CONGRESSIONAL ANTI-LGBT DISCRIMINATION IN D.C.

GAY AND LESBIAN ACTIVISTS ALLIANCE

GLAA

Introduction

In its dealings with the federal government, the District of Columbia has learned painfully that what is just is not always what is specified in the U.S. Constitution. Article I, § 8 states, “The Congress shall have power ... To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States....” This language is reinforced by the Home Rule Act.

Defenders of democracy have urged Congress to respect the spirit of home rule by refraining from preempting or overruling the District's elected Council except in cases involving a clear federal interest. Congress has imposed its judgment in place of the District's own in cases involving not only gay rights but abortion, needle exchange, medical marijuana, and gun control. The District has proven all too convenient a political playground for social policy initiatives of the intolerant right, whose congressional adherents do not have to answer to District voters. GLAA supports efforts by Congresswoman Eleanor Holmes Norton to grant the District legislative and budgetary autonomy.

Sodomy Repeal and the Unicameral Veto

In 1981, the D.C. Council repealed the District's felony sodomy law as part of the Sexual Assault Reform Act, which was then signed by the Mayor. In reaction to this, the Moral Majority launched a bigoted campaign of disinformation, suggesting that the law would lead to bestiality in the streets of the nation's capital; in Congress, Rep. Philip Crane (R-IL), a right-wing former presidential candidate, launched an effort to overturn the law. On October 1, 1981 — during the congressional review period specified in the Home Rule Act for Council-passed legislation — the U.S. House of Representatives overturned the D.C. Sexual Assault Reform Act, using the one-house veto authorized in the Home Rule Act.

On June 23, 1983, by a 7-2 decision, the Supreme Court in a separate case affirmed a Court of Appeals ruling that the unicameral veto "violates the constitutional doctrine of separation of powers." [*INS v. Chadha*, 462 U.S. 919 (1983). This ruling means that a congressional overturn of a D.C. measure must be passed by both houses and signed by the President, as with any congressional bill.] Subsequently, both houses of Congress as a "housekeeping" measure reaffirmed the actions previously taken unicamerally, and the President gave his signature. The District reformed the sodomy law in 1993, and fully repealed it in 1995. All remaining sodomy laws in the country were overturned by the Supreme Court of the United States in *Lawrence v. Texas* in 2003.

Armstrong Amendment

During the 1980s, GLAA persuaded the D.C. Council to deny bond issues and street closings to Georgetown University, which was violating the D.C. Human Rights Act by denying equal treatment to gay student groups. After losing to the gay students in the D.C. Court of Appeals, the University settled with the students. Congress intervened by enacting the "Nation's Capital Religious Liberty and Academic Freedom Act," (A.K.A. the "Armstrong Amendment") as part of the 1989 D.C. Appropriations Act. The Armstrong Amendment allowed religiously-affiliated educational organizations to discriminate based on sexual orientation.

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Plaintiffs in *Clarke v. United States* —the thirteen-member D.C. Council, led by Chairman David A. Clarke — challenged the constitutionality of the Armstrong Amendment. In ruling for plaintiffs on December 13, 1988, Judge Lamberth declared that Congress, while free to legislate directly for the District, may not compel the District's elected legislature to vote in a particular way. (*Clarke v. United States*, 705 F.Supp. 605 (D.D.C. 1988)). (886 F.2d 404 (D.C. Cir. 1989)). (915 F.2d 699 (D.C. Cir. 1990))

Domestic Partnerships & Marriage Equality

For nine years after the District passed the Health Care Benefits Expansion Act of 1992 (the domestic partners law), Congress included language in the District's annual appropriations bill to prohibit the expenditure of funds to implement the law. This blockage ended in Fiscal Year 2002, after which the District expanded the Domestic Partners law incrementally with a series of bills.

In December 2009, the Religious Freedom and Civil Marriage Equality Amendment Act of 2009 was passed by the Council and signed by Mayor Adrian Fenty. It became law on March 3, 2010 after the congressional review period expired without adverse congressional action. Subsequent attempts by opponents of marriage equality to block the new law in court failed, leaving Congress as the only remaining entity that can overturn it.

Some in Congress seek to impose a ballot measure in the District that would overturn the law. Even if such a measure passed both houses, it would be unlikely to win enough votes to override a presidential veto. Also, multiple polls show that District voters, who strongly resent congressional interference in the city's affairs, would defeat such a ballot measure. Congress should stop trying to undermine the republican form of government guaranteed by Article IV, Section 4 of the Constitution as it applies to the District.

Adoption

Unmarried couples (including gay couples) have been able to adopt children jointly in D.C. since a 1995 court decision. Congress defeated an attempt to prohibit such adoptions in 1999. GLAA supported the District's Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009, based on the principle that children deserve to have both of their parents legally and financially responsible for them. The overriding criterion in adoption and custody cases must continue to be the best interests of the child — not those of congressional or other ideologues.

Private School Vouchers

D.C. voters rejected the concept of taxpayer-financed vouchers for private schools in a 1981 referendum by a decisive margin of 9-to-1. GLAA opposes public subsidies for private schools, in part because many private schools are run by religious denominations that profess tenets hostile to the equal rights of lesbians and gay men. Diverting public funds to private schools is merely the latest attempt at undermining public schools, a favorite hobby of bigots since *Brown v. Board of Education*. Private school vouchers imposed by Congress violate home rule principles, are likely to violate the Establishment Clause, and have been shown not to work.

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P.O. Box 75265, Washington, DC 20013 • (202) 667-5139
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