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**Documenting Discrimination on the Basis of Sexual Orientation
and Gender Identity in State Employment**

Title

Minnesota - Sexual Orientation and Gender Identity Law and Documentation of
Discrimination

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Publication Date

2009-09-23



MEMORANDUM

From: Williams Institute
Date: September 2009
RE: **Minnesota – Sexual Orientation and Gender Identity Law and Documentation of Discrimination**

I. OVERVIEW

Battles over LGBT rights began early in Minnesota, when the twin cities amended their anti-discrimination ordinances to include sexual orientation: Minneapolis in 1974 and St. Paul in 1976. Two years later, however, St. Paul voters rescinded the protections for gay people in that city.

In 1993, the debate shifted to the state legislature when Minnesota became one of the first states to pass a civil rights statute, the Minnesota Human Rights Act (“MHRA”), that prohibited sexual orientation and gender identity discrimination in a variety of contexts.

Opponents of the 1993 amendment have tried to strike the MHRA’s ban on sexual orientation and gender identity discrimination from the law, most recently in 2004, but to date have been unsuccessful.¹ Prior to its passage, the chief sponsor of the bill in the house chamber of the state legislature even received death threats for her efforts.² Former State Rep. Arlon Lindner, one of the chief proponents of stripping these provisions from the Minnesota Human Rights Act, contended that the MHRA as written promoted teaching gay and lesbian sex in school, which in turn would cause HIV transmissions.³ Therefore, Rep. Lindner argued, failing to amend the MHRA put Minnesota at risk of ending up like “the African continent.”⁴ Rep. Arlon Lindner also

¹ ACLU ANNUAL REPORT (2004).

² Frank Jossi, *Profiling the Minnesota Legislature: State Rep. Karen Clark*, ST. PAUL LEGAL LEDGER, Dec. 20, 2007.

³ *Committee Leader Lindner Sullies Party, House Name*, DULUTH NEWS TRIBUNE, Mar. 12, 2003. Based on a review of Minnesota newspaper articles covering these opponents efforts, the only evidence put forward to support the argument that the MHRA was being used to teach gay and lesbian sex in schools were teachers answering questions about same-sex practices during a Q&A, a student-made art display featuring nude males, and video of a teacher telling his students about an ice-cream social being thrown by the school’s Gay-Straight Alliance. See, Conrad de Feibre, *Effort to Repeal Rights Protections for Gays Dropped in Senate*, STAR TRIBUNE, Mar. 22, 2003.

⁴ Patricia Lopez & Conrad de Feibre, *House DFL Files Ethics Complaint Against Lindner: Critics Grow in Number*, STAR TRIBUNE, Mar. 12, 2003. Rep. Arlon Lindner also questioned whether the LGBT community was targeted by the Nazis during the Holocaust, and went so far as to propose state legislation that would require the state of Minnesota to longer recognize the LGBT community as victims of the Holocaust. John Welsh, *Senator Withdraws Rights Bill*, ST. PAUL PIONEER PRESS, Mar. 22, 2003. He also floated the idea that gay guards in the Nazi Concentration Camps were the real perpetrators of the horrors of the Holocaust. Ironically, despite the focus these opponents put on the MHRA’s alleged impact on public education, their proposed version of the MHRA, which would not include protections against sexual orientation or gender identity discrimination, did not mention public education at all. See Conrad de Feibre, *Effort to Repeal Rights Protections for Gays Dropped in Senate*, STAR TRIBUNE, Mar. 22, 2003.

questioned whether the LGBT community was targeted by the Nazis during the Holocaust, and went so far as to propose state legislation that would require the state of Minnesota to longer recognize the LGBT community as victims of the Holocaust. He also floated the idea that gay guards in the Nazi Concentration Camps were the real perpetrators of the horrors of the Holocaust.⁵

According to research compiled by the Williams Institute, 32 complaints have been filed with the Minnesota Department of Human Rights (“Department”) alleging unlawful sexual orientation or gender identity discrimination by a public entity. The Department has agreed to hand over all of the information they have on these cases, but at the present time, has not done so.

Documented examples of employment discrimination on the basis of sexual orientation and gender identity by state and local government employers in Minnesota include:

- In 2007, a lesbian public school teacher who was subjected to a hostile environment because of her sexual orientation.⁶
- A teacher who was discriminated against by her principal based on sexual orientation.⁷ In 2002, the Duluth School Board voted unanimously to approve a \$30,000 settlement of the claim pending against the school before the Minnesota Department of Human Rights.
- When the Minnesota state sodomy law was invalidated in 2001 by a statewide class action suit,⁸ the Minnesota Supreme used the possibility of adverse effects on the plaintiffs’ employment to give them standing. The plaintiffs here represented a wide variety of professions--teachers and doctors joined lawyers in fighting the state sodomy law. These being licensed professions, the court notes that the “state-mandated application for a medical license requires applicants to swear under oath that they have ‘not engaged in any of the acts prohibited by the statutes of Minnesota’” and that the lawyers must adhere to their rules of professional conduct, which dictates that all attorneys will “follow the requirements of the law.”⁹ The court then details these “collateral injur[ies]”: “Dr. Krebs, who is now in her residency, faces the prospect of having to state under oath, as part of her application later this year for a physician license from the Minnesota Board of Medical Practice, that she has ‘not engaged in any of the acts prohibited by the statutes of Minnesota.’ Similarly...Mr. Roe,¹⁰ a licensed

⁵ John Welsh, *Senator Withdraws Rights Bill*, ST. PAUL PIONEER PRESS, Mar. 22, 2003.

⁶ Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

⁷ Lesbian & Gay L. Notes (Dec. 2002), available at <http://www.qrd.org/qrd/usa/legal/lgln/2002/12.02>.

⁸ *Doe v. Ventura*, No. MC 01-489, 2001 WL 543734 (Minneapolis District Court, May 15, 2001).

⁹ *Id.* at *1.

¹⁰ It should be noted that in the case of Mr. Roe, the adverse effect on employment could not be linked to his sexual orientation--he is a heterosexual, married man, and therefore outside the class of plaintiffs who make up the focus of this memorandum.

elementary school teacher, and Mr. Duran and Ms. Doe, licensed Minnesota lawyers, fear adverse licensure consequences from any disclosure, voluntary or otherwise, of their past and future violations” of the state sodomy statute.¹¹

- An academic counselor at the University of Minnesota who sued the university alleging discrimination based on his sexual orientation. The university settled with him during the trial for \$80,000.¹² The counselor had been working with various athletes since 1984. The university forbade him from rooming with anyone when he traveled with the teams on road trips, and forbade him from participating in athletes’ academic meetings held in school locker rooms, both of which he contends were discriminatory measures. In his lawsuit, the counselor contended that he was denied fair pay and subjected to working in a hostile environment because of his sexual orientation, and his suit alleged that ‘homophobic attitudes of administrators at Minnesota deprived him of advancement.’¹³
- A transgender middle school teacher who resigned facing mounting pressure from her school and the surrounding community. The teacher, a male who planned to undergo gender reassignment surgery, was living as a woman when she interviewed for the teaching position at Roosevelt Middle School. After an open house for parents at Roosevelt, one parent asked the school principal about the teacher’s gender. The principal then contacted the teacher, and upon learning that she was transitioning, immediately placed her on two months’ administrative leave while school officials devised a way for her to ‘come out’ to parents, students, and school staff. In November, the school held a meeting for her and school administrators to meet with teachers and a handful of parents and explain the process she was undergoing. A second meeting drew 400 parents. Some parents excoriated the school for permitting a transgendered teacher to work with children, while others objected to the intolerant vilification of the teacher. She resigned in February 1999, citing pressure from a parents’ group.¹⁴
- A transsexual Minneapolis police trainee who in 1999 was denied appropriate restroom and shower facilities,¹⁵ even though the training program required use of the shower facilities.¹⁶ The trainee filed a discrimination suit against the Department and city claiming unlawful discrimination. The city ultimately won on summary judgment on the grounds that the city was entitled to vicarious official immunity.¹⁷ As such, no determination was made as to the veracity of the

¹¹ *Id.* at *4.

¹² Lesbian & Gay L. Notes (Table of Cases 2000), available at <http://www.qrd.org/qrd/usa/legal/lgin/case.table-2000> (citing STARTRIBUNE, June 28, 2000).

¹³ PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 159-160 (1999 ed.).

¹⁴ *Id.* at 157-58.

¹⁵ Rosalind Bentley, *Transgendered Worker Sues Minneapolis Police*, STAR TRIBUNE, Jan. 21, 1999.

¹⁶ *Id.*

¹⁷ *Doe v. City of Minneapolis*, 2002 WL 31819236 (Minn. App. Dec. 17, 2002).

complaint's allegations. Doe v. City of Minneapolis, 2002 WL 31819236 (Minn. App. Dec. 17, 2002).

- A Minneapolis police officer who, according to Senator Paul Wellstone in 1997, said this about the sexual orientation discrimination in her workplace: “I seem to represent everything that the old boys hate in this department -- female, black and gay. The thing that makes it worst of all is I'm a good cop. When I first came to this shift, my sergeant was like, 'When I saw your name on my list, I tried everything I could to get you the hell out of my precinct. I didn't want you here. I've heard all those bad things about you. You were a trouble maker and you brought the morale down. I'm glad I got you because there's not one person on this shift that won't work with you.’”¹⁸

Part II of this memo discusses state and local legislation, executive orders, occupational licensing requirements, ordinances and policies involving employment discrimination based on sexual orientation and gender identity, and attempts to enact such laws and policies. Part III discusses case law, administrative complaints, and other documented examples of employment discrimination by state and local governments against LGBT people. Part IV discusses state laws and policies outside the employment context.

¹⁸ S. Hrg. 105-279, p. 17, Senator Paul Wellstone, Hearing before the Senate Committee on Labor and Human Resources re: S.869: The Employment Non-Discrimination Act of 1997, Thurs., Oct. 23, 1997, 105th Congress, 1st Session. Reprinted in Federal News Service, In the News, Thurs., Oct. 23, 1997.

II. SEXUAL ORIENTATION & GENDER IDENTITY EMPLOYMENT LAW

A. State-Wide Employment Statutes

1. Scope of Statute

In 1993, Minnesota amended its Human Rights Act (hereinafter “MHRA”) to prohibit the discrimination of a person based on his or her “sexual orientation” in the employment, housing, public accommodations, public service, education, credit, and business contexts.¹⁹ The statute defines “sexual orientation” as “having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment,” and also as “having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness.”²⁰ As such, the statute is designed to protect people against both sexual orientation and gender identity discrimination.²¹ The MHRA covers public as well as private employers.²² The statute exempts certain religious and youth-oriented organizations.²³ The MHRA also contains language prohibiting state officials, including educators, from endorsing or advocating homosexuality as moral.²⁴ Opponents of the 1993 amendment have tried to strike the MHRA’s ban on sexual orientation and gender identity discrimination from the law, most recently in 2004, but to date have been unsuccessful.²⁵

2. Enforcement and Remedies

In order for a person to make a claim under the MHRA, s/he must file a complaint with the commissioner of the Department within one year of the alleged discriminatory act.²⁶ If the alleged unlawful discriminatory conduct is continuous, then the Department can take into account alleged discriminatory acts that occurred more than one year ago just so long as at least one act in this pattern of unlawful discrimination occurred within the last year.²⁷ Once the Department receives a complaint alleging unlawful discrimination, it must conduct an investigation to determine whether “probable cause” exists to believe that the MHRA was violated.²⁸ The Department has up to one year to complete this investigation.²⁹ If the Department finds probable cause to believe the MHRA was violated, the Department can act as an advocate on behalf of the aggrieved

¹⁹ Minn. Stat. § 363A.02(a).

²⁰ Minn. Stat. § 363A.03(44).

²¹ See Human Rights Campaign, State Law Listings, Minnesota Non-Discrimination Law, http://www.hrc.org/your_community/1070.htm (last visited Sept. 4, 2009).

²² See, e.g., *Kolton v. County of Anoka*, 628 N.W.2d 643 (Minn. App. 2001).

²³ Donna Halverson, *Gay Rights Bill Nears Final Approval*, STAR TRIBUNE, Mar. 27, 1993.

²⁴ This language is off-handedly referred to as the MHRA’s “no promo-homo” provision. See John Welsh, *Senator Withdraws Rights Bill*, ST. PAUL PIONEER PRESS, Mar. 22, 2003.

²⁵ ACLU ANNUAL REPORT (2004).

²⁶ See Minn. Stat. § 363A.28(1), (3).

²⁷ *Id.*

²⁸ Minn. Stat. § 363A.28(6).

²⁹ *Id.*

party and either attempt to negotiate a settlement between the parties that mends and ends the discriminatory practice, or bring suit against the wrongdoing party before an administrative law judge.³⁰

A person who files a claim with the Department can initiate his/her own claim under the MHRA in state district court forty-five days after it receives notice that the Department found his/her case lacks probable cause, or forty-five days after it receives notice that the Department found probable cause but still has not brought the case before an administrative law judge.³¹

Claims made under the MHRA follow the *McDonnell-Douglas* burden-shifting scheme whereby: (1) a plaintiff must establish a prima facie case that the plaintiff was discriminated against by the defendant because of a real or perceived characteristic of the plaintiff's that is protected by under the MHRA; (2) if a plaintiff makes this showing, the burden shifts onto the defendant to put forward a legitimate, nondiscriminatory reason for the defendant's action(s) vis-à-vis the plaintiff; and (3) if the defendant makes this showing, then the plaintiff must prove by a preponderance of the evidence that the defendant's articulated nondiscriminatory reason is just a pretext.³²

If the plaintiff prevails on a claim under the MHRA, s/he is entitled to treble damages and also may be entitled to damages from mental anguish or suffering, attorneys' fees, and punitive damages.³³ In addition, the plaintiff may be entitled to being hired, reinstated, or upgraded at a place of employment and back pay.³⁴

B. Attempts to Enact State Legislation

Proponents of amending the MHRA to include prohibitions on sexual orientation and gender identity discrimination spent two decades fighting for the changes before seeing them come to pass.³⁵ The chief sponsor of the bill in the house chamber of the state legislature even received death threats for her efforts.³⁶ Despite these efforts, the State House had only voted on amending the MHRA to add these protections once, in 1975, and the State Senate had only done so once, in 1977.³⁷ The successful 1993 effort involved mobilizing most of the state's churches, labor unions, and business organizations in support of the amendments, and reportedly also was helped by the fact the legislature took on a more "suburban" make-up.³⁸ Nevertheless, the bill passed both

³⁰ *Id.*; see also Minn. Stat. § 363A.28(8).

³¹ See Minn. Stat. §§ 363A.29; 363A.33(1).

³² *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); see also *Dovenmuehler v. St. Cloud Hosp.*, 509 F.3d 435, 439 (8th Cir. 2007) (stating that the MHRA uses the *McDonnell-Douglas* burden-shifting framework).

³³ See Minn. Stat. §363A.29(4).

³⁴ See Minn. Stat. §363A.29(5).

³⁵ Robert Whereatt, *Gay Rights and Other New Laws Take Effect*, STAR TRIBUNE, Aug. 1, 1993.

³⁶ Frank Jossi, *Profiling the Minnesota Legislature: State Rep. Karen Clark*, ST. PAUL LEGAL LEDGER, Dec. 20, 2007.

³⁷ Donna Halvorsen, *Carlson Signs Gay-Rights Bill into Law*, STAR TRIBUNE, Apr. 3, 1993.

³⁸ *Id.*

houses on more narrow margins than expected.³⁹ In fact, some legislators acknowledged supporting the amendments but voted against them out of fear of losing their seats given the strength of the opposition.⁴⁰

Opponents of the MHRA's prohibitions on sexual orientation and gender identity discrimination have attempted, but also always failed, to repeal those sections of the MHRA since its passage in 1993. Most recently, opponents in the legislature attempted to strip these provisions in 2004.⁴¹ Former State Rep. Arlon Lindner, one of the chief proponents of stripping these provisions from the MHRA, contended that the MHRA as written promoted teaching gay and lesbian sex in school, which in turn would cause HIV transmissions.⁴² Therefore, Rep. Lindner argued, failing to amend the MHRA put Minnesota at risk of ending up like "the African continent."⁴³

C. Executive Orders, State Government Personnel Regulations & Attorney General Opinions

1. Executive Orders

None.

2. State Government Personnel Regulations

As noted above, the MHRA's scope includes conduct by public entities.

3. Attorney General Opinions

None.

³⁹ *Id.*

⁴⁰ Dane Smith & Donna Halverson, *Backlash Hits Gay Rights Bill*, STAR TRIBUNE, Mar. 11, 1993.

⁴¹ ACLU Annual Report (2004).

⁴² *Committee Leader Lindner Sullies Party, House Name*, DULUTH NEWS TRIBUNE, Mar. 12, 2003.. Based on a review of Minnesota newspaper articles covering these opponents efforts, the only evidence put forward to support the argument that the MHRA was being used to teach gay and lesbian sex in schools were teachers answering questions about same-sex practices during a Q&A, a student-made art display featuring nude males, and video of a teacher telling his students about an ice-cream social being thrown by the school's Gay-Straight Alliance. See, Conrad de Feibre, *Effort to Repeal Rights Protections for Gays Dropped in Senate*, STAR TRIBUNE, Mar. 22, 2003.

⁴³ Patricia Lopez & Conrad de Feibre, *House DFL Files Ethics Complaint Against Lindner: Critics Grow in Number*, STAR TRIBUNE, Mar. 12, 2003. Rep. Arlon Lindner also questioned whether the LGBT community was targeted by the Nazis during the Holocaust, and went so far as to propose state legislation that would require the state of Minnesota to longer recognize the LGBT community as victims of the Holocaust. John Welsh, *Senator Withdraws Rights Bill*, ST. PAUL PIONEER PRESS, Mar. 22, 2003. He also floated the idea that gay guards in the Nazi Concentration Camps were the real perpetrators of the horrors of the Holocaust. Ironically, despite the focus these opponents put on the MHRA's alleged impact on public education, their proposed version of the MHRA, which would not include protections against sexual orientation or gender identity discrimination, did not mention public education at all. See Conrad de Feibre, *Effort to Repeal Rights Protections for Gays Dropped in Senate*, STAR TRIBUNE, Mar. 22, 2003.

D. Local Legislation

Minnesota municipalities with local ordinances protecting LGBT people from employment discrimination include Minneapolis, which passed its ordinance in 1974,⁴⁴ and St. Paul passed an ordinance in 1976, repealed it in 1978, and then reinstated it in 1990.⁴⁵

⁴⁴ Jill Hodges, *Victim or Advocate? Gay Attorney Sues His Former Firm Over Alleged Job Discrimination*, STAR TRIBUNE, Apr. 17, 1996.

⁴⁵ *Id.*

III. DOCUMENTED EXAMPLES OF EMPLOYMENT DISCRIMINATION AGAINST LGBT PEOPLE BY STATE & LOCAL GOVERNMENTS

A. Case Law

1. State & Local Government Employees

Doe v. City of Minneapolis, 2002 WL 31819236 (Minn. App. Dec. 17, 2002).

In 1999, a transsexual Minneapolis police trainee filed a discrimination suit against the Department and city claiming unlawful discrimination on account of the Department's refusal to provide him with appropriate restroom and shower facilities.⁴⁶ The training program requires use of the shower facilities, but according to the complaint filed, the Department refused the trainee access to either male or unisex shower facilities.⁴⁷ The city ultimately won on summary judgment on the grounds that the city was entitled to vicarious official immunity.⁴⁸ As such, no determination was made as to the veracity of the complaint's allegations.

McConnell v. Anderson, 316 F.Supp. 809 (D.Minn. 1970), *rev'd*, 451 F2d 193 (8th Cir. 1971).

James McConnell filed suit against the University of Minnesota, claiming that his employment application was denied on the basis of his sexual orientation in violation of his constitutional rights to equal protection and due process. The District Court ruled for Plaintiff but the Court of Appeal reversed.

On July 9, 1970, the University of Minnesota Board of Regents rejected the application of James Michael McConnell to head, at the rank of instructor, the cataloging division of the University's St. Paul campus library on the ground that his "personal conduct, as represented in the public and university news media, is not consistent with the best interest of the University." On July 22, 1970, McConnell brought suit for injunctive relief in the United States District Court for the District of Minnesota, naming as defendants the individual members of the Board of Regents and Ralph H. Hopp, the university librarian. McConnell's complaint alleged that he was offered the division head appointment in April 1970; that he accepted the offer in May 1970, but that the offer was withdrawn after he and another male publicly applied for a marriage license at the Hennepin County, Minnesota Clerk's office (this action drew media attention). McConnell's complaint asserted that he was a homosexual and that the Board's resolution not to approve his employment application was premised on the fact of his homosexuality and upon his desire, as exemplified by the marriage license incident, specifically to publicly profess his "earnest" belief that homosexuals are entitled to privileges equal to those afforded heterosexuals. McConnell asserted that his rights to equal protection and due process under the Fourteenth Amendment were violated.

⁴⁶ Rosalind Bentley, *Transgendered Worker Sues Minneapolis Police*, STAR TRIBUNE, Jan. 21, 1999.

⁴⁷ *Id.*

⁴⁸ *Doe v. City of Minneapolis*, 2002 WL 31819236 (Minn. App. Dec. 17, 2002).

The District Court entered judgment for McConnell and enjoined the Board from refusing to employ him “solely because, and on the grounds that he is a homosexual and that thereby 'his personal conduct, as presented in the public and University news media, is not consistent with the best interest of the University.’”

The Eighth Circuit reversed, concluding: “[T]he Board possessed ample specific factual information on the basis of which it reasonably could conclude that the appointment would not be consistent with the best interests of the University. We need only to observe that the Board was given the unenviable task and duty of passing upon and judging McConnell's application against the background of his actual conduct. So postured, it is at once apparent that this is not a case involving mere homosexual propensities on the part of a prospective employee. Neither is it a case in which an applicant is excluded from employment because of a desire clandestinely to pursue homosexual conduct. It is, instead, a case in which something more than remunerative employment is sought; a case in which the applicant seeks employment on his own terms; a case in which the prospective employee demands, as shown both by the allegations of the complaint and by the marriage license incident as well, the right to pursue an activist role in implementing his unconventional ideas concerning the societal status to be accorded homosexuals and, thereby, to foist tacit approval of this socially repugnant concept upon his employer, who is, in this instance, an institution of higher learning. We know of no constitutional fiat or binding principle of decisional law which requires an employer to accede to such extravagant demands. We are therefore unable fairly to categorize the Board's action here as arbitrary, unreasonable or capricious.”⁴⁹

2. Private Employers

None.

B. Administrative Complaints

As noted above, in order for a party to bring a claim under the MHRA, s/he must first file it with the Department.⁵⁰ Since 1993, 212 cases have been filed with the Department for allegedly unlawful “sexual orientation” discrimination.⁵¹ Of these 212 cases, 32 were filed against public entities.⁵²

C. Other Documented Examples of Discrimination

A Minnesota Public School

⁴⁹ *McConnell v. Anderson*, 316 F.Supp. 809 (D.Minn. 1970), *rev'd*, 451 F2d 193 (8th Cir. 1971).

⁵⁰ *See, supra*, Sec. II.A.2.

⁵¹ *See* Williams Institute Complaint Chart (2009) (on file with the Williams Institute). As noted above, the MHRA's definition of “sexual orientation” includes protections against both sexual orientation and gender identity discrimination.

⁵² *Id.*

In 2007, a lesbian public school teacher who was subjected to a hostile environment because of her sexual orientation.⁵³

Duluth Public School

In 2002, the Duluth School Board voted unanimously to approve a \$30,000 settlement of a sexual orientation discrimination claim pending against the school before the Minnesota Department of Human Rights, in which Deborah Anderson claims that the principal of her school discriminated against her based on sexual orientation.⁵⁴

University of Minnesota

An openly gay academic counselor for University of Minnesota athletes sued the university alleging discrimination based on his sexual orientation. Rick Marsden had been working as a counselor with various athletes since 1984. The university forbade him from rooming with anyone when he traveled with the teams on road trips, and it forbade him from participating in athletes' academic meetings held in school locker rooms, both of which he contends were discriminatory measures. In his lawsuit, Marsden contended that he was denied fair pay and subjected to working in a hostile environment because of his sexual orientation, and his suit alleged that 'homophobic attitudes of administrators at Minnesota deprived him of advancement.' Moreover, Marsden alleged that the university did not want to encourage gay athletes to attend the school, and he believed that gay athletes who were considering 'coming out' were directed to speak with him because the university thought he would advise them against it.⁵⁵ The university settled with Marsden during the trial for \$80,000.⁵⁶

Roosevelt Public School

Alyssa Williams, a male who planned to undergo gender reassignment surgery, was living as a woman when she interviewed for the teaching position at Roosevelt Middle School. After an open house for parents at Roosevelt, one parent asked the school principal about Williams' gender. The principal then contacted Williams, and upon learning that she was transitioning, immediately placed her on two months' administrative leave while school officials devised a way for her to 'come out' to parents, students, and school staff. In November, the school held a meeting for Williams and school administrators to meet with teachers and a handful of parents and explain the process Williams was undergoing. A second meeting drew 400 parents. Some parents excoriated the school for permitting a transgendered teacher to work with children, while others objected to the intolerant vilification of Williams. Williams resigned in February

⁵³ Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

⁵⁴ Lesbian & Gay L. Notes (Dec. 2002), *available at* <http://www.qrd.org/qrd/usa/legal/lgl/2002/12.02>.

⁵⁵ PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 159-160 (1999 ed.).

⁵⁶ Lesbian & Gay L. Notes (Table of Cases 2000), *available at* <http://www.qrd.org/qrd/usa/legal/lgl/case.table-2000> (citing STARTRIBUNE, June 28, 2000).

1999, citing pressure from a parents' group and local clergy.⁵⁷

Minneapolis Police Department

Gwendolyn Gunther, a police officer serving Minneapolis, said this about the sexual orientation discrimination in her workplace: "I seem to represent everything that the old boys hate in this department -- female, black and gay. The thing that makes it worst of all is I'm a good cop. When I first came to this shift, my sergeant was like, 'When I saw your name on my list, I tried everything I could to get you the hell out of my precinct. I didn't want you here. I've heard all those bad things about you. You were a trouble maker and you brought the morale down. I'm glad I got you because there's not one person on this shift that won't work with you.'"⁵⁸

⁵⁷ *Id.* at 157-58.

⁵⁸ S. Hrg. 105-279, p. 17, Senator Paul Wellstone, Hearing before the Senate Committee on Labor and Human Resources re: S.869: The Employment Non-Discrimination Act of 1997, Thurs., Oct. 23, 1997, 105th Congress, 1st Session. Reprinted in Federal News Service, In the News, Thurs., Oct. 23, 1997.

IV. NON-EMPLOYMENT SEXUAL ORIENTATION & GENDER IDENTITY RELATED LAW

In addition to state employment law, the following areas of state law were searched for other examples of employment-related discrimination against LGBT people by state and local governments and indicia of animus against LGBT people by the state government, state officials, and employees. As such, this section is not intended to be a comprehensive overview of sexual orientation and gender identity law in these areas.

A. Housing & Public Accommodations Discrimination

As noted above, the MHRA prohibits the discrimination of people based on their sexual orientation or gender identity in housing and public accommodations.⁵⁹

B. Education

As noted above, the MHRA prohibits the discrimination of people based on their sexual orientation or gender identity in the education context.⁶⁰

In 2007, a Gay-Straight Student Alliance at the Maple Grove Senior High School obtained an injunction against the school requiring the school to treat it like any other extracurricular student group.⁶¹ The school district appealed the district court's order to the appeals court, where the matter is still pending.⁶²

C. Recognition of Same-Sex Couples

1. Benefits

In 2001, state employees obtained domestic partner benefits in a collective bargaining agreement. However, the legislature delayed the implementation of that agreement by refusing to ratify it, and in 2003, ultimately was able to cut domestic partner benefits from that agreement.⁶³ In 2008, the state's governor vetoed legislation that would have allowed local counties and municipalities to decide for themselves whether they would provide domestic partner benefits.⁶⁴

⁵⁹ Minn. Stat. § 363A.02(a).

⁶⁰ Minn. Stat. § 363A.02(a).

⁶¹ See *SAGE v. Osseo Area Sch. Dist. No. 279*, 2007 WL 2885810 (D.Minn. Sept. 25, 2007); see also ACLU ANNUAL REPORT (2007).

⁶² *SAGE*, 2007 WL 2885810.

⁶³ ACLU ANNUAL REPORT (2004).

⁶⁴ See Human Rights Campaign, *supra* note 16.