

Commentary by Heather Wishik

What the Vermont ERA amendment could mean

Last month David Curtis wrote a commentary about the proposed Vermont Equal Rights Amendment in which he said that the amendment is "intended to prohibit discrimination on the basis of sex (gender) and not sexual orientation." I believe that sexual orientation discrimination is a type of sex (gender) discrimination, and as such arguably would be prohibited by the Vermont Equal Rights Amendment if adopted. This is, admittedly, not the understanding of the legislative sponsors of the amendment, or is it the position taken by the Vermont ERA Coalition.

Courts which have looked at sexual orientation discrimination claims brought under federal civil rights statutes such as Title VII of the Civil Rights Act of 1964 have so far been reluctant to see such discrimination as a type of sex discrimination. Certain kinds of related discrimination have received recognition by some courts, however. In one case involving a discrimination claim brought by a transsexual airline pilot the federal trial judge (who was later reversed on appeal) agreed that telling an employee he must remain male in order to retain employment was sex discrimination in employment.

The judge understood that to fire an employee for changing sexes was to make gender a condition of employment - something prohibited under Title VII. The judge also held that gender is a matter of self perception and social perception, not simply a matter of

biology. In addition, courts looking at sexual harassment claims where the harassment was by a male employer against a male employee have agreed that same sex harassment is sex discrimination. The employee would not have been subjected to the harassment but for his maleness.

So far, in cases where an employee has been refused employment or fired due to her/his homosexuality, federal courts have held that such discrimination is not covered under

Letters to the Editor

VLS is not a gay paradise

Dear Out in the Mountains,

This letter is in response to your April cover story about Vermont Law School's ban of military recruiters.

As a third-year law student at Vermont Law School I have witnessed overt homophobia and gay-baiting during my time at VLS, and this year has been the worst. The dart board in the student lounge had the gay rights cover of a magazine as the target recently; student mailboxes have been decorated with accusations of lesbianism; the student newspaper has carried student commentaries telling all the gays and lesbians to leave VLS, etc., etc.. None of these events has bothered Dean Jonathan Chase enough for him to do anything about the rampant homophobia in the institution. That he responded to a student-generated concern about military discrimination by banning the military from on-campus recruiting probably has more to do with his political hostility to the military and its policies than it has to do with his feelings about sexual preference-based discrimination. If there was any doubt about this, he made clear his own homophobia at a recent open meeting about the nondiscrimination policy and its application to placement he opined that military anti-gay policy should not apply to attorneys in the military, but he could understand the military might be concerned about sex between men in combat situations. This is also the dean who, when confronted about his own sexism, responded, "I'm not sexist, I'm sexual."

Gays and lesbians in this state should not be misled into thinking that Vermont Law School and its administration are friendly to gays; the place is sexist, racist, and homophobic, in and outside the classroom. Don't be fooled.

Sincerely,
Susan L. Donegan
Barre

Dear Editors;

At my request the Vermont Law School Faculty unanimously adopted the following resolution at its April 11 faculty meeting:

"The Vermont Law School Faculty

Title VII's prohibition against discrimination based upon sex. There have likewise been no successful cases alleging that sexual orientation discrimination is sex discrimination under the Equal Protection Clause of the U.S. Constitution.

Under state equal rights amendments, which exist in 16 states, sexual orientation cases have rarely been brought. One gay couple did bring a case alleging that Washington

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supports the present VLS nondiscrimination policy in its full scope and reaffirms its dedication to guaranteeing freedom from discrimination on any of the presently listed bases. The faculty requests that the Board of Trustees also reaffirm VLS's institutional commitment to nondiscrimination on all listed bases. As a law school it is particularly important that this institution make public its commitment to equity for all people, including equity for people regardless of their parental or marital status or sexual preference. To limit our guarantees of equal access to those groups which the law has already recognized is to abandon our role as spokespersons regarding law reform and as thoughtful critics of the limitations of present legal standards."

Hopefully the VLS Board of Trustees at its August meeting will reaffirm the VLS comprehensive nondiscrimination policy. However, policies on paper do not prevent racism, sexism and homophobia. During my five years as a faculty member at VLS I have counselled countless students who came to me in distress due to overt discriminatory behavior by a faculty member or fellow student. Some of this behavior was verbal; some was physically violent; all of it was debilitating to the students victimized by it. I have repeatedly attempted to get the law school to take institutional action to educate its student body, faculty, and staff on discrimination issues. So far no action has been taken by the school to address these problems. I am leaving the institution shortly and hope someone else will continue to demand institutional commitment to ending racism, sexism, and homophobia in the daily operation of the school. If no action is taken, then the commendably broad nondiscrimination policy which I helped to write and put into place will remain nothing more than empty language.

Sincerely,
Heather R. Wishik
Associate Professor
of Law
Vermont Law School

Purpose

The purpose of *Out in the Mountains* is to serve as a voice for lesbians, gay men and our supporters in Vermont. We wish the newspaper to be a source of information, support and affirmation for lesbians and gay men. We also see it as a vehicle for celebration of the goodness and diversity of the lesbian and gay community.

Editorial Policy

We will consider for publication any material which broadens our understanding of our lifestyles and of each other. Views and opinions appearing in the paper do not necessarily represent those of the staff.

This paper cannot, and will not endorse any candidate for public office. We will serve as a vehicle for informing our readers about the views of candidates and actions of public officials on issues of particular importance to lesbians and gay men.

We will not publish any material which is overtly racist, sexist, anti-Semitic, ageist or homophobic.

All materials submitted must be signed and include an address and/or phone number so we can contact the author should we need to consider editorial revisions. However, within the pages of the newspaper, articles may appear anonymously, upon request, and strict confidentiality will be observed. No revisions or rejections of materials will occur without dialogue with the author.

We welcome and encourage all readers to submit materials for publication and to share your comments, criticisms and positive feelings with us. This paper is here for you.

The deadline for submitting material for each issue is the 15th of the month prior to publication.

Materials should be sent to:

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