

UCLA

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

Title

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

Permalink

<https://escholarship.org/uc/item/1704b2xm>

Author

Sears, Brad

Publication Date

2009-09-23



MEMORANDUM

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

I. OVERVIEW

Oklahoma has no state legislation that prohibits employment discrimination on the basis of sexual orientation or gender identity. As late as 1990, Oklahoma laws included a statute prohibiting employment of openly gay teachers in public schools. One state agency and one county in Oklahoma have instituted policies prohibiting employment discrimination on the basis of sexual orientation: the state Attorney General's office and Oklahoma County. In 2005, a bill was introduced in the Oklahoma legislature to rescind both of these policies. Although the bill failed, Oklahoma County removed sexual orientation from its published employment non-discrimination policy.

Documented examples of employment discrimination based on sexual orientation and gender identity by state and local governments include:

- Oklahoma enacted a law that, by prohibiting “homosexual conduct” and defining that phrase to include advocacy of gay rights, barred openly gay teachers from Oklahoma schools. Most portions of the law were struck down by federal courts,¹ and the remainder of the law was repealed, effective in 1990.
- In 2004, Oklahoma City reached a settlement with a transgender police officer who was harassed and fired because of her gender identity. The officer, a decorated army veteran, was fired even though she had received an award from the Department of Justice for her service as a police officer. In *Schonauer v. City of Oklahoma, ex. rel. Oklahoma City Police Department*,² the plaintiff sued the Oklahoma Police Department and the City of Oklahoma, her employer of more than ten (10) years, for gender discrimination, hostile work environment and disparate treatment, based on gender.³ When Ms. Schonauer was first hired by the police department in 1992, she was male; in 2001, she underwent gender reassignment surgery.⁴ After the surgery, she faced constant harassment from her co-workers, which she alleges interfered with her ability to do her job.⁵ However, she continued performing her job and even improved relations between the police

¹ *Nat'l Gay & Lesbian Task Force v. Bd. of Ed. of the City of Okla. City*, 729 F.2d 1270 (10th Cir. 1984).

² Case No. CIV-05-104-W (W.D. Okla. 2005).

³ Memorandum from the City of Oklahoma City Office of the Municipal Counselor to Mayor and Council (Sept. 27, 2005), <http://bit.ly/3IVVNk> (last visited Sept. 6, 2009).

⁴ Richard Green, *Transgender Officer Sues Police in OKC*, TULSA WORLD, Dec. 29, 2004, at A15.

⁵ Reuters, *Sex-Change Oklahoma Officer Files Harassment Suit*, EXP. INDIA, Dec. 29, 2004, <http://bit.ly/aW3mM> (last visited Sept. 6, 2009).

- department and the Asian, Hispanic, and gay and lesbian communities.⁶ Despite this achievement, and her exceptional performance prior to 2001,⁷ the police department removed her from patrol duties, gave her an interim clerical position, and then placed her on paid administrative leave.⁸
- In *Lankford v. City of Hobart*,⁹ two female dispatchers for the Hobart City police station in Oklahoma brought suit against the City and their supervisor, the former police chief, alleging that the police chief had violated their privacy rights and created a hostile and abusive work environment by sexually harassing them.¹⁰ One of the plaintiffs alleged that after she spurned the supervisor's advances, he became angry and spread rumors that she was a lesbian.¹¹ He then used his position as police chief to gain access to her medical records in order to verify his claim.¹²
 - In 2008, a municipal police officer transitioned from male to female while on the job. Thereafter, she experienced severe harassment based on her gender identity. After her transition, the police department also insisted that she undergo psychological evaluations. They transferred her to an unfavorable position.¹³
 - In 2007, a gay electronics technician who worked out of a city firehouse reported, after another employee learned that he was gay, that he began to experience harassment from co-workers. He was called a "cocksucker," was whistled at, was told that "[q]ueers are just shit; people like you float," was lectured about same-sex attraction being "against the Bible," and was told that gay people are "an abomination to god." When a new employee complained about having to clean the showers at the firehouse, the technician commented that they were so filthy that he wouldn't take a shower there. The new employee replied that, according to what he had heard from others, he had thought that "you'd like that [implying a shower with other men]." One coworker repeatedly screamed at the technician, physically intimidated him, and twice threatened to kill him. When the individual complained, his shift was changed against his wishes so that he would not work the same time as that co-worker. The department administrator refused to give

⁶ Oklahoma Office of Personnel Management Affirmative Action Plan, <http://bit.ly/sKEIp> (last visited Sept. 6, 2009).

⁷ See Chad Graham, *Gays in the Red States*, ADVOCATE, Feb. 15, 2005, available at <http://bit.ly/NFRP1> (stating that Ms. Schonauer received an award from the Department of Justice for her performance as an Oklahoma police officer).

⁸ Oklahoma Office of Personnel Management Affirmative Action, *supra* note 6.

⁹ 27 F.3d 477 (10th Cir. 1994).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ E-mail from Jon Davidson, Legal Director, Lambda Legal, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 11, 2009, 12:18:00 EST) (on file with the Williams Institute).

him a copy of the employer's policy vis-à-vis sexual harassment and nondiscrimination.¹⁴

- In 2004, a librarian, employed at the Oklahoma City Branch of Langston University—Oklahoma's only historically black college and university—for approximately three years, began the process of transitioning from male to female. After she returned from a professional conference, she discovered that a student had circulated over 100 copies of a hate-filled petition calling for her removal from campus and had posted flyers to the same effect around the campus. Every reason cited in support of the librarian's removal was related to her gender identity. When the librarian confronted the library director about the situation, he told the librarian that the student had a right to freedom of speech and that he would not do anything. When other students complained to the library director about the flyers, he supported the student who had passed them out. The student then printed a second flyer stating that "God wished [her] dead" and that he hoped she would die. When she confronted administrators about the second flyer, she was told her concerns were unwarranted and she was the one creating problems. The following semester, her schedule was changed so that she would have to leave the building at 10:00PM—long after other staff and faculty had gone home. Fearing that she would be unsafe on campus at that hour, she had no choice but to resign.

Oklahoma continued to criminalize same-sex sexual behavior until its law was invalidated by the United States Supreme Court in 2003 in *Lawrence v. Texas*. Despite that decision, the state still has a sodomy statute on the books. Before it was struck down, the statute was used to justify the state law prohibiting gay teachers from teaching in public schools, as well as to support specific terminations of public employees, including the professor at Oklahoma State University, both mentioned above.

Oklahoma City removed language from the student handbook that was designed to protect gay students in public schools from bullying and discrimination, claiming that current policies already provided sufficient protection for these students, a claim vehemently rejected by some on the faculty.¹⁵ Oklahoma officials have repeatedly denied gays their First Amendment rights to speech and association.¹⁶ Oklahoma police have refused to protect gays in the same way as heterosexuals.¹⁷ And, Oklahoma public servants have, on several occasions, publicly spoken out against gays and gay rights. For example, in March of 2008, Oklahoma State Representative Sally Kern of the Oklahoma Legislature made headlines after an audio clip of her comments berating the gay

¹⁴ *Id.*

¹⁵ *OC Teacher Criticizes Removal from Handbook of Language Protecting Gays*, A.P., Oct. 21, 2006 (discussing Oklahoma City Public Schools' removal of language from the student handbook that would protect gay students from bullying and discrimination). To date, Oklahoma City has not replaced this protective language. OKLAHOMA CITY STUDENT HANDBOOK, <http://bit.ly/yjjG8> (last visited Sept. 6, 2009).

¹⁶ *Cimarron Alliance Foundation v. City of Oklahoma City*, 290 F. Supp. 2d 1252 (W.D. Okla. 2002) (denial of parade banners); *Norma Kristie, Inc. v. Oklahoma City* (denial of use of city convention center).

¹⁷ *Cornelison v. Brooks*, 524 F.3d 1103 (10th Cir. 2008) (sheriff's refusal to enforce protective order in case involving two women).

community was released on YouTube. Aside from claiming that homosexuality is a lifestyle choice unsupported by God, Kern also said the homosexual agenda is destroying the nation and poses a bigger threat to the U.S. than terrorism or Islam.

Part II of this memo discusses state and local legislation, executive orders, occupational licensing requirements, ordinances and polices 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.

II. SEXUAL ORIENTATION & GENDER IDENTITY EMPLOYMENT LAW

A. State-Wide Employment Statutes

Currently the state of Oklahoma has not enacted laws to protect sexual orientation and gender identity from employment discrimination. Oklahoma did, however, have an anti-gay employment statute in effect until as late as 1990. Section 6-103.15(B) of Title 70 of the Oklahoma Statutes provided in part that

“a teacher, student teacher or teacher’s aide may be refused employment or reemployment, dismissed, or suspended after a finding that the teacher or teacher’s aide has: (i) engaged in public homosexual conduct or activity; and (2) has been rendered unfit, because of such conduct or activity, to hold a position as a teacher, student teacher or teacher’s aide.”¹⁸

The statute defined “public homosexual activity” as “the commission of an act defined in Section 886 of Title 21 of the Oklahoma Statutes¹⁹ [Oklahoma’s sodomy laws], if such act is: (a) committed with a person of the same sex, and (b) indiscreet and not practiced in private.”²⁰ It defined “homosexual conduct” broadly to include “advocating, soliciting, imposing, encouraging or promoting public or private homosexual activity in a manner that creates a substantial risk that such conduct will come to the attention of school children or school employees.”²¹ In effect, the statute effectively barred openly gay teachers from employment in the Oklahoma public school system. In 1982, the National Gay and Lesbian Task Force challenged the constitutionality of the statute.²² The U.S. District Court for the Western District of Oklahoma upheld the statute’s constitutionality.²³ On appeal, the Tenth Circuit Court of Appeals upheld the statute with respect to the ban on public homosexual activity, but struck the statute with respect to the ban on public homosexual conduct as unconstitutionally vague.²⁴ In 1989, the statute was repealed, and this repeal became effective in 1990.

B. Attempts to Enact State Legislation

In 2005, Oklahoma state congressmen Daniel Sullivan and Randy Brogdon proposed House Bill 1746, which provided that “any nondiscriminatory policy based on sexual preference developed and implemented by an agency or governmental entity is

¹⁸OKLA. STAT 70, § 6-103.5 (repealed in 1989) (statutory text available in *Nat’l Gay Task Force v. Bd. of Ed. of the City of Okla. City*, 729 F. 2d 1270 (10th Cir. 1984)).

¹⁹*See infra* Section III.C.

²⁰*Id.*

²¹*Id.*

²²*Nat’l Gay & Lesbian Task Force*, 729 F.2d at 1270.

²³*Id.* at 1272.

²⁴*Id.* at 1270.

²⁴*Id.* at 1272.

null and void.”²⁵ Effectively the measure would have eliminated protective language provided by the Attorney General of Oklahoma’s office and Oklahoma County, the only state and local agencies that had policies of non-discrimination against gays at the time.²⁶ The measure failed fifty-eight (58) to thirty-eight (38) to receive the requisite two-thirds vote to be advanced to a third reading.²⁷

In 1999, the Oklahoma House of Representatives passed SB 1394, a bill to bar “known homosexuals” from working in schools. The bill had originated in the Senate as a measure prohibiting sex offenders from working in the public school system, and was amended in the House by Rep. Bill Graves to include gay men and lesbians as well. Graves claimed that homosexuals were sexual criminals guilty of “consensual sodomy,” which was prohibited by state law. He also said that many homosexuals are pedophiles who use schools as a “breeding ground” to “recruit young people” to become gay or lesbian. Graves told a local newspaper that his goal was to “drive [gays] back into the closet like the way they were.”²⁸

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

1. Executive Orders

None.

2. State Government Personnel Regulations

Oklahoma state and local agencies do not generally have employment non-discrimination policies that include sexual orientation and gender identity.²⁹ The Oklahoma Office of Personnel Management (“OPM”), which provides comprehensive human resource services and guidelines to all state agencies (including law enforcement and teachers through the high school level), has an affirmative action policy, but this policy does not include LGBT people.³⁰ Moreover, it seems that some Oklahoma state

²⁵*Week in Review*, OKLA. SENATE, Mar. 7-10, 2005, <http://bit.ly/uk4Z1> (last visited Sept. 6, 2009).

²⁶Oklahoma Office of the Attorney General, Employment Opportunities, <http://bit.ly/25wyxw> (last visited Sept. 6, 2009); see Julie E. Bisbee, *Policy Prompts Debate at State and Local Level*, A.P., Mar. 9, 2005. Both the Attorney General’s office is the only state agency that still has a published policy of non-discrimination against gays. The current Oklahoma County policy as available on the internet does not include sexual orientation as a protected class. Oklahoma County Employment Policy, <http://bit.ly/IQER9> (last visited Sept. 6, 2009). The Oklahoma County Employment Policy as it appears in the Oklahoma County Handbook does include sexual orientation as a protected class. OKLAHOMA COUNTY EMPLOYEE HANDBOOK 36 (2008).

²⁷*Week in Review*, *supra* note 25.

²⁸ PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 190-191 (1999 ed.).

²⁹ See, e.g., Oklahomans for Equality, *FAQ: LGBT in Tulsa*, <http://www.okeq.org/faq.cfm> (last visited Sept. 6, 2009) (summarizing City of Tulsa employment policies); University of Oklahoma Employment Policy, <http://bit.ly/eZT0g> (last visited Sept. 6, 2009); Oklahoma Department of Human Services Non-Discrimination statement, <http://bit.ly/1FgXj> (last visited Sept. 6, 2009).

³⁰ Oklahoma Office of Personnel Management Affirmative Action Plan, <http://bit.ly/sKEIp> (last visited Sept. 6, 2009).

and local actors have backed away from their positions protecting gays. Oklahoma County, for example, implemented an employment policy in 2004 including sexual orientation as a protected class in employment decisions. However, the current non-discrimination policy excludes sexual orientation.³¹ Oklahoma City removed language from the student handbook that would protect gay students in public schools from bullying and discrimination, claiming that current policies already provided sufficient protection for these students, a claim vehemently rejected by some on the faculty.³²

A few state actors have implemented protective language in their policies. The state Attorney General's office³³ and the Oklahoma Commissioners and Budget Board³⁴, for example, have implemented non-discrimination policies that include sexual orientation. In addition, a few of Oklahoma's state universities have implemented non-discrimination policies that protect students based on sexual orientation in student enrollment and activities.³⁵

3. Attorney General Opinions

None.

D. Local Legislation

None.

E. Occupational Licensing Requirements

There is no evidence that state or local agencies expressly discriminate against potential employees based on sexual orientation or gender identity. Some Oklahoma state and local licenses require candidates to be "of good moral character," but no evidence exists that this standard has been used to eliminate potential employees based on gender identity or sexual orientation. The Oklahoma City Police Department, for example, requires that applicants are "of good moral character."³⁶ The application, however, does not define this term, nor does it include any questions relating to sexual orientation or gender identity.³⁷ Similarly, under the Oklahoma Child Care Facilities

³¹Oklahoma Office of the Attorney General, Employment Opportunities, <http://bit.ly/25wyxw> (last visited Sept. 6, 2009); see Julie E. Bisbee, *Policy Prompts Debate at State and Local Level*, A.P., Mar. 9, 2005.

³²*OC Teacher Criticizes Removal from Handbook of Language Protecting Gays*, A.P., Oct. 21, 2006 (discussing Oklahoma City Public Schools' removal of language from the student handbook that would protect gay students from bullying and discrimination). To date, Oklahoma City has not replaced this protective language. OKLAHOMA CITY STUDENT HANDBOOK, <http://bit.ly/yjjG8> (last visited Sept. 6, 2009).

³³Oklahoma Office of the Attorney General, Employment Opportunities, <http://bit.ly/25wyxw> (last visited Sept. 6, 2009); see Julie E. Bisbee, *Policy Prompts Debate at State and Local Level*, A.P., Mar. 9, 2005.

³⁴LESBIAN & GAY L. NOTES (Feb. 2005), available at <http://www.qrd.org/qrd/www/legal/lgln/02.2005.pdf>.

³⁵See, e.g., Southern Oklahoma Technology Center's Enrollment Application, <http://www.sotc.org/enroll> (last visited Sept. 6, 2009); *Oklahomans for Equality*, ENEWS, <http://bit.ly/RdhKC> (noting that Tulsa Community College amended its student by-laws to include sexual orientation and gender preference as a protected classes).

³⁶Application for Oklahoma City Police Department, <http://bit.ly/3HIfEf> (last visited Sept. 6, 2009).

³⁷*Id.*

Licensing Act, the Oklahoma State Department of Human Services has the power to establish licensing requirements for all private facilities that provide services to children.³⁸ The requirements promulgated under this statute require that all employees of these facilities be “of good moral character.”³⁹ Again, however, the requirements do not define this term nor include any reference to the sexual orientation or gender identity of potential employees.

³⁸OKLA. STAT. ANN. 10, §410 (West 2008).

³⁹*See, e.g.*, Licensing Requirements for Child Care Centers, <http://bit.ly/SW4ul> (last visited Sept. 6, 2009); Licensing Requirements for Residential Child Placing Agencies, <http://bit.ly/1Cjxv6> (last visited Sept. 6, 2009); Licensing Requirements for Family Child Care Homes, available at <http://bit.ly/LMR4W> (last visited Sept. 6, 2009).

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

A. Case Law

1. State & Local Government Employees

Schonauer v. City of Okla., ex. rel. Okla. City Police Dep't, Case No. CIV-05-104-W (W.D. Okla. 2005).

In *Schonauer v. City of Oklahoma, ex. rel. Oklahoma City Police Department*,⁴⁰Ms. Paula Schonauer, a transsexual police officer, sued the Oklahoma Police Department and the City of Oklahoma, her employer of more than ten (10) years, for gender discrimination, hostile work environment and disparate treatment based on gender.⁴¹ When Ms. Schonauer was first hired by the police department in 1992, she was male and a decorated army veteran named Paul Schonauer.⁴² In 2001, she underwent gender transformation surgery.⁴³ After the surgery, she faced constant harassment from her co-workers, which she alleges interfered with her ability to do her job.⁴⁴ However, she continued performing her job duties, allegedly even improving relations between the police department and the Asian, Hispanic, and gay and lesbian communities.⁴⁵ Despite this, and her exceptional performance prior to 2001,⁴⁶ the police department removed her from patrol duties, gave her an interim clerical position, and placed her on paid administrative leave.⁴⁷ Ms. Schonauer sued in 2005, seeking reinstatement of her patrol duties and an end to the harassment. The City settled the claims with Ms. Schonauer in exchange for \$4000.00 and eighty (80) hours of reinstated sick leave.⁴⁸

Lankford v. City of Hobart, 27 F.3d 477 (10th Cir. 1994).

*Lankford v. City of Hobart*⁴⁹ involved two female dispatchers for the Hobart City police station in Oklahoma who brought suit against the City and their supervisor, the former police chief, alleging that the police chief had violated their privacy rights and

⁴⁰Case No. CIV-05-104-W (W.D. Okla. 2005).

⁴¹Memorandum from the City of Oklahoma City Office of the Municipal Counselor to Mayor and Council (Sept. 27, 2005), <http://bit.ly/3IVVNk> (last visited Sept. 6, 2009).

⁴²Richard Green, *Transgender Officer Sues Police in OKC*, TULSA WORLD, Dec. 29, 2004, at A15.

⁴³*Id.*

⁴⁴Reuters, *Sex-Change Oklahoma Officer Files Harassment Suit*, EXP. INDIA, Dec. 29, 2004, <http://bit.ly/aW3mM> (last visited Sept. 6, 2009).

⁴⁵Oklahoma Office of Personnel Management Affirmative Action Plan, <http://bit.ly/sKEIp> (last visited Sept. 6, 2009).

⁴⁶See Chad Graham, *Gays in the Red States*, ADVOCATE, Feb. 15, 2005, available at <http://bit.ly/NFRP1> (stating that Ms. Schonauer received an award from the Department of Justice for her performance as an Oklahoma police officer).

⁴⁷Oklahoma Office of Personnel Management Affirmative Action Plan, <http://bit.ly/sKEIp> (last visited Sept. 6, 2009).

⁴⁸PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 190-191 (1999 ed.).

⁴⁹27 F.3d 477 (10th Cir. 1994).

created a hostile and abusive work environment by sexually harassing them.⁵⁰ One of the plaintiffs alleged that after she spurned the supervisor's advances, he became angry and spread rumors that she was a lesbian.⁵¹ He then used his position as police chief to gain access to her medical records in order to verify this claim.⁵² The District Court dismissed all of plaintiffs' claims against the city and defendant police chief except for the invasion of privacy claim.⁵³ The Tenth Circuit Court of Appeals ruled that the plaintiff's case survived defendant's motion for summary judgment because she had stated a legitimate cause of action for invasion of privacy.⁵⁴ On remand, the district court dismissed the case in favor of the defendant.⁵⁵

Nat'l Gay & Lesbian Task Force v. Bd. of Educ., 729 F.2d 1270 (10th Cir. 1984).

In this case, the Plaintiff sought a declaration that an Oklahoma law that permitted public school teachers to be fired for public homosexual "activity" or "conduct," was unconstitutional. Under the law, "activity" was defined as specific acts committed with a person of the same sex that is "indiscreet and not practiced in private," and "conduct" was defined as "advocating, soliciting, imposing, encouraging or promoting public or private homosexual activity in a manner that creates a substantial risk that such conduct will come to the attention of school children or school employers." The court struck down the "conduct" clause as overbroad and violative of the First Amendment, reasoning that it could apply to conduct that did not encourage "imminent lawless action." However, the court upheld the "activity" clause with minimal analysis.⁵⁶

2. Private Employees

Two notable Oklahoma cases, *Saladin v. Turner* and *Joffe v. Vaughn*, involving discrimination against gays in the private sector, have also arisen during the past few years.

Saladin v. Turner, 936 F. Supp. 1571 (N.D. Okla. 1996).

In *Saladin v. Turner*, plaintiff, a waiter at a high-end Oklahoma restaurant, sued his employer, the restaurant owner, for discrimination under the Americans with Disabilities Act.⁵⁷ Plaintiff was one of the restaurant's most well-respected waiters and was liked by both patrons and co-workers.⁵⁸ Plaintiff was openly gay and involved with a long term partner who was infected with HIV.⁵⁹ Many regular patrons would inquire

⁵⁰*Id.* at 478.

⁵¹*Id.*

⁵²*Id.*

⁵³*Id.*

⁵⁴*Id.* at 478-80.

⁵⁵73 F.3d. 283 (10th Cir. 1996).

⁵⁶*Nat'l Gay & Lesbian Task Force*, 729 F.2d at 1270.

⁵⁷936 F. Supp. 1571 (N.D. Okla. 1996).

⁵⁸*Id.* at 1575.

⁵⁹*Id.*

about plaintiff's partner and plaintiff's charitable activities in the HIV/AIDS community.⁶⁰ When the restaurant manager learned of this, she requested that plaintiff refrain from these conversations because other customers had allegedly complained.⁶¹ Defendant, the restaurant owner, did not think this solution was sufficient and decided to suspend plaintiff for one month without pay, the longest suspension ever imposed in the restaurant's history.⁶² During the suspension, defendant terminated plaintiff, alleging that another employee had told the manager that plaintiff had quit.⁶³ Plaintiff subsequently applied for unemployment benefits, but was initially denied because defendant claimed he had been insubordinate.⁶⁴ Plaintiff then filed a discrimination complaint with the EEOC.⁶⁵ Defendant tried to re-offer plaintiff his job, but plaintiff refused for fear of retaliation.⁶⁶ The district court held in favor of plaintiff finding that defendant had suspended and subsequently terminated plaintiff solely because of his association with his partner, who had AIDS.⁶⁷

Joffe v. Vaughn, 873 P.2d 299 (Okla. Civ. App. 1993).

In *Joffe v. Vaughn*, plaintiff sued his former employer for wrongful termination, slander and intentional infliction of emotional distress.⁶⁸ Plaintiff was a news anchor at a local television station.⁶⁹ Plaintiff's co-anchor told the station's news director that plaintiff had engaged in a homosexual liaison with his hair dresser, specifically claiming that plaintiff had frequented a well-known "gay bar," picked up a stranger and took him back to his apartment for sex.⁷⁰ Within a month of the allegation and without any investigation or substantiated evidence, defendant told plaintiff that he must either resign or suffer termination.⁷¹ Plaintiff refused to resign and was fired without cause under the termination provision of his employment contract.⁷² Plaintiff quickly became the subject of negative rumors and speculation throughout Tulsa, despite his recent marriage to his long-time fiancée.⁷³ After his own investigation into the allegations, plaintiff discovered the name of his accuser and filed suit against both his co-anchor and the station. The emotional strain of the incident, however, proved to be too much, and plaintiff took his own life before completion of the case.⁷⁴ At trial, the jury found in favor of the plaintiff on the theory of intentional infliction of emotional distress and awarded \$2 million.⁷⁵

⁶⁰*Id.*

⁶¹*Id.*

⁶²*Id.*

⁶³*Id.* at 1578.

⁶⁴*Id.* at 1576.

⁶⁵*Id.*

⁶⁶*Id.* at 1579.

⁶⁷*Id.* at 1581.

⁶⁸873 P.2d 299 (Okla. Civ. App. 1993).

⁶⁹*Id.* at 301.

⁷⁰*Id.* at 302, 306.

⁷¹*Id.* at 302.

⁷²*Id.*

⁷³*Id.*

⁷⁴*Id.*

⁷⁵*Id.* All other claims were dismissed by the trial court. *Id.*

The appellate court upheld the award, in part, because it did not find the unsubstantiated allegations about plaintiff to be credible.⁷⁶

B. Administrative Complaints

None.

C. Other Documented Examples of Discrimination

Municipal Police Department

In 2008, a police officer transitioned from male to female while on the force. Thereafter, she experienced severe harassment based on her gender identity. After her transition, the police department insisted that she undergo psychological evaluations. Superiors also transferred her to an unfavorable position.⁷⁷

Municipal Fire Department

In 2007, a gay electronics technician who worked out of a city firehouse reported that, after another employee learned that he was gay, he began to experience harassment from coworkers. He was called a “cocksucker,” was whistled at, was told that “[q]ueers are just shit; people like you float,” was lectured about same-sex attraction being “against the Bible,” and was told that gay people are “an abomination to god.” When a new employee complained about having to clean the showers at the firehouse, the technician commented that they were so filthy that he wouldn’t take a shower there. The new employee replied that, according to what he had heard from others, he had thought that “you’d like that [implying a shower with other men].” One coworker repeatedly screamed at the technician, physically intimidated him, and twice threatened to kill him. When the individual complained, his shift was changed against his wishes so that he would not work the same time as that coworker. The department administrator refused to give him a copy of the employee policies on sexual harassment and nondiscrimination.⁷⁸

Langston University- Oklahoma City Branch

In 2004, a librarian employed at the Oklahoma City Branch of Langston University, Oklahoma’s only HBCU (Historically Black College and University) for approximately three years, began the process of transitioning from male to female. After she returned from a professional conference, she discovered that a student had circulated over 100 copies of a hate-filled petition calling for her removal from campus and had posted flyers to the same effect around the campus. Every reason cited in support of the librarian’s removal was related to her gender identity. When the librarian confronted the library director about the situation, he told the librarian that the student had a right to freedom of speech and that he would not do anything. When other students complained

⁷⁶*Id.* at 304, 306.

⁷⁷E-mail from Jon Davidson, Legal Director, Lambda Legal, to Nan D. Hunter, Legal Scholarship Director, the Williams Institute (Feb. 11, 2009, 12:18:00 EST) (on file with the Williams Institute).

⁷⁸*Id.*

to the library director about the flyers, he supported the student who had passed them out. The student then printed a second flyer stating that “God wished [her] dead” and that he hoped she would die. When she confronted administrators about the second flyer, she was told her concerns were unwarranted and she was the one creating problems. The following semester, her schedule was changed so that she would have to leave the building at 10 pm—long after other staff and faculty had gone home. Fearing that she would be unsafe on campus at that hour, she had no choice but to resign.⁷⁹

⁷⁹ 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).

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. Criminalization of Same-Sex Sexual Behavior

Although struck down in 2003 by *Lawrence v. Texas*⁸⁰ as applied to consensual homosexual acts, Oklahoma still has a sodomy statute on the books.⁸¹ Before *Lawrence*, the sodomy statute was used to bar employment of openly gay teachers in Oklahoma public schools.⁸² It was also used to justify denial of gay activist groups their First Amendment right to associate.⁸³

B. Hate Crimes

To date, Oklahoma has no hate crime bills protecting the gay community.⁸⁴ Evidence also exists that the Oklahoma police ignore issues of sexual orientation and gender identity when investigating crimes, and that they refuse to report crimes as hate crimes if the crimes appear to be based on sexual orientation.⁸⁵ For example, in the summer of 2008, a gay couple in Tulsa was targeted twice at the couple's home with anti-gay messages, such as "Gays Must Go," spray painted on the property.⁸⁶ The couple alleged that they were victims of a hate crime, but the police disagreed saying that the messages were mere acts of vandalism and mischief.⁸⁷

C. Parenting

Oklahoma prohibits adoption by same sex couples,⁸⁸ and until 2007, Oklahoma did not recognize foreign adoptions by same sex couples (*i.e.*, adoptions in which the

⁸⁰539 U.S. 558 (2003).

⁸¹OKLA. STAT ANN. 21, §886, *et. seq.* (West 2008) ("Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is punishable by imprisonment in the custody of the Department of Corrections not exceeding ten (10) years.").

⁸² See *supra* Section II.A.

⁸³*Id.*

⁸⁴ See, Richard Ogden, *Oklahoma Hate Crimes*, OKLAHOMANS FOR EQUALITY, <http://bit.ly/SJnlu> (last visited Sept. 6, 2009) (collecting legislative proposals).

⁸⁵David Schulte, *By Law, Not a Hate Crime*, TULSA WORLD, July 18, 2008 at A1 (noting that the Oklahoma State Bureau of Investigation, which develops standards for state law enforcement agencies in collecting hate crime records, has stated that the Oklahoma police refuse to report crimes based on sexual orientation as hate crimes).

⁸⁶*Id.*

⁸⁷*Id.*

⁸⁸OKLA. STAT ANN. 10, §7503-1.1 (West 2008).

same sex couple adopted in another state and subsequently moved to Oklahoma).⁸⁹ When the foreign adoption ban was put before the Oklahoma legislature, only five state senators voted against it. The leader of the Oklahoma Senate, James Williamson said that “[a] key component of the radical homosexual agenda is to take away the right of states to regulate and define adoptions, just as they are trying to redefine marriage across the nation.”⁹⁰

In *M.J.P. v. J.G.P.*, the Supreme Court of Oklahoma upheld an award of custody to the child’s heterosexual father, in part, because an expert witness psychologist speculated that the child would eventually have to make a choice between what society considers “moral” and defending his mother’s homosexuality.⁹¹ However, in *Fox v. Fox*, the Supreme Court of Oklahoma denied a change in custody from the lesbian mother to the heterosexual father.⁹² The court held in part that more evidence existed at the time of the custody dispute in *M.J.P.* warranting a change in custody.⁹³

D. Recognition of Same-Sex Couples

1. Marriage, Civil Unions & Domestic Partnership

The Oklahoma constitution bans same sex marriage.⁹⁴

E. Other Non-Employment Sexual Orientation & Gender Identity Related Laws

Outside of the employment context, Oklahoma has demonstrated an animus towards the gay community through repeated suppression of its First Amendment right to speech and association. This section discusses four examples: (i) *Cimarron Alliance Foundation v. City of Oklahoma City*, (ii) *Norma Kristie, Inc. v. City of Oklahoma City*, (iii) *Gay Activists Alliance v. Bd. of Regents of Univ. of Okla.* and (iv) the Gay Straight Alliance Club at Oklahoma’s Jenks High School in which the state denied gay groups their First Amendment rights because of the content of their messages.

Freedom of Speech

⁸⁹ OKLA. STAT. 10, §7502-1.4(A) (struck down in *Finstuen v. Crutcher*, 496 F.3d 1139 (10th Cir. 2007), as a violation of the full faith and credit clause of the Constitution).

⁹⁰ Graham, *supra* note 7.

⁹¹ 640 P.2d 966, 969 (Okla. 1982) (stating that the

“[expert] agreed that one of the manifestations of defending his mother’s homosexuality would be to indicate that there is nothing wrong with it, that there is nothing immoral with it, and that there sometimes occurs a time in the life of such a child where society’s morals collide with what he thought was right at home. Ultimately, J. will have to make a “choice between his mother and society and somehow reconcile it with himself.”).

See also infra Section IV.E (Bill Graves’ comments).

⁹² 904 P.2d 66 (Okla. 1995).

⁹³ *Id.* at 70.

⁹⁴ Graham, *supra* note 7.

In *Cimarron Alliance Foundation v. City of Oklahoma City*, Cimarron Alliance Foundation (“CAF”) sued the City of Oklahoma for violation of its First Amendment rights on two separate occasions.⁹⁵ In the spring of 2001, CAF hosted a gay pride parade in Oklahoma City.⁹⁶ With the city’s permission, CAF posted banners along the parade route that were scheduled to remain displayed during the parade and for several months thereafter.⁹⁷ Shortly after the banners went up, Oklahoma officials began receiving complaints from the general public about their presence.⁹⁸ Consequently, immediately after the parade, city officials removed the banners, contrary to the permitted time period.⁹⁹ CAF threatened litigation if the banners were not replaced, and the city subsequently complied.¹⁰⁰ Several months after the parade, at the mayor’s prompting, the City Council adopted a new banner ordinance, which in part prohibited banners that promoted “social advocacy.”¹⁰¹ When CAF applied for banner space again in 2002 for that year’s parade, the city denied the application on the grounds that the banners promoted social advocacy.¹⁰² CAF brought suit in federal district court claiming violation of its First Amendment rights for both the removal of banners in 2001 and the denial of its application in 2002.

With respect to CAF’s claim on the banner removal, the court held that a genuine issue of material fact existed as to whether defendant removed the banners due to criticism of what they stated and represented.¹⁰³ With respect to the banner ordinance, the court held that the ordinance gave city officials too much discretion as to determine which banners qualify as “social advocacy.”¹⁰⁴ The court also held that the city denied CAF’s application based on CAF’s beliefs and advocacy.¹⁰⁵ Therefore, the court granted CAF injunctive relief, prohibiting the city from imposing, exercising or otherwise using the ordinance.¹⁰⁶ Following the case, the Oklahoma City Council accepted a settlement allowing gay pride banners to fly over city streets.¹⁰⁷

Similarly, in *Norma Kristie, Inc. v. City of Oklahoma City*, Norma Kristie, Inc., a group that hosts the annual female impersonators contest, “Miss Gay America Pageant” sued Oklahoma City for denial of its First Amendment rights.¹⁰⁸ Plaintiff applied for a permit to use the Oklahoma Myriad Convention Center for the pageant, which showcases

⁹⁵ 290 F. Supp. 2d 1252 (W.D. Okla. 2002).

⁹⁶ *Id.* at 1255.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 1255-56.

¹⁰² *Id.* at 1255-56.

¹⁰³ *Id.* at 1261.

¹⁰⁴ *Id.* at 1262.

¹⁰⁵ *Id.* at 1263.

¹⁰⁶ *Id.* at 1263.

¹⁰⁷ Human Rights Campaign Foundation, Recent Developments in Sexual Orientation and Gender Identity Laws, LAW Briefs, Dec. 2002, available at <http://bit.ly/2AfBmg> (last visited Sept. 6, 2009).

¹⁰⁸ 572 F. Supp. 88 (W.D. Okla. 1983).

men dressed in female clothing.¹⁰⁹ A city official, however, denied plaintiff's application because he believed the message of the pageant to be "homosexual"¹¹⁰ and immoral.¹¹¹ The court ruled in favor of plaintiff and ordered defendant to permit the pageant.¹¹² The court held that defendant denied plaintiff's application solely because of his belief about the pageant's message.¹¹³

Freedom of Association

In *Gay Activists Alliance v. Bd. of Regents of Univ. of Okla.*, the Gay Activists Alliance, a student association at the University of Oklahoma, sued the University for denying its application for recognition as a student organization.¹¹⁴ The group had complied with all of the requirements to obtain recognition (such as a membership of at least ten (10) students and a faculty advisor), and thus alleged that it was denied this status solely on the basis of the content of its message.¹¹⁵ The University argued that it denied recognition to the club because the behavior sponsored by the organization violated Oklahoma law contrary to the University's duty to act for the benefit of the health, welfare and morals of the students.¹¹⁶ The Supreme Court of Oklahoma held in favor of plaintiffs because the University did not overcome its heavy burden in proving that the group would incite imminent lawless action.¹¹⁷ Today, the Gay Activists Alliance does not exist, however, the University of Oklahoma does have a student organization entitled Gay Lesbian Bisexual, Transgendered and Friends.¹¹⁸

Similarly, in 2001, students at one of Oklahoma's public high schools, Jenks High School, attempted to form a Gay-Straight Alliance club.¹¹⁹ The purpose of the club was

¹⁰⁹*Id.* at 90.

¹¹⁰*Id.*

¹¹¹*Id.*

¹¹²*Id.* at 92.

¹¹³*Id.* (stating that

“[p]articularly disturbing to this Court is Defendants’ conduct in dealing with Plaintiff’s application. Defendants made no effort to follow clear dictates of the U.S. Supreme Court...Defendant Johnson unilaterally rejected the application without investigation and based solely on his own opinion.”).

¹¹⁴ 638 P.2d 1116 (Okla. 1981).

¹¹⁵*Id.* at 1119.

¹¹⁶*Id.* at 1121-22.

¹¹⁷*Id.* at 1122 (stating that

“[w]here the denial of recognition is based on mere suspicion, unpopularity and fear of what might occur and is achieved by state action which burdens associational rights resulting in the lessening of an organization’s ability to effectuate legal purposes, guaranteed freedoms have been violated.”).

¹¹⁸Gay, Lesbian, Bisexual, Transgendered, and Friends Website, <http://www.ou.edu/glbtf> (last visited Sept. 6, 2009).

¹¹⁹David Schulte, *JHS Gay-Straight Alliance Continuing to Promote Tolerance*, TULSA WORLD, Mar. 23, 2005, at ZS1.

to provide a safe place for students to discuss sexual orientation issues, which the club's founders felt were oftentimes left unaddressed by the school.¹²⁰ The school's principal fought the formation of the club.¹²¹ Despite the principal's efforts, the students found a faculty moderator and began holding regular meetings of both gay and straight students.¹²² The school district, however, refused to call the club "a student organization" because it did not want to imply that the school sponsored the group.¹²³ Today, the Gay Straight Alliance still exists at Jenks High School, but it is still a non-school sponsored group and its activities are still non-school sanctioned.¹²⁴

Police Treatment of GLBT Individuals

Evidence also exists that the Oklahoma police have refused to administer protection equally among gay and heterosexual citizens. In *Price-Cornelison v. Brooks*, for example, plaintiff sued the Undersheriff of Garvin County, Oklahoma for failing to enforce an emergency protective order and a permanent protective order.¹²⁵ After an unpleasant split with her partner, plaintiff received a state court emergency protective order, which instructed her ex-partner to leave plaintiff's property.¹²⁶ Plaintiff soon learned that her ex-partner was repeatedly returning to the property in violation of the order and was removing items without permission.¹²⁷ Plaintiff called the sheriff's office several times informing the staff of the situation and requesting intervention or a police report on the incident.¹²⁸ Despite the protective order, defendant refused to get involved in the dispute, which he characterized as "one of those lesbian relationships," and even told plaintiff that if she returned to the property, she herself would be arrested.¹²⁹ Defendant also informed his staff that if anyone called the office regarding the matter, the staff should take a message.¹³⁰ Even after the state court issued a permanent protective order, defendant still refused to get involved in the dispute, claiming that the office was too "busy."¹³¹ On advice from the local prosecutor, plaintiff went to defendant's office in person and requested that the second protective order be enforced.¹³² In response, defendant denied her request and replied in part: "everyone in the courthouse [is] laughing at you."¹³³ Plaintiff sued for violations of both her Fourth Amendment right to

¹²⁰*Id.* (quoting one of the group's student founders as saying that "[i]t is not an overtly homophobic atmosphere, but it is something that people don't talk about, and I think that is more harmful in some ways").

¹²¹*Id.*

¹²²*Id.*

¹²³ *Id.*

¹²⁴ See Nora Froeschle, *Silent Protest Aimed at Anti-Gay Acts*, TULSA WORLD, Apr. 25, 2008, available at <http://bit.ly/kBZEa>.

¹²⁵ 524 F.3d 1103 (10th Cir. 2008).

¹²⁶*Id.* at 1106.

¹²⁷*Id.*

¹²⁸*Id.*

¹²⁹*Id.*

¹³⁰*Id.* at 1107.

¹³¹*Id.*

¹³²*Id.*

¹³³*Id.*

unreasonable search and seizure and her Fourteenth Amendment right to equal protection. She alleged that the sheriff's office had a policy of discrimination against lesbian victims of domestic violence. Defendant claimed qualified immunity on both issues. The district court agreed that she had presented enough evidence on this issue to withstand defendant's summary judgment motion.¹³⁴ On appeal, the Tenth Circuit Court of Appeals held in favor of plaintiff with respect to the permanent protective order and the Fourth Amendment claims, denying defendant qualified immunity, but dismissed the claim with respect to the emergency protective order.¹³⁵ Although remanded for trial, the case was dismissed on August 5, 2008 because plaintiff was unwilling to pursue the case further.¹³⁶ Of note is that the county was completely unwilling to settle or admit any wrongdoing on its part.¹³⁷

Apart from the case law discussed above, Oklahoma state officials and public servants have demonstrated other animus towards gays. In March of 2008, for example, Representative Sally Kern of the Oklahoma Legislature made headlines after an audio clip of her comments berating the gay community was released on YouTube.¹³⁸ Aside from claiming that homosexuality is a lifestyle choice unsupported by God, Kern also said the homosexual agenda is destroying the nation and poses a bigger threat to the U.S. than terrorism or Islam.¹³⁹ In defense of her statements, Kern claims that she was targeting the homosexual agenda, not individuals who have "made this lifestyle choice."¹⁴⁰ Of particular concern to her was the effect the "homosexual agenda" would have on Oklahoma's children.¹⁴¹ Three years prior in March of 2005, Kern had asked the Metropolitan Library System to move gay-themed children's books to the adult section because she wanted to restrict children's access to this content.¹⁴² Subsequently, the Oklahoma House passed Resolution 1039, which required libraries to "confine homosexually themed books and other age-inappropriate material to areas exclusively for

¹³⁴*Id.* at 1110.

¹³⁵*Id.* at 1119.

¹³⁶Telephone Interview with Valerie A. Williford, Plaintiff's Counsel, Oklahoma City, Okla. (Jan. 20, 2009).

¹³⁷*Id.*

¹³⁸ Tim Talley, *Oklahoma Legislator's Anti-Gay Comments Stir Hostile Reaction*, TULSA WORLD, Mar. 10, 2008, available at <http://bit.ly/1KOAXQ>.

¹³⁹*Id.*

¹⁴⁰ *Id.* (quoting Kern as saying, "I was talking about an agenda. I was not talking about individuals... They have the right to choose that lifestyle. They do not have the right to force it down our throat.").

¹⁴¹*Id.* (quoting Kern as saying,

"We have the gay-straight alliance coming into our schools. Kids are getting involved in these groups; their lives are being ruined... They are going after our young children, as young as two (2) years of age, to try to teach them that the homosexual lifestyle is an acceptable lifestyle. This stuff is deadly and it's spreading, and it will destroy our young people; it will destroy this nation.")

¹⁴²Chad Previch & Carrie Coppennoll, *Libraries Haven't Pulled Gay-Themed Kids' Books; Metro-Area Commission May Act on Shelving at Its Thursday Meeting*, OKLAHOMAN, May 13, 2005, at 20A.

adult access and distribution.”¹⁴³ The Bill also required that no public funds be used in “the distribution of such materials to children.”¹⁴⁴ The Oklahoma Senate allowed the bill to lapse in April of 2006.¹⁴⁵

In July of 2008, State House candidate Jay K. Ramey told local papers that one of his main reasons for running for office was to ensure a prohibition in Oklahoma on same sex marriage, civil unions, and domestic partnership.¹⁴⁶ His campaign website stated that

“I am opposed to gay marriage... It seems to me much more rational and normal to legalize polygamous marriage or marriage between first cousins before we even thinking of legalizing marriage between two people of the same sex. More importantly, Oklahoma should never recognize or be forced to recognize gay marriages performed in other states.”¹⁴⁷

Other evidence exists that the Oklahoma bench and bar has used sexual orientation negatively to determine a case’s outcome. In April of 2008, for example, state district court judge Bill Graves wrote a letter to the Oklahoma Bar Association members criticizing their proposal to add greater protections for gays into the state’s Code of Judicial Conduct.¹⁴⁸ Prior to the proposal, the Code of Judicial Conduct prohibited a judge from manifesting prejudice or bias on the basis of sexual orientation.¹⁴⁹ The OBA proposal provided more protections for gays by: (i) including sexual orientation in a newly developed definition of harassment and (ii) including sexual orientation in a newly developed prohibition on discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge’s official capacity.¹⁵⁰ In his letter, Judge Graves argued that these protections were too expansive and would prohibit him from using sexual orientation as a factor in child custody and adoption cases, which he argued would be detrimental to children.¹⁵¹

¹⁴³Hope Marie Cook, *History of Censorship in Children’s Literature and New Censorship Challenges*, TEACHING EXCELLENCE SEMINAR 13 (Spring 2006), available at <http://bit.ly/sizym> (hereinafter “Seminar”).

¹⁴⁴*Id.*

¹⁴⁵*Id.* at 14.

¹⁴⁶*House-District 66*, OKLAHOMAN, July 20, 2008, at 29.

¹⁴⁷ Jay K. Ramey Website, <http://www.jayramey.com> (last visited Sept. 6, 2009).

¹⁴⁸ Jay F. Marks, “*Sexual Orientation Clause*” *Draws Judge’s Ire*, NEW OK, June 4, 2008, available at <http://bit.ly/OkF8o>.

¹⁴⁹ *In re OBA*, 2006 OK 2 (Okla. 2006).

¹⁵⁰ OKLA. CODE OF JUD. CONDUCT 52, 90 (final draft proposal Nov. 10, 2008), available at <http://bit.ly/3QNL30>.

¹⁵¹*See generally supra* Section IV.C.