

What ERA means for Vermont's lesbians, gays

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become the issue which precipitates its defeat

It may be argued that the ERA should apply to discrimination based upon sexual orientation as well as gender. I would not disagree with the merits of that argument. It would certainly be preferable if that were true. The fact is, however, that there is little or no evidence that those people who proposed the ERA or who have worked so hard for its passage intended that it should have that

effect. Furthermore, the legislative history relative to the amendment in Vermont does not reflect any intent that it should have such an effect. It would be preferable if adoption of the ERA meant that gay or lesbian teachers could not be fired because of their sexual orientation. Or that gay men and lesbians would be able to adopt children on the same basis as other people. However, although these are issues that should be addressed, there is

no indication that the ERA is intended to do so. Indeed, the evidence is to the contrary.

Gay rights is an issue whose time has not yet come in Vermont, but is rapidly approaching. Equal rights for women, however, is an issue whose time has long since come. All Vermonters should work for its adoption. Lesbian and gay Vermonters must work especially hard to insure that the ERA is not defeated by those opponents of ERA who equate it with gay rights.

Dr. Wishik testifies

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FDA. That language states:

- the primary purpose of the HTLV-III test is for blood screening
- it is inappropriate to use the HTLV-III test as a screen for AIDS or as a screen for members of groups at increased risk for AIDS in the general population
- the test is not a diagnostic tool to determine whether an individual has or will develop AIDS

Despite this legally required restrictive labelling, employers, both public and private, the U.S. military, medical facilities, and other entities have begun requiring persons to be tested before being hired, granted housing and so on. The insurance industry is considering use of the test as part of application procedures for health and life insurance, and several people have been threatened with denial of medical coverage when their positive HTLV-III tests became known to carriers. Recent management conferences for the business community have stressed to employers the desirability of requiring employees to submit to HTLV-III testing as well. All this misuse of the test is occurring despite the fact that the Center for Disease Control has repeatedly issued statements and guidelines based on the latest medical research stating that there is no basis for routinely screening workers with the antibody test or for excluding infected workers.

Litigation on behalf of persons discriminated against in housing, public accommodations, education, employment, insurance, and access to medical care based upon positive antibody tests is in progress in many parts of the country. In addition, many jurisdictions have legislation under consideration that would bar some or all types of

discrimination based upon HTLV-III testing. Wisconsin and California have passed restrictive legislation regarding insurance uses of HTLV-III tests, the District of Columbia has legislation under discussion, and several cities do also.

It is important to understand that discrimination based upon HTLV-III testing is an issue that differs from discrimination based upon a person's actually having Acquired Immune Deficiency Syndrome. The issue of discrimination based upon having AIDS is one that properly gets dealt with under laws concerning prohibition of discrimination based upon handicap. However, persons with positive HTLV-III antibody tests don't have a disease or handicap. They may not have any HTLV-III virus in their systems and the evidence of antibodies to the virus may be a false positive. All such persons have is an often erroneous blood-test-for-antibodies result. While these tests may be useful in screening the nation's blood supply, they do not provide an appropriate basis for denying people employment, housing, access to public accommodations, or insurance.

The Governor's Commission on the Status of Women has passed the following policy statement with regard to this issue:

Whereas: The HTLV-III antibody test (ELISA) is only licensed to be used for blood screening and is, according to the FDA, falsely positive 70% or more of the time; and

Whereas: use of the HTLV-III test to discriminate against people is inappropriate since testing positive for these antibodies does not mean a person has AIDS or poses any health risk to others; and

Whereas: the Governor's Commission on the Status of Women opposes

discrimination based on handicaps, suspected handicaps and handicapping conditions;

Therefore, The Governor's Commission on the Status of Women supports Legislation designed to prohibit discrimination against persons with positive tests for HTLV-III (AIDS virus) antibodies.

House Bill 622 accomplishes part of the task of moving to be certain that Vermont citizens are not subjected to discrimination based upon HTLV-III test results. It would bar such discrimination in employment and housing. However, discrimination in public accommodations and insurance are also important. THE GCSW supports H. 622, both in its bar of employment and housing discrimination and in its support of the rights of students to have access to education without suffering HTLV-III testing discrimination according to the guidelines developed by the commissioners of health and education. The Commission would also support legislation that would go further to prohibit HTLV-III discrimination in public accommodations, and supports state regulatory efforts, or legislation if necessary, to prevent abuses of the antibody test by the insurance industry.

As a discrimination law scholar, I would urge you to move quickly to enact this legislation, and not wait until we have hundreds of Vermont citizens being required to take HTLV-III blood tests by prospective employers and others. Prevention is the best medicine in this area; this legislation would prevent needless suffering by clearly stating to all Vermonters that HTLV-III tests are for blood bank use, not as a means to restrict access to employment, housing, education or needed accommodations and services