We welcome AJ Vogt as co-editor of *Open Court*. AJ joins Mária Zulick Nucci, who has been co-editor since our December 2018 issue, and solo editor since May 2020.

In the last quarter of this difficult year, our committee’s Transgender Name Change Task Force, chaired by Ellen Fischer, worked to finalize a proposed rule to implement court procedures to make it easier for people who are transgender to protect their safety through the name change process and procedure. When final, we will share that draft with this committee before sending it to PBA President David E. Schwager for guidance and direction on approaching the Pennsylvania Supreme Court’s Civil Procedural Rules Committee.

The Task Force on the Elimination of the Trans and Gay Panic Defenses, chaired by Henry Sias, also worked hard to examine the most effective strategies to abolish that defense. The task force is examining options in addition to a statutory ban and is working to finalize its draft proposal to the committee in the coming weeks.

Our committee’s monthly meetings continue via Zoom or telephone at noon on the third Thursday of each month. We have been encouraged by greater member participation, including several new and young members who bring important interest and ideas to the table.

Thanks to our co-vice chairs, John Schaffranek and John Byrd, who drafted the membership survey that was completed in the fall. Its results tell us that we have some very engaged members interested in more involvement, information, education and advocacy. We continue to welcome input, feedback, and contributions from ALL of our members.

We are excited to share that the PBA’s Diversity Team is interested in an LGBTQ+-oriented summit in the near future. Plans are in development, so please watch your email inbox for more information soon.

We enter 2021 with new guidance from our members, new optimism that a vaccine will soon allow us to discover post-COVID-19 life, and a reinvigorated sense of purpose to improve the lives of our community members.
On Feb. 18, Rep. David Cicilline (D-RI), with 240 cosponsors, and Senator Jeff Merkley (D-OR), with 46 cosponsors, introduced The Equality Act, H.R.5 - 116th Congress (2019-2020): Equality Act | Congress.gov | Library of Congress, S.788 - 116th Congress (2019-2020): Equality Act | Congress.gov | Library of Congress. H.R.5 passed, 224-206, on Feb. 25; it went to the Senate, which, on March 2, placed it on the Senate Legislative Calendar. The Act would (1) amend the 1964 Civil Rights Act to include sexual orientation and gender identity, (2) allow the Department of Justice to intervene in equal protection actions based on sexual orientation or gender identity, (3) expand “public accommodations” to include, inter alia, retail and transportation, (4) prohibit denial of access to shared facilities based on gender identity, and (5) not allow the federal Religious Freedom Restoration Act, 42 U.S.C. 2000bb et seq. (RFRA), to “provide a claim concerning, or a defense to a claim under, a covered title, or provide a basis for challenging the application or enforcement of a covered title.” Rep. Chip Roy (R-Texas) intends a legal challenge. GOP’s Chip Roy vows to fight Equality Act in court | TheHill.

Certain faith organizations and advocates object to the Act, so that litigation is foreseeable. What Is The Equality Act? Anti-Discrimination Law Explained : NPR. There is objection to the RFRA exclusion where, historically, free-exercise claims were reviewed under strict scrutiny as First Amendment rights; litigation might also be based on state RFRAs, potentially citing the principle that state law may be more protective of individual rights than federal, and arguing that the Equality Act raises states’-rights issues.
Numerous medical and health organizations, including the American Academy of Pediatrics, the American Psychiatric Association, the American Psychological Association (APA), the American Academy of Child and Adolescent Psychiatry, the American School Counselor Association and the U.S. Department of Health and Human Services have stated that the practice of Sexual Orientation Change Efforts (SOCE) poses tangible risks of harm to minors.

According to the Movement Advancement Project (MAP), an independent nonprofit organization that researches a variety of social and economic issues, despite these professional positions, 38% of the LGBTQ+ population live in states with no laws or policies banning the use of SOCE, also known as “conversion therapy,” on minors. MAP also tracks data on a state and local level. Movement Advancement Project | Conversion “Therapy” Laws (lgbtmap.org).

Pennsylvania currently lacks statewide legislation protecting LGBTQ+ youth in the juvenile justice system, protecting LGBTQ+ people from hate crimes, or prohibiting the use of SOCE on minors. In 2019, legislation regarding SOCE was introduced by Rep. Brian Sims, but it did not gain traction. https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20190&cosponId=28047.

Despite that effort, 10 cities and two counties have passed ordinances prohibiting conversion therapy for minors. On Jan. 20 – the day of President Biden’s inauguration – Sen. Anthony H. Williams, with 10 cosponsors, introduced SB26, the Protection of Minors from Sexual Orientation Change Counseling Act. SB26 cites studies by the APA and other medical and health organizations and would prohibit the use of SOCE on patients under 18, although a minor would be able to consent to SOCE consistent with current law on minors’ rights to consent to professional treatment. SB26 was referred to the Senate’s Consumer Protection and Professional Licensure Committee. Bill Information – Senate Bill 26; Regular Session 2021-2022 – PA General Assembly (state.pa.us).

Earlier cases from the Third and Ninth U.S. Courts of Appeals addressed SOCE, and a recent decision by the 11th Circuit has thrust SOCE into the spotlight once again. As such, the legality of sexual orientation change efforts might come before the eyes of the U.S. Supreme Court, as a circuit split now exists and as the decisions address diverse, sensitive issues under the First and 14th Amendments, regarding speech, religion and parental rights.

On Nov. 20, 2020, the 11th Circuit issued Otto v. City of Boca Raton, No. 16-10604 (11th Cir., Nov. 20, 2020), a 2-1 decision striking down, for First Amendment violations, two local ordinances that banned the practice of SOCE on minors. In Otto, there were parallel cases before the 11th Circuit. At issue were two nearly identical ordinances that prevented therapists in Florida from engaging in SOCE on minors in the city of Boca Raton and in Palm Beach County. Slip op. at 2. The 11th Circuit’s decision runs counter to the prior decisions from the Third and Ninth Circuits. All three cases address the intersection of the First Amendment and the constitutionality of banning therapists, counselors

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and practitioners from engaging in the practice of SOCE on minors.

One of the first major decisions addressing the validity of statutes banning the use of SOCE on minors was *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014), *cert. denied*, 134 S. Ct. 2871 (2014). There, the Ninth Circuit applied rational basis scrutiny and upheld SB 1173, passed by the California legislature and placed in the Business and Professions Code, which regulates the conduct of psychotherapists; the new law prevented them from engaging in SOCE on minors. Id. at 1222; see also Cal. Bus. & Prof. Code §856(b)(1). A majority of the court agreed that SB 1172 regulated only conduct and, as such, was subject to rational basis review. Id. at 1331.

When reaching its ultimate holding, the court first determined that SB 1172 regulated only conduct. Indeed, the court explained that the statute only “bann[ed] a form of treatment for minors [and] does nothing to prevent licensed therapists from discussing the pros and cons of SOCE with their patients.” *Pickup*, 740 F.3d at 1229. As SB 1172 only regulated conduct, the statute needed only to survive rational basis review, which meant that SB 1172 needed only to be rationally related to a legitimate state interest. Id. The California legislature stated that the purpose to SB 1172 was to “protect[] the physical and psychological well-being of minors, including lesbian, gay, bisexual and transgender youth, and [to] protect[] its minors against exposure to serious harm caused by sexual orientation change efforts.” *Pickup*, 740 F.3d at 1229 (quoting 2012 Cal. Legis. Serv. Ch. 835 §1(n)). Relying on this stated purpose, the court found that there were “plausible reasons for the legislature’s action[s]” and concluded that SB 1172 passed rational basis review. *Pickup*, 730 F.3d at 1232 (citing *Romero-Ochoa v. Holder*, 712 F.3d 1328, 1331 (9th Cir. 2013)).

The Ninth Circuit’s opinion was an amendment of its earlier opinion in *Pickup*, at 728 F.3d 1042 (9th Cir. 2013), and followed its denial of rehearing and rehearing en banc. Later, in a related case, *Welch v. Brown*, 834 F.3d 1041 (9th Cir. 2016), the court rejected First Amendment Free Exercise and Establishment Clauses claims and privacy claims that some minors might seek conversion therapy for religious reasons.

Following the Ninth Circuit’s decision in *Pickup*, the Third Circuit unanimously upheld a New Jersey law that banned the use of SOCE on minors. *King v. Governor of New Jersey*, 767 F.3d 216 (3d Cir. 2014). While the court relied heavily on *Pickup*, it upheld the New Jersey statute on a different legal principle. It concluded that the practice of SOCE was not the practice of particular conduct, but instead constituted speech. In reaching this determination, the Third Circuit noted that, although the practice of SOCE constitutes speech, it does not have full First Amendment protection because it regulates professionals. To further explain this, the court recognized that “the police power of the states extends to the regulation of certain trades and callings, particularly those which closely concern the public health.” Id. at 229 (quoting *Watson v. State of Maryland*, 218 U.S. 173 (1910)). With that principle in mind, Judge Smith, writing for the unanimous panel, opined that “licensed professional[s] do not enjoy the full protection of the First Amendment when speaking as part of the practice of [their] profession.” 767 F.3d at 232.

After engaging in a detailed review of First Amendment jurisprudence, the Third Circuit concluded that intermediate scrutiny was the applicable standard, because the New Jersey statute “directly advance[d]” the government’s interest in protecting clients from ineffective and/or harmful professional services, and is ‘not more extensive than

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necessary to serve that interest.”’” Id. at 237. The court found that New Jersey’s interest in protecting the minor population, which is particularly vulnerable to medical practices such as SOCE, was strong and that that interest is directly advanced by “prohibiting a professional practice that poses serious health risks to minors.” Id. at 238. Separately, the court upheld the district court’s ruling that Garden State Equality, an LGBTQ+ advocacy organization, did not have to show Article III standing in order to intervene in the case.

A year after King, the Third Circuit affirmed the dismissal of a complaint, by a minor and his parents, that New Jersey’s law violated their First Amendment rights to receive information and to free exercise of religion, and the parents’ 14th Amendment due process right regarding the raising of their children, where the 15-year-old plaintiff was struggling with his sexual orientation and identity and the family’s religion regarded homosexuality as a sin. Doe v. Governor of New Jersey, No. 14-1941 (3d Cir. 2015).

By contrast, the 11th Circuit in Otto held that ordinances prohibiting therapists from engaging in SOCE on minors violated the First Amendment, finding that such ordinances are content-based regulations of speech and cannot survive strict scrutiny. The ordinance passed by the city of Boca Raton specifically banned treating minors with:

any counseling, practice or treatment performed with the goal of changing an individual’s sexual orientation or gender identity, including, but not limited to, efforts to change behaviors, gender identity or gender expression, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender or sex. Slip op. at 3.

The county ordinance, while not verbatim to the city’s, contained substantially similar language. The plaintiff therapists sought a preliminary injunction, arguing that the ordinances restricted speech-based therapy “because the local governments disagreed with the message, ideas, subject matter, and content of the words spoken during their clients’ therapy.” Id. at 6. The majority opined that the issue of whether the ordinances were content-based or not was “easy,” and concluded that because the ordinances “depend on what is said,” they are content-based restrictions subject to strict scrutiny. Id.

In determining that these ordinances were content-based, the majority stated:

Whether therapy is prohibited depends only on the content of the words used in that therapy, and the ban on that content is because the government disagrees with it. And whether the government’s disagreement is for good reasons, great reasons, or terrible reasons has nothing at all to do with it. All that matters is that a therapist’s speech to a minor client is legal or illegal under the ordinances based solely on its content. Id. at 10. The court went on to find that these ordinances were an “obvious” content-based restriction because they provided for an exception that expressly allowed counseling to provide support to a person undergoing gender transition, thereby “codifying a particular viewpoint.” Id. at 12.

Notably, the 11th Circuit in Otto rejected the argument that the regulation of professional speech receives less protection under the First Amendment, directly diverging from Pickup and King. The majority opined that “there is a real difference between laws directed at conduct sweeping up incidental speech on the one hand [(i.e. commercial speech)] and laws that directly regulate speech on the other.” Id. at 15.

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The majority, briefly addressing King and Pickup, rejected the Third and Ninth Circuits’ “willingness to ‘except professional speech from the rule that content-based regulations of speech are subject to strict scrutiny.’” Id. at 19 (quoting National Institute of Family & Life Advocates [NIFLA] v. Becerra, 585 U.S. ___, 138 S.Ct. 2361, 2371 (2018)). Therefore, the majority concluded that the ordinances could not survive strict scrutiny as they were not narrowly tailored to serve a compelling state interest.

In a lengthy dissent, Judge Martin disagreed with the majority and opined that the ordinances at issue would survive strict scrutiny. Otto, slip op. at 30-31 (Martin, J., dissenting). The dissent, relying on NIFLA, noted that the U.S. Supreme Court stated that strict scrutiny is not the proper lens of analysis for “regulations of professional conduct that incidentally burden speech.” Id. (citing NIFLA, 138 S.Ct. at 2371–73). Instead, an intermediate form of scrutiny is appropriate for reasonable regulations on the practice of medicine. In its analysis, the dissent assumed that the ordinances were content-based restrictions and focused analysis on whether they were the least restrictive means of furthering the government’s interests in protecting minors. Id. at 33. The dissent explained that localities (1) have a strong interest in protecting minors from harmful professional practices and (2) have broad power to establish standards for licensing practitioners and regulating the practice of professionals. Id. at 34 (citing New York v. Ferber, 458 U.S. 747, 756-57 (1982); Goldfarb v. Va. State Bar, 421 U.S. 773, 792 (1975)). Judge Martin disagreed that the ordinances restrict the ideas to which minors may be exposed; instead, she found that the ordinances only prevented the plaintiffs from performing a particular medical practice on minor patients. Id. at 35. Finally, Judge Martin concluded that the ordinances’ “narrow regulation of a harmful medical practice affecting vulnerable minors” was the least restrictive means of achieving the government’s compelling interest. Id. at 46.

Interestingly, all three of these decisions relied, in differing degrees, on several studies published by the American Psychological Association (APA). All three note a 2007 APA study by the APA Task Force on Appropriate Therapeutic Responses to Sexual Orientation, Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation 43 (2009) (Task Force Report), which found that individuals experienced harm from the practice of SOCE. In particular, there are documented, statistically significant reports that attempts to change sexual orientation may result in “anger, anxiety, confusion, depression, grief, guilt, hopelessness, deteriorated relationships with family, loss of social support, loss of faith, poor self-image, social isolation, intimacy difficulties, intrusive imagery, suicidal ideation, self-hatred and sexual disfunction.” Task Force Report at 42. Clearly, the Third and Ninth Circuits lent the report more credence than did the 11th Circuit; what remains unclear is why the 11th Circuit refused to credit the report in the same fashion. (Of note, in early 2020, with the Trump Administration’s appointment of Judge Andrew Brasher, the 11th Circuit now consists of a majority of Republican-appointed judges; Judge Brasher was not on the Otto panel.)

Furthermore, the APA consistently asserts that SOCE “can lead to negative outcomes, including treatment related anxiety, suicidal ideation, depression, impotence[,] and relationship dysfunction.” In advocating this position, the APA relies on several recent studies that indicate the negative outcomes of SOCE. See https://www.apa.org/news/
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apa/2020/03/sexual-orientation-change (Last accessed Feb. 18, 2021); see also Deblin JP, et. al., Sexual Orientation Change Efforts Among Current or Former LDS Church Members, Journal of Counseling Psychology (2015); Ryan, C., et. al., Parent-Initiated Sexual Orientation Change Efforts With LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment (2020). The APA submitted amicus briefs in several cases on SOCE, including Otto. After the 11th Circuit’s decision, the APA issued a statement criticizing the opinion and rejecting the presumption that a gay or lesbian young person must change.

Thus, there are now three separate federal circuit court decisions on SOCE, applying three different standards to First Amendment issues arising out of SOCE and its regulation and reaching divergent conclusions whether bans on the use of SOCE on minors is unconstitutional. This type of circuit split might catch the eye of the Supreme Court, particularly where, as noted, the cases raise diverse, sensitive issues of speech, free exercise, establishment, parental rights and minors’ rights to medical, health and professional services. With the recent changes in the court’s composition, the question whether ordinances banning the practice of SOCE on minors might violate the First Amendment could very well reach the high court. Undoubtedly, the implications of any decision would have significant impact on LGBTQ+ minors across the nation.

Alfred (AJ) Vogt is a co-editor of Open Court. Read the following article to find out more about AJ.

Getting to Know One of Our Members: AJ Vogt

Just for the record, what is your full name?

My name is Alfred Vogt, but I go by AJ.

Can you tell our readers about your background, education and employment as an attorney?

I am a newly practicing family law attorney with the Law Offices of Jennifer J. Riley, in Blue Bell and Wayne. I recently moved to the Greater Philadelphia area from Washington, D.C., to start a career in family law and hopefully to serve the community.

Prior to moving to the eastern side of the state, I spent most of my life in Pittsburgh. I attended Duquesne University for both my undergraduate and law degrees. I studied mathematics while an undergraduate and published research involving long-term care needs for victims of human trafficking, an issue I am extremely passionate about. In law school, I was actively involved in appellate advocacy and competed for Duquesne across the country. I also worked on the Name Change Project with the Transgender Legal Defense & Education Fund, assisting transgender individuals through the name change process.

After law school, I clerked for Justice Christine Donohue on the Supreme Court of Pennsylvania. Following that experience, I transitioned to the federal government in Washington, D.C., drafting decisions for administrative law judges.

Where do you live and work? How do you feel about it?

I live in Wayne and work in both Blue Bell and Wayne. I am new to the area but am very excited to explore the local neighborhoods and restaurants and to support the community as safely as possible.

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What made you join the LGBTQ+ Rights Committee? Does it dovetail with other professional or volunteer efforts or ventures?

Being a member dovetails with my work. I have been involved in civil rights work since my undergraduate studies and prior work experience, and I continually seek employment opportunities and community involvement that positively impacts any marginalized group. This has now led me to practicing family law as an ally to the LGBT community.

I joined this committee not only to contribute to a community that is meaningful to me personally, but also, as a member of the LGBT community myself, to be available to listen and provide guidance to any member who might be dealing with legal issues and to be an understanding ear for anyone who might be looking for personal support.

Can you give an example?

Something that I thoroughly enjoyed in law school was my experience with the Name Change Project. As an associate with the Law Offices of Jennifer J. Riley, I have the opportunity to continue to work with the project and assist the transgender community through an exciting, but stressful, experience.

On a lighter note, what’s your favorite vacation spot?

I would have to say my favorite vacation spot would be Colorado. I have spent time throughout different parts of the state, and I love being outdoors – whether it’s hiking in the summer or skiing in the winter – Colorado is great for both! I really enjoy the peaceful atmosphere and the beautiful views no matter where you go in the state.

Do you have a favorite book and why do you love it?

I cannot say I have any specific favorite book, but I have always enjoyed Malcolm Gladwell’s writing. I appreciate his analytical approach to discussing social issues. I enjoyed his most recent book, *Talking with Strangers*, where he talked about how we approach our interactions with strangers and how our assumptions about those strangers are often incorrect. This book allowed me to assess my own perspectives and implement change in my own life.

Do you have a favorite TV show?

Since the beginning of 2020 I have had a lot more time to watch TV (Netflix, HBO, Amazon Prime, Hulu, etc.) and admittedly I have watched quite a bit of new shows. While I cannot say I have a standout favorite, some that I have thoroughly enjoyed were Killing Eve, The Crown and, of course, Schitt’s Creek!

What about a favorite movie?

I do not have a particular favorite movie, but I always enjoy the Marvel universe.

What’s one thing that we don’t know about you?

I am an avid runner and recently ran the Chicago marathon. I was registered for the Philadelphia marathon for 2020 but, unsurprisingly, that race was cancelled. Hopefully I can give it a try next year.

Do you have a favorite band or type of music?

Admittedly, pop is my favorite genre of music. These upbeat songs typically get me through my morning workouts and tend to stay in my head until the day’s end.

Do you have any “pet peeves”?

Slow walkers and hearing people chew their food.

Is there anything special you do after a particularly challenging day?

Going for a run always clears my mind after a difficult day. If not, a glass of wine would certainly help.

Do you have any interesting object, special photo or artwork in your office?

I keep a mug/pencil holder that my maternal grandmother made prior to her passing in 2001. It serves as a constant reminder that she is watching over and supporting me.

I keep a photo out from my law school graduation with my paternal grandmother. As the first and only lawyer in my family, she was so proud of me and that photo provides me extra confidence when needed.

Do you have any pets?

My family has a 210-pound English mastiff, who loves to sleep all day long and is the best cuddler.

If you were not a lawyer, you would be a _____.

I would likely be some sort of applied mathematician. I enjoy the field of mathematics and working on solving real world problems with math.
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.

On Jan. 12, the Department of Health and Human Services (HHS) issued a Final Rule, to be effective Feb. 11, revising its grants regulations for the stated purpose of enabling federal agencies to manage and administer awards compliant with the U.S. Constitution, federal law, including the Religious Freedom Restoration Act (RFRA), and public policy. The rule is stated as intended to better ensure compliance with RFRA and to allow HHS to avoid situations of substantial burdens on religious exercise. The final rule’s history notes the record, under the rule’s former language, of exemption requests by certain faith-based providers and of litigation, particularly regarding foster care and adoption placements. Federal Register :: Health and Human Services Grants Regulation. 2020-26706.pdf (govinfo.gov). The final rule is argued as allowing illegal discrimination in foster and adoption placement and potentially other social services. Trump HHS finalizes rule rolling back nondiscrimination protections for LGBTQ individuals - JURIST - News - Legal News & Commentary. As of this publication, President Biden has not addressed this rule. However, his campaign platform included The Plan to Advance LGBTQ+ Equality in America and Around the World, and he pledged to sign the federal Equality Act within 100 days of taking office. Biden’s Equality Act to Advance LGBTQ+ Rights Around the World - Bringing you Truth, Inspiration, Hope. (visiontimes.com); The Equality Act: S.788 - 116th Congress (2019-2020): Equality Act | Congress.gov | Library of Congress; H.R.5 - 116th Congress (2019-2020): Equality Act | Congress.gov | Library of Congress.

President Biden’s inauguration quickly brought action on LGBTQ+ issues. One of his first executive orders addressed antidiscrimination protection of gender identity and sexual orientation. https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/. This executive order memorialized the U.S. Supreme Court’s recent decision in Bostock v. Clayton County, 590 U.S. __, 140 S. Ct. 1731, 2020 WL 3146686, 2020 U.S. LEXIS 3252 (2020). Executive agencies are directed to review their existing policies, regulations, policies, and programs, and develop a plan to carry out antidiscrimination policies for LGBTQIA persons. The order also rescinded President Trump’s Sept. 22, 2020, executive order which prohibited, in part, workplace training by the Uniformed Services, federal agencies and federal contractors, in “divisive concepts” regarded as “anti-American propaganda,” including “sex stereotyping” and “sex scapegoating,” as stated in the September order. Biden reverses Trump executive order restricting diversity training (msn.com); President Trump’s executive order: Federal Register :: Combating Race and Sex Stereotyping. The Office of Federal Contract Compliance issued FAQs regarding the September order, including that it proscribed training regarding “unconscious or implicit bias.” On Oct. 15, 2020, more than 160 business and nonprofit organizations, including the U.S. Chamber of Commerce, asked President Trump to rescind his order, as having “a chilling effect” on valuable employee training toward inclusive workplaces. b5c62775-5376-4f8d-9384-35b76ce39682.pdf (uschamber.com). On Dec. 22, U.S. District Judge Beth Labson Freeman issued an order granting a nationwide preliminary injunction against enforcement of Sections 4 and 5 of the September order, “Requirements for Government Contractors” and “Requirements for Federal Grants.” Santa Cruz Lesbian and Gay Community Center v. Trump, No. 5:20-cv-07741-BLF (N.D.Cal., filed Dec. 22, 2020); https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/diversity_ca_20201222-order-granting-part-nationwide-preliminary-injunction.pdf.

The plaintiffs in that action were several nonprofits serving the LGBTQ+ and HIV communities, providing advocacy and training to health care providers and local govern-

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ments and businesses, to help with health care issues, and received direct or pass-through federal grants or funding; the Bradbury-Sullivan LGBT Community Center, based in Allentown, Pa., was a plaintiff. Judge Freeman found that the plaintiffs showed infringement of their First Amendment Free Speech right in providing training, a key part of their missions, and Fifth Amendment Due Process right, where the executive order was vague in that it was impossible for the plaintiffs to know what conduct was proscribed.

On Jan. 25, 2021, the Biden Administration issued an executive order that enabled all qualified Americans to serve their country in uniform, thereby permitting transgender individuals to serve in the Armed Forces. [link] Executive order on enabling all qualified Americans to serve their country in uniform. President Biden specifically provided that “gender identity should not be a bar to military service.” The order goes on specifically to revoke the two Trump Administration memoranda, issued in 2017 and 2018, banning transgender persons from serving in the military.

On Feb. 4, 2021, the Biden Administration issued the Memorandum on Advising the Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons Around the World, reaffirming a 2011 memorandum that directed executive agencies to ensure that United States diplomacy and foreign assistance promote and protect the human rights of LGBTQIA persons everywhere. [link] The memorandum directs agencies to combat criminalization of LGBTQIA persons, protect vulnerable LGBTQIA refugees and asylum seekers, provide swift and meaningful responses to human rights abuses to LGBTQIA persons abroad and build coalitions of like-minded nations and engage with international organizations in the fight against LGBTQIA discrimination. It also requires agencies, within 100 days, to review all policies and rescind any inconsistent policies, directives or regulations.

**Henderson v. Box**, 947 F.3d 482 (7th Cir. 2020), cert. denied, No. 19-1385 (Dec. 14, 2020). Eight married lesbian couples had children by artificial insemination and wanted both mothers named on the birth certificates. The State of Indiana refused. Indiana law allowed both opposite-sex parents to be named, even if a sperm donor was used. The Seventh Circuit found that a state may have a birth certificate system based on biological parentage, not marriage, but its current system was unconstitutional in presuming that a birth mother’s husband was the child’s biological father, subject to rebuttal, but not allowing a lesbian non-birth mother the same right. After **Obergefell v. Hodges**, 576 U.S. 644, 135 S.Ct. 2584 (2015), and **Pavan v. Smith**, 582 U.S. ___, 137 S.Ct. 2057 (2017) (per curiam), a state cannot presume that a husband is the father, i.e., parent, but deny an equivalent presumption of parentage in same-sex marriages. Therefore, Indiana must recognize such children as legitimate, born in wedlock, and identify both wives as parents.

“Does God still love me?” Chloe Shelton, 8 years old, was expelled from Rejoice Christian School in Owasso, Oklahoma, for telling a female classmate that she had a crush on her. According to her mother, Delanie, a vice principal told Chloe that the Bible said she could only marry and have children with a man; her five-year-old brother was also expelled. The school’s handbook allows opposite-sex dating, and Chloe’s statement did not violate any school rule. Delanie told the school that she had no problem with her daughter’s statement, and neighbors organized a drive-by show of encouragement to Chloe. After she was expelled, Chloe asked her mother, “Does God still love me?” [link] Second grader expelled from Christian school because she said she had a crush on a girl / LGBTQ Nation; Rejoice Christian Schools (RCS) - Leading Christian education provider in northeastern Oklahoma for grades pre3 through 12 grade. [link] Owasso neighbors rally together to make young girl feel welcome in the community again. Nine United States Catholic Bishops released “God Is On Your Side: A Statement from Catholic Bishops on Protecting...” [link]
LGBTQ Youth.” God Is On Your Side: A Statement from Catholic Bishops on Protecting LGBT Youth • Tyler Clementi Foundation. The bishops developed the statement with the Tyler Clementi Foundation, an anti-bullying organization; the statement, also supported by the Ursuline Sisters of Louisville, notes the high suicide rate among LGBTQ youth. U.S. Catholic Bishops: ‘People of Goodwill Should Support LGBT Youth’ (advocate.com). Through the foundation, other bishops are invited to sign, and thanks to signing bishops and outreach to other bishops is encouraged. The foundation was formed in memory of Tyler Clementi, an 18-year-old gay man who committed suicide on Sept. 22, 2010, after his roommate at Rutgers University secretly filmed him in their room in an intimate moment with a date, posted the video online and planned a second video. Tyler Clementi Foundation • The Tyler Clementi Foundation’s mission is to end online and offline bullying in schools, workplaces, and faith communities.

Fresse v. Starbucks Corp., No. 20-16567 (D.N.J., filed Nov. 19, 2020). Betsy Fresse, a former Starbucks barista, sued the company for allegedly firing her for her refusal to wear a company-issued rainbow Pride t-shirt, based on her Christian beliefs. She stated that a manager told her she did not have to wear the shirt, and Starbucks stated likewise. However, she received a letter from its corporate offices stating that her “comportment was not in compliance with Starbucks’ core values” and was fired. The complaint does not set forth her address, for the stated purpose of maintaining her privacy. Complaint: BETSY FRESSE v. STARBUCKS CORPORATION | Diversity Jurisdiction | Lawsuit (scribd.com); see also https://www.lgbtqnation.com/2020/11/barista-fired-telling-coworkers-need-jesus-wear-pride-t-shirt-sues-suing/.

EEOC v. The Kroger Company, No. 4:20-cv-01099-LPR (E.D.Ark., filed Sept. 14, 2020). Kroger issued new aprons for employees, with a heart logo with a light blue outer band, then red and yellow bands, and a darker blue core. Brenda Lawson and Trudy Rickerd did not want to wear the aprons, citing their religious beliefs. Lawson asked to cover the heart with her name tag; Rickerd offered to buy an apron without the logo. The complaint pleads their sincerely held religious beliefs in the literal interpretation of the Bible and that homosexuality is a sin, belief that the heart as depicted on the apron is the LGBTQ symbol, and Kroger’s failure to discipline other employees who did not wear the apron or who covered the heart. Kroger, well-rated on LGBTQ+ issues, apparently did not confirm the symbol issue nor explain the logo’s selection, design and approval process, and declined comment due to litigation. Complaint: Conway-Kroger-Complaint.pdf (familycouncil.org); see also Kroger Company Sued by EEOC For Religious Discrimination | U.S. Equal Employment Opportunity Commission. The complaint was filed during the Trump Administration; the case might merit following based on EEOC leadership and policy changes in the new Biden Administration.

Barry W. Bussey, The Legal Revolution Against the Accommodation of Religion: The Secular Age Versus the Sexular Age. Dr. Bussey is director, Legal Affairs at Canadian Centre for Christian Charities, and adjunct associate professor, University of Notre Dame Australia (Sydney). His doctoral dissertation analyzes the history in Western liberal democracies of protecting religious liberty and current challenges to its traditional accommodation. He focuses on the Supreme Court of Canada’s decisions involving Trinity Western University, which wanted to start a law school; three law societies refused accreditation because of its admission requirement defining marriage as one man and one woman. The court ruled in favor of the law societies. Marriage equality became law in Canada in 2005 under the federal Civil Marriage Act.

Pasadena Republican Club v. Western Justice Center (WJC), No. 20-55093 (9th Cir., filed Jan. 25, 2021), Pasadena Republican Club v. Western Justice Center, No. 20-55093 (9th Cir. 2021) :: Justia. The court affirmed dismissal of civil rights claims against WJC and its executive director and summary judgment in favor of the City of Pasadena. WJC leases property from the city and is allowed to rent out space for events. It rented space to the club for a speaking event, then learned that the speaker was president of the Na-
Hear Ye! Hear Ye!
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The court found that WJC and its executive director were not state actors under the facts of their lessee relationship with the city, where there was no joint action nor symbiotic relationship between them, and that the city was not vicariously liable, where it had not delegated final policy-making authority to them. The opinion provides a thorough history of the case and discussion of state actor status.

Rainbeaux Arts and Culture

This section adds a touch of the humanities, because the humanities civilize and inspire! 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.

Books

Nadia Owusu, *Aftershocks* (Simon & Schuster; 320 p., $26). Owusu’s memoir tells her complex story as a child of Armenian and Ghanaian heritage, holding United States and Ghanaian passports. Her mother left her and her sister with their father, who remarried; Nadia had a difficult relationship with her stepmother. Her memoir delves into the challenges of family dynamics, citizenship, racial and ethnic heritage, and identity. Her greatest challenge came when, as an adult, her stepmother told her that her father did not die of cancer, as she had been told at 13 when he died, but of AIDS. This gives her a connection to AIDS victims: “In denying that connection, I diminished rather than protected my story of my father.” *Aftershocks* places AIDS within the framework, not of disease, but of parents and children, identity, heritage and acknowledgment.

Robert Jones Jr., *The Prophets* (G.P. Putnam’s Sons; 400 p., $27). Jones’ first novel traces the story of queer slaves, Samuel and Isaiah, on a plantation. It delves into diverse points of view and characters, taking the reader into the minds not only of the lovers but of other slaves, the plantation owner and his son, and the violence and inhumanity of that world. Jones’ style combines narrative, the characters’ consciousness, Biblical references and the supernatural. In so doing, it tells an inevitably painful and violent, but nonetheless moving, tale.

Zeyn Joukhadar, *The Thirty Names of Night* (Atria Books; 290 p., $27). This novel tells the story of an unnamed protagonist, a young trans man in a Syrian family who immigrated to the United States in the 1960s. He is visited by the ghost of his mother, who was an ornithologist; she leads him to find a journal by Laila Z, a Syrian painter of birds, who disappeared years ago. The novel alternates chapters from her journal and by the narrator and addresses the history of Syrians in the United States, the queer and trans communities, coming of age and coming to terms with gender, all within the ever-present images of birds.
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.

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