

Where do you live and work?
I live in Boyertown, in Berks County, but I work for Dolan Ray Law LLC, in Pottstown, Montgomery County. I love my firm, but I look forward to getting out of downtown Boyertown.

Why did you join the committee and how does it dovetail with other professional or volunteer activities or ventures?
I joined the committee to fight more properly for the people I care about, and because family law and civil rights law specifically relating to the LGTBQIA community is a field I am very interested in terms of policy and practice.

Could you give an example?
One of my major interests in estate planning is assisting the LGTBQIA community in developing estate planning portfolios to ensure that the right person (i.e., someone that person trusts) is making the end-of-life decisions and overseeing all their needs. I feel that there is not enough outreach on that, and I would like to facilitate that outreach.

More personally, I have these two gay aunts and a gay daughter that I love to pieces, and it’s because of them that I have marched with bands in Pride parades (Boston and Salem) as a “band mom.”

What is your favorite vacation spot?
That’s a tough question. I love both Edinburgh, Scotland, and Dublin, Ireland. Edinburgh will always be a special place for me because not only did I visit there frequently, I also applied for my younger daughter Z’s citizenship there.

Dublin is a big city that feels like a small town, which is very appealing. I backpacked around Ireland in 2008 with hubby and older daughter, Arwen, and I went back several times when I was living in Galway.

What is your favorite book and why?

Do you have a favorite TV show?
The documentary “Cheer” is my favorite TV program. I am off and on a volunteer cheerleading coach and was a tumbling instructor, but even when I’m not coaching, I enjoy watching cheerleading stunts.

What is your favorite movie?
“The Last Unicorn” is my favorite film. There’s just so much there — triumph, regret, sorrow — and the band America did the soundtrack.

Do you have a favorite musical artist, group or genre?
I am a fan of Celtic music and Celtic-inspired rock/folk music; my favorite band is Scythian.

Do you have any pets?
Too many! I have a 10-year-old husky (Akela), an 8-year-old border collie (Merida), a five-year-old dalmatian (Blaze), and five cats — three black cats (Black Magic, Athena, Phoebe Morrigan), a tabby (Nike), and a tortie (Scathach Ceridwen). I wouldn’t have all these cats were it not for my younger daughter Z, who keeps letting them in!

What is one thing we did not know about you (until now)?
I am a firewalker. I took up firewalking 11 years ago when I was suffering from major writer’s block while writing my dissertation. I haven’t “walked” in a few years, but I am always looking for opportunities.

Do you have any “pet peeves”?
Speeding. We’ll all get there safely if we make good choices behind the wheel.

Is there anything special you do after a particularly challenging day?
I like to sit down with a dram of whiskey and tell myself tomorrow will be better.

Do you have any interesting object, special photo or artwork in your office?
I have photos of my daughters, but my favorite may be of the two of them together at a cheerleading competition.

If you were not a lawyer, you would be a _______.
If I were not a lawyer, I would be a history professor (again).
Rainbeaux Arts

This section adds the arts, humanities and social sciences, which civilize, inspire and educate. It includes the creative arts, documentaries and nonfiction works in various media. Members are welcome to send the editors an item or alert about the arts and culture for the LGBTQ+ community. Items are provided for information and are not officially endorsed or promoted by the committee or the PBA.

Call for Contributors! Imagining Queer Domesticities: Edited Collection. Mary Wilson, Associate Professor of English & Communication, University of Massachusetts – Dartmouth, is seeking submissions of original completed essays for an edited collection of original scholarly research on imagining queer domesticities in literary, cultural, historical and/or legal contexts. Complete essays are due Nov. 15, 2021. Acceptance of publication will be provided by Feb. 15, 2022. Please send inquiries and submissions to Professor Wilson at mwilson4@umassd.edu.

The Walking Dead: How the Criminal Regulation of Sodomy Survived Lawrence v. Texas, Jordan Carr Peterson (Missouri Law Review, Vol. 86, 2021). Peterson opines that, 18 years after Lawrence v. Texas, individuals are still being arrested, prosecuted, convicted and incarcerated under statutes materially equivalent to the one at issue in Lawrence. Mostly notably, Peterson notes that some states still refuse to repeal statutes “indiscriminately criminalizing sodomy under a constitutional regime[,]” Law is ultimately an expression of public values and, as Peterson notes, it bears consideration of exactly which values criminal prohibitions on sodomy advance. Even though these statutes are not being enforced, the mere fact that they still exist perpetuates a public contempt for the sexual practices most common among a population subgroup, resulting in serious public health concerns. Peterson recognizes that the clearest avenue to resolution is to repeal these statutes. However, that process can be quite difficult and requires significant political will. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3784093.

Tallying the Lost Years for L.G.B.T. Seniors, Michael Schulman (The New Yorker, March 8, 2021), highlights an art exhibit, “Not Another Second,” at The Watermark, a Brooklyn Heights retirement home, featuring 12 of the country’s three million LGBT elders, nearly 34%, who carry the burden of less accepting times, hence fear that they might have to go back into the closet when they enter senior housing. Exhibit visitors may scan a QR code next to a portrait to make it come to life on the visitor’s smart phone or other PED screen. Watermark is a national chain, and is seeking platinum accreditation from SAGE, an organization that serves LGBT elders. The article is part of The New Yorker’s “Years Lost” series. https://www.newyorker.com/magazine/2021/03/08/tallying-the-lost-years-for-lgbt-seniors?utm_source=onsite-share&utm_medium=email&utm_campaign=onsite-share&utm_brand=the-new-yorker; Tallying the Lost Years for L.G.B.T. Seniors – SAGE (sageusa.org).

Let the Record Show: A Political History of ACT UP New York, 1987-1993, Sarah Schulman (Farrar, Strauss and Giroux; 736 p.; $40). Published in May and on several top book lists, this book gives a comprehensive political history of ACT UP and American AIDS activism. It is based on more than 200 interviews with ACT UP members, who give lessons for today and provide a reassessment of the group’s

Continued on page 15
inner workings, achievements and fractures. Schulman has authored more than 20 works of fiction; this newest work is over 700 pages of historical research and intellectual analysis that explores how a group of outcasts changed America after storming the FDA and the NIH in Washington, D.C. https://www.theguardian.com/books/2021/may/16/hiv-aids-act-up-sarah-schulman-women-people-color-protest-david-france?CMP=Share_AndroidApp_Other.

*Lies with Man*, Michael Nava. Published in April, the novel is set in 1986, at the height of the AIDS crisis, and centers on proposed legislation that would allow government officials to identify HIV-positive people and force them into quarantine camps. Nava, who has a law degree from Stanford University and is a six-time Lambda Literary Award winner, weaves this crisis of the times with an intricate explanation of the legal processes surrounding the proposed California legislation. http://michaelnavawriter.com.

*Kiss My Gay Ass*, Tom Ammiano (Bay Guardian Books; 238 p.; $20). Ammiano was a track athlete who earned a high school varsity letter in 1959, but was subjected to bullying and anti-gay rhetoric and prevented from receiving his letter. Now 79, his book reviews the homophobia still happening in sports and relates that he has always felt part of a larger narrative. He was featured on Peter Hartlaub’s recent podcast, Tom Ammiano: “Kiss My Gay Ass” from Total SF | Podcast Episode on Podbay; https://www.kissmygayass.com; San Francisco Bay Guardian | New Book! Tom Ammiano’s ‘Kiss My Gay Ass’ recalls SF political history (sfbg.com).
LGBTQ+ Rights Committee

The LGBTQ+ Rights Committee shall study matters pertaining to the recognition and protection of the legal rights of the gay, lesbian, bisexual and transgender (LGBTQ+) community. The committee will monitor and make recommendations on issues and developments in the law impacting LGBTQ+ people in the public and the legal profession.

The committee is open to LGBTQ+ lawyers and allies. The committee welcomes all members who are interested in promoting equal rights for the LGBTQ+ lawyers and the LGBTQ+ community at large.

2021-22 Co-chairs:

Martricia McLaughlin
McLaughlin & Glazer
26 N. Third St.
Easton, PA 18042
mclandg@hushmail.com
610-258-5609

Thomas William Ude Jr.
Mazzoni Center Legal Services
1348 Bainbridge St.
Philadelphia, PA 19147
tude@mazzonicenter.org
215-563-0652

2021-22 Co-Vice Chairs:

John Alan Byrd
North Penn Legal Services
33 N. Main St., Ste. 200
Pittston, PA 18640
jbyrd@northpennlegal.org
570-320-8723

John M. Schaffranek
Law Office of John M. Schaffranek
10475 Perry Hwy, Ste. 212C
Wexford, PA 15090-92136
John@JMSLawOffice.com
412-643-3848