

UCLA

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

Title

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

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Author

Sears, Brad

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MEMORANDUM

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

I. OVERVIEW

A 2003 survey of more than 2,000 LGBT Idahoans revealed that more than half the LGBT respondents felt they had been expected to deny or hide their sexual orientation or gender identity at work.¹ Of those, almost 60% had been explicitly asked by employers to do so.² Almost a quarter of those surveyed thought they had been fired from a job, not promoted, or not received compensation or a raise as a result of anti-gay attitudes in their workplace.³ And 16.3% of transgender participants, 12% of gay and bisexual men, and 7.6% of gay and bisexual women were expressly told by their employer that their sexual orientation or gender identity had led to such a result.⁴

Idaho is the only state to have reinstated its felony sodomy law after it was taken off the books; public outcry about the 1971 elimination of the state's law making homosexual conduct subject to felony conviction led the Idaho legislature to reinstate the old criminal code in 1972.⁵ Despite *Lawrence v. Texas*,⁶ Idaho has not repealed its sodomy law. Thus, Idaho's public code continues to characterize sodomy as "the infamous crime against nature," punishable by imprisonment of not less than five years.⁷

Idaho does not include LGBT persons in any protected category for the purpose of employment discrimination. A bill that would have prohibited employers with more than five employees (including the State of Idaho but excepting certain religious organizations) from discriminating based on sexual orientation or gender identity was proposed in the Idaho Senate on January 21, 2008. The bill was defeated in February of 2009.⁸ Similar bills have failed in the past.⁹

¹ IDAHO LESBIAN, GAY, BISEXUAL, AND TRANSGENDER SURVEY (2003), available at <http://bit.ly/Inpom>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See *Idaho Sodomy Laws*, <http://bit.ly/IV22F>.

⁶ 539 U.S. 538 (2003).

⁷ IDAHO CODE § 18-6605 ("Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison not less than five years.").

⁸ See S.B. 1323 (Idaho 2008), available at <http://bit.ly/2Hn88>. See also <http://bit.ly/NAM14>.

⁹ LESBIAN & GAY L. NOTES (Dec. 1994), available at <http://www.qrd.org/qrd/usa/legal/lgln/1994/12.94>.

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

- In 1997, an adult probation officer in Power County was fired immediately after supervisors discovered her sexual orientation. She had been employed by the county for six months prior to her termination and had disclosed her sexual orientation only to one trusted co-worker. Two days prior to her termination, while accompanied off-duty by her female partner, she ran into a co-worker in a store. She introduced the co-worker to the woman as her partner. Following the interaction, three Power County Commissioners confronted her, telling her that they were “unhappy” and that she “could either quit or be fired.” The officer refused to quit, and the Commissioners fired her.¹⁰
- The ACLU of Idaho reported that, in 1977, seven female employees of the Boise Police Department were fired when superiors suspected them of lesbianism.¹¹ The ACLU reported that “[t]wo women were accused of allowing homosexual activities to harm their job performance. Others were ousted for reason such as conduct unbecoming a police officer and having a life-style that interfered with police duties.”¹² While there were no anti-discrimination laws under which these women could bring suit, six of the seven sued and won settlements because their phone lines had been illegally tapped.¹³

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.

¹⁰ 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).

¹¹ See ACLU Idaho, *Some Other Examples of Discrimination in Idaho*, <http://bit.ly/9sgXU> (last visited Sept. 6, 2009).

¹² *Id.* (citing N.Y. TIMES, Apr. 10, 1977, at32).

¹³ *Id.*

II. SEXUAL ORIENTATION & GENDER IDENTITY EMPLOYMENT LAW

A. State-Wide Employment Statutes

Currently the state of Idaho has not enacted laws to prohibit employment discrimination based on sexual orientation or gender identity.

B. Attempts to Enact State Legislation

Currently, employers with more than five employees are prohibited from discriminating because of race, color, religion, national origin, sex, age and disability.¹⁴ On January 21, 2008, three state senators and three state representatives co-sponsored a bill that would have altered Idaho's Human Rights Law.¹⁵ The stated purpose of SB 1323 was to expand the categories to add sexual orientation and gender identity:

“Currently in Idaho a person can be fired from their job simply because they are gay or because someone thinks they are gay. . . . This legislation will end decades of discrimination against men and women in every part of Idaho and set a tone for the state making clear that it is wrong to fire someone from a job, refuse to promote or fairly compensate someone, for no other reason than that they gay.”¹⁶

The proposed legislation also provided an exception to this extension of discrimination law for “any religious corporation, association or society.”¹⁷ Two state senators opposed the bill's introduction; one commented: “It just seems to me like it's another effort to impose state sanction or certification of a lifestyle that I think is not particularly beneficial to families.”¹⁸

More than a year has passed since Senate Bill 1323 was introduced and printed; the bill has stalled in the State Affairs committee.¹⁹ The committee has not issued a report.

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

1. Executive Orders

None.

¹⁴ IDAHO CODE § 67-5901, *et seq.*

¹⁵ S.B. 1323.

¹⁶ *Id.* at (Statement of Purpose).

¹⁷ *Id.* at § 10.

¹⁸ Betsy Z. Russell, *Idaho Weighs Anti-Discrimination Law*, SPOKESMAN REV., Jan. 21, 2008, *available at* <http://bit.ly/13METB>.

¹⁹ S.B. 1323 (Bill Status).

2. State Government Personnel Regulations

Idaho's large state universities are the only state entities that offer protection against employment discrimination based upon sexual orientation. In 1995, the University of Idaho adopted a policy prohibiting discrimination based on sexual orientation.²⁰ However, sexual orientation is not listed in the section regarding discrimination. Rather, sexual orientation has its own chapter, which states:

“The University of Idaho regards discrimination on the basis of sexual orientation to be inconsistent with its goal of providing an atmosphere in which students, faculty, and staff may learn, work, and live. The University of Idaho values the benefits of cultural diversity and pledges to students, prospective students, employees and the public that it will defend pluralism in the academic community, and warmly welcomes all men and women of good will without regard to sexual orientation.”²¹

The University of Idaho policy states that sexual orientation cannot be considered in regard to personnel decisions. However, the policy also states that to the extent such policy conflicts with state law, state law controls. As a result of this language and the absence of protection in the state's anti-discrimination statute, it is unclear whether the university policy provides any enforceable legal protection against employment discrimination.²²

Boise State University (“BSU”) includes sexual orientation in its employment policy; the policy states that “Boise State University has a strong policy of equal employment opportunity and nondiscrimination. The University does not discriminate on the basis of sex, race, age, color, disability, religion, sexual orientation, or national and ethnic origin.”²³ BSU instituted an administrative grievance procedure in 1994 (later revised in 1998), which provides a grievance process for anyone discriminated against because of sexual orientation..²⁴

Idaho State University has a policy similar to that of the University of Idaho.²⁵ Idaho State implemented a “Sexual Orientation Policy” in 1995, which states that

“to the extent that it does not conflict with a contractual obligation or state, federal or local law or regulation, it is

²⁰ UNIVERSITY OF IDAHO FACULTY/STAFF HANDBOOK, Chapter 3215 (Non-Discrimination on the Basis of Sexual Orientation), *available at* <http://www.webs.uidaho.edu/fsh/3215.html> (last visited Sept. 6, 2009).

²¹ *Id.* at A.

²² *Id.* at B-1, D.

²³ *See* Boise State Human Resources Policies, *available at* <http://bit.ly/MJ2xh> (last visited Sept. 6, 2009).

²⁴ *See* Boise State Judicial Procedures, *available at* <http://bit.ly/1tL707> (last visited Sept. 6, 2009); Boise State Anti-Harassment Policy, *available at* <http://bit.ly/2ECQpi> (last visited Sept. 6, 2009).

²⁵ *See* Idaho State University Faculty/Staff Handbook at Part 4G, *available at* <http://bit.ly/NytP0> (last visited Sept. 6, 2009).

the policy of Idaho State University that an individual's sexual orientation is an irrelevant factor and shall not be a basis for institutional decisions relating to education, employment, or access to programs, facilities or services."²⁶

None of the university policies includes gender identity.

3. **Attorney General Opinions**

None.

D. **Local Legislation**

None.

E. **Occupational Licensing Requirements**

Several Idaho statutes require license-seekers and holders to meet "morality" standards. For example, occupations that require licensees possess "good moral character" include: optometrist,²⁷ physical therapist and physical therapist assistant,²⁸ accountant,²⁹ barber and hair stylist,³⁰ and social worker.³¹ Licensed psychologists must also be of "acceptable moral character."³²

²⁶ *See id.* at Part 4P.

²⁷ IDAHO CODE § 54-1520.

²⁸ § 54-2210.

²⁹ § 54-208.

³⁰ § 54-506.

³¹ § 54-3206.

³² § 54-2307.

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

A. Case Law

1. State & Local Government Employees

None.

2. Private Employees

None.

B. Administrative Complaints

The Idaho Commission on Human Rights, appointed by the Governor to investigate discrimination complaints in the areas of employment, housing, education, and public accommodations, does not handle claims of sexual orientation or gender identity discrimination.³³ And while it appears that the Commission had supported SB 1323's proposed protection against sexual orientation and gender identity discrimination for the past several years, on February 9, 2009, the Idaho Commission on Human Rights (with some new members) decided, by a vote of 5 to 4, to drop their support for this protective legislation.³⁴

C. Other Documented Examples of Discrimination

Power County Probation Department

In September of 1997, a woman was fired from her job as an adult probation officer in Power County, Idaho because of her sexual orientation. She had been employed by the county for six months prior to her termination and had disclosed her sexual orientation to one trusted co-worker. Two days prior to being fired, while accompanied by her female partner, she ran into a co-worker in a store off work hours. She introduced the woman as her partner to the co-worker. Following the interaction, three Power County Commissioners confronted her, telling her that she was "unhappy" and "could either quit or be fired." She refused to quit and the Commissioners fired her. She contacted the Idaho Human Rights Commission in Boise immediately after her termination and was told that she had no means of redress because there was no

³³ See Idaho Comm'n on Human Rights, http://humanrights.idaho.gov/about_us/about_us.html (last visited Sept. 6, 2009) (Idaho Commission on Human Rights' purpose is "[t]o secure for all individuals within the state freedom from discrimination because of race, color, religion, national origin, sex, age (40 and over) and disability.").

³⁴ See *Idaho Human Rights Commission's Big But*, BOISE WEEKLY, Feb. 10, 2009, available at <http://bit.ly/3pO0r>.

protection for sexual orientation discrimination under the state's employment anti-discrimination law.³⁵

Boise Police Department

In 1977, seven female employees of the Boise Police Department were fired for their perceived lesbianism.³⁶ The ACLU of Idaho reported that “[t]wo women were accused of allowing homosexual activities to harm their job performance. Others were ousted for reason such as conduct unbecoming a police officer and having a life-style that interfered with police duties.”³⁷ While there were no anti-discrimination laws under which these women could bring suit, six of the seven sued and won settlements because their phone lines had been illegally tapped.³⁸

³⁵ 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).

³⁶ See ACLU Idaho, Some Other Examples of Discrimination in Idaho, <http://bit.ly/3pO0r> (last visited Sept. 6, 2009).

³⁷ *Id.* (citing N. Y. TIMES, Apr. 10, 1977, at 32).

³⁸ *Id.*

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

Idaho's strong anti-gay attitudes were shaped during the mid-1950s.³⁹ On November 2, 1955, Idaho's leading newspaper announced that three homosexual Boise men had admitted their guilt regarding "the infamous crime against nature." One man received a life sentence, and the other two received fifteen years in prison.⁴⁰ More than a dozen other men, including a bank vice-president, were arrested in 1955 and sentenced to jail terms ranging from six months to fifteen years.⁴¹ Idaho soon became the epicenter for lurid stories of homosexual men preying on the community's young men.⁴² By April 1956, over 1,500 Boise residents (out of the then-population of 40,000) had been interviewed about an alleged "homosexual underworld."⁴³

Fifteen years later, in 1971, Idaho was the third state to repeal its sodomy law to eliminate its prohibition on private homosexual acts between consenting persons ages sixteen and older.⁴⁴ However, intense public reaction led the legislature to reinstate its felony sodomy law in 1972.⁴⁵ As drafted, the statute prohibits both same-sex and opposite-sex conduct.⁴⁶ Idaho courts once construed the statute to prohibit fellatio of any kind,⁴⁷ but later held that the statute could "not be constitutionally enforced to prohibit private consensual *marital* conduct."⁴⁸

³⁹ Seth Randal and Alan Virta, *Idaho's Original Same-Sex Scandal*, N.Y. TIMES, Sept. 2, 2007, available at <http://www.nytimes.com/2007/09/02/opinion/02.randal.html>.

⁴⁰ ERICH GOODE & NACHMAN BEN-YEHUDA, MORAL PANICS: THE SOCIAL CONSTRUCTION OF DEVIANCE 6 (Wiley-Blackwell 1994) (hereinafter "Moral Panics").

⁴¹ *Id.* at 6-7.

⁴² *Idaho Underworld*, TIME, Dec. 12, 1955, available at <http://bit.ly/bZqnR> (naming many of the men who were formally charged with "the infamous crime" and stating that Idaho "had sheltered a widespread homosexual underworld that involved some of Boise's most prominent men and had preyed on hundreds of teen-age boys for the past decade").

⁴³ Moral Panics, *supra* note 40, at 7.

⁴⁴ See *Idaho Sex Reform: Adult Consent Law Adopted; Nation's Third*, ADVOCATE, June 22, 1971, available at <http://www.glapn.org/sodomylaws/usa.idaho/idnews01.htm> (hereinafter "Idaho Sex Reform").

⁴⁵ See Idaho Sodomy Laws, <http://bit.ly/obX0L> (last visited Sept. 6, 2009).

⁴⁶ See Idaho Sex Reform, *supra* note 44.

⁴⁷ See *Idaho v. Izatt*, 534 P.2d 1107, 1109-10 (Idaho 1975).

⁴⁸ *Idaho v. Holden*, 890 P.2d 341, 347 (Idaho Ct. App. 1995) (emphasis added).

This sodomy law remains on the books, although the U.S. Supreme Court decision in *Lawrence v. Texas*⁴⁹ precludes its application to private, consensual adult conduct.⁵⁰

B. Housing & Public Accommodations Discrimination

None.⁵¹

C. Hate Crimes

The Idaho hate crimes law does not include crimes related to sexual orientation or gender identity.⁵²

D. Education

None.⁵³

In 2008, a gay University of Idaho student was threatened by a harasser, who wrote “Faggot. Fucking kill you” on the student’s dorm room door. The victim made the following remark: “I think people forget that this level of hate and ignorance still exists in the world and maybe reminders like this will keep them aware ... this is a high-risk time for people.”⁵⁴

E. Health Care

In Idaho, in the absence of a living will or durable power of attorney document,⁵⁵ a same-sex partner may make a medical decision on behalf of an incapacitated partner as a “competent individual representing himself or herself to be responsible for the health care of such person.”⁵⁶ However, in the absence of a power of attorney document, a

⁴⁹ 539 U.S. at 538.

⁵⁰ In 2008, an Idaho appellate court upheld a conviction for “infamous crime against nature” when an adult male provided oral sex in a gym sauna to an adult male with Down’s Syndrome. The defendant challenged Idaho’s sodomy law as unconstitutional in light of *Lawrence v. Texas*, but the Court of Appeal held because the matter of whether the disabled male could have consented was at issue, Idaho’s felony sodomy law was constitutionally applied. *Idaho v. Cook*, 192 P.3d 1085 (Idaho Ct. App. 2008).

⁵¹ Idaho protects against housing discrimination based on race, color, religion, sex, national origin, and/or disability. See IDAHO CODE § 67-5909(8)-(10).

⁵² See IDAHO CODE § 18-7902 (extending only to crimes involving “race, color, religion, ancestry or national origin”).

⁵³ Idaho protects against educational discrimination based on race, color, religion, sex, and/or national origin. See IDAHO CODE § 67-5909(7).

⁵⁴ Lianna Shepherd, *Gay Student Threatened*, ARGONAUT, Oct. 6, 2008, available at <http://www.uiargonaut.com/content/view/6652/1>.

⁵⁵ See IDAHO CODE § 39-4510 (any adult who is not a non-relative employee of the treating health care facility or a community health care facility can be designated as a person’s health care agent).

⁵⁶ See § 39-4504.

same-sex partner can make health decisions only after the guardian, spouse, parents and relatives have been given the option to decide.⁵⁷

F. Gender Identity

Idaho is one of three states in the United States that does not amend birth certificates to change gender designations following sexual reassignment surgery.⁵⁸

G. Parenting

In Idaho, single GLBT individuals are permitted to adopt.⁵⁹ Although adoptions by same-sex couples and second-parent adoptions are not expressly prohibited in Idaho, no court has heard the issues.

In 2002, the state adoption law was amended to prohibit discrimination against those with disabilities. The amendment expressly states that “transvestism and transsexualism” (grouped with other “sexual disorders”), as well as “sexual preference or orientation,” are not to be considered disabilities protected from discrimination in adoption proceedings.⁶⁰

In Idaho, any adult parent can seek custody of his or her child.⁶¹ Like the state adoption law, in 2002, the state child custody law was amended to prohibit discrimination

⁵⁷ *Id.*

⁵⁸ See § 39-250 (procedures for amending paternity and name); see also Lambda Legal, Sources of Authority to Amend Sex Designation on Birth Certificates, <http://bit.ly/3ecGEW> (last visited Sept. 6, 2009) (

“Although Idaho generally permits amendment of birth records upon an appropriate evidentiary showing, the Idaho Office of Vital Statistics reports that Idaho does not currently amend birth records to reflect the correct sex of individuals who have changed their sex by surgical procedure.”).

⁵⁹ § 16-1501 (“Any minor child may be adopted by any adult person residing in and having residence in Idaho. . .”).

⁶⁰ § 16-1501(2) (

“Adoptions shall not be denied solely on the basis of the disability of a prospective adoptive parent. . . (b) . . . Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania, or pyromania. Sexual preference or orientation is not considered an impairment or disability.”).

⁶¹ § 32-1005 (

“When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require.”).

against those with disabilities. The amendment expressly states that “transvestism and transsexualism” (grouped with other “sexual disorders”), as well as “sexual preference or orientation,” are not to be considered disabilities protected from discrimination in child custody proceedings.⁶²

A 2004 Idaho Supreme Court case, *McGriff v. McGriff*, addresses the issue of whether homosexuality can factor into child custody and visitation.⁶³ The Court held that, in light of *Lawrence v. Texas*, which “legalized the practice of homosexuality and in essence made it a protected practice under the Due Process clause,”⁶⁴ a court could not use sexual orientation as a basis for awarding or removing custody. The court noted that

“[s]exual orientation, in and of itself, cannot be the basis for awarding or removing custody; only when the parent’s sexual orientation is shown to cause harm to the child, such that the child’s best interests are not served, should sexual orientation be a factor in determining custody.”⁶⁵

However, the Court affirmed the Magistrate’s denial of custody and limits on visitation based on the father’s homosexuality.

In *McGriff*, the father had been divorced from his wife for three years and shared custody of his two girls when he moved in with a same-sex partner.⁶⁶ The ex-wife filed for a modification of custody and visitation based on the “changed circumstance” of his homosexuality.⁶⁷ She also complained that her ex-husband made the “unilateral decision to discuss his sexual orientation with one of the children, in direct contravention of [the mother’s] wishes.”⁶⁸ The Magistrate’s original decision “found that [the father’s] choice of lifestyle should not be minimized in light of the conservative culture and values of the community in which the parties and the children reside.”⁶⁹ The Magistrate further noted that “[the father’s] decision to openly cohabit with Nick Case, his partner, is a change in circumstances which will generate questions from the girls and their friends regarding their conservative culture and morays [sic] in which the children live.”⁷⁰

⁶²§ 16-1501(2) (

“Adoptions shall not be denied solely on the basis of the disability of a prospective adoptive parent. . . (b) . . . Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania, or pyromania. Sexual preference or orientation is not considered an impairment or disability.”).

⁶³ *McGriff v. McGriff*, 99 P.3d 111 (Idaho 2004).

⁶⁴ *Id.* at 648.

⁶⁵ *Id.*

⁶⁶ *Id.* at 649.

⁶⁷ *Id.*

⁶⁸ *Id.* at 650.

⁶⁹ *Id.* at 648.

⁷⁰ *Id.* at 655 (J. Kidwell, dissenting).

While the Idaho Supreme Court held that sexual orientation could not be used as the sole reason to deny custody, it nonetheless upheld the Magistrate's decision to award full custody to the mother and to allow visitation rights to the father only if his partner would not be in the house.⁷¹ The limitation on visitation was approved because the father's partner had allegedly made two "hang-up" calls to the ex-wife, had complained to the police that the ex-wife tried to cut him off on the road, and had allegedly called the town mayor's office with the intent of complaining that the ex-wife (a city employee) was abusing her work time.⁷² The Idaho Supreme Court felt that the Magistrate was justified in light of such "vindictive action" in ordering that the partner not be residing with McGriff when the children were visiting, comparing the restriction to that made in a prior case involving a mother's fiancé with drug abuse problems and a felony record.⁷³

There is currently no case law in Idaho regarding transgender parents or same-sex co-parents.

H. Recognition of Same-Sex Couples

1. Marriage, Civil Unions & Domestic Partnership

Idaho law does not permit or recognize same-sex unions, whether by marriage or domestic partnership. In January 1996, the Idaho governor signed into law a statute denying recognition to marriages "that violate the public policy of this state" such as same-sex marriages.⁷⁴ While the Idaho legislature was considering a Joint Resolution to amend the Idaho Constitution to prohibit same-sex marriage, the Idaho Attorney General issued an Opinion stating that a narrow amendment dealing only with a prohibition on same-sex marriage would be "insufficient to articulate a public policy that seeks not only to define marriage as between a man and a woman but also to prohibit recognition of other relationships such as same-sex marriages, civil unions and domestic partnerships."⁷⁵

Later that year, on November 2, 2006, Idaho voters ratified a revision to the Idaho Constitution that both defined marriage as being only between a man and a woman and barred any domestic legal union other than marriage.⁷⁶ The Legislature's Statement of

⁷¹ *Id.* at 652.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ IDAHO CODE § 32-209 (

"All marriages contracted without this state, which would be valid by the laws of the state or country in which the same were contracted, are valid in this state, unless they violate the public policy of this state. Marriages that violate the public policy of this state include, but are not limited to, same-sex marriages, and marriages entered into under the laws of another state or country with the intent to evade the prohibitions of the marriage laws of this state.").

⁷⁵ Idaho Att'y Gen. Op. No. 1 (2006), at 11.

⁷⁶ See Idaho Const., Art. III, § 28; see also CNN Election Results (2006), <http://www.cnn.com/ELECTION/2006/pages/results/ballot.measures> (last visited Sept. 6, 2009).

Purpose for this amendment was clear; the amendment was “intended to prohibit recognition by the State of Idaho, or any of its political subdivisions, of civil unions, domestic partnerships, or any other relationship that attempts to approximate marriage, no matter how denominated.”⁷⁷

2. Benefits

On December 17, 2007, the city of Moscow (home to the University of Idaho) passed a resolution authorizing the city to financially contribute towards employee health benefits for city employees who filed an affidavit of qualifying domestic partnership with Regence Blue Shield of Idaho.⁷⁸ The resolution noted that Moscow “is recognized in the National League of Cities as Idaho’s only ‘Inclusive Community.’” It also stated that

“the Council believes that all persons are entitled to equal employment opportunity and does not discriminate against City employees because of ... sexual orientation ...”; and that “the City believes it is reasonable, equitable, and fair to contribute to its employees who qualify for health insurance benefits as domestic partners in the same way it contributes to its other employees, monetarily, emotionally, philosophically, and inclusively.”⁷⁹

This caused immediate uproar from conservative Idaho groups, and on February 12, 2008, the Idaho Attorney General furnished a non-binding opinion arguing that the resolution was unconstitutional. It stated that

“[t]he City of Moscow’s new policy of extending health care benefits to the domestic partners of its employees and the dependents of those domestic partners constitutes recognition of a domestic legal union other than marriage. Consequently, an Idaho court would likely find that this policy violates the Idaho Constitution’s Marriage Amendment.”⁸⁰

The Attorney General explained that the City of Moscow, as a subdivision of the state, has no power to provide benefits that conflict with state laws.⁸¹ The following month, on March 4, 2008, the Moscow City Council voted (4-1) to continue supporting

⁷⁷ See H. JJ. R. 2 (Idaho 2006) (Statement of Purpose). Note: 2006 House Joint Resolution No. 2 passed by a margin of 53-17 in the Idaho House, and 26-9 in the Idaho Senate. See *id.* (Bill Status).

⁷⁸ See City of Moscow Resolution No. 31 (2007).

⁷⁹ *Id.* at 1.

⁸⁰ State of Idaho, Office of the Attorney General Lawrence G. Wasden, Feb. 4, 2008 letter to Russell M. Fulcher at 1.

⁸¹ *Id.* at 2.

the measure because it believed the ordinance was written in a way that does not violate the marriage amendment.⁸²

A 2008 story that received national attention involved a gay couple with a New Jersey registered partnership who moved to Idaho. After the move, the primary earner's company, Konica Minolta, dropped his partner from the company insurance plan.⁸³

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

Hallmark Stores

In August 2008, a group of Hallmark stores located in Idaho refused to carry Hallmark's new line of cards marketed towards LGBT consumers.⁸⁴

Nampa Recreation Center

In January of 2009, a lesbian couple with a four-year-old child was denied a family pass to the Nampa Recreation Center, which is owned and operated by the City of Nampa, Idaho.⁸⁵ The Nampa mayor responded that the two women were not married. He remarked: "We have to protect the integrity of our funding structure. Any two people who happen to be roommates and say, 'Hey we're family, give us a discount', we would suffer financially."⁸⁶

⁸² Greg Meyer, *Moscow Council Votes to Maintain Domestic Partner Benefits*, KLEWtv, Mar. 4, 2008, available at <http://www.klewtv.com/news/16238552.html>.

⁸³ Jessie Bonner, *Gay Couple Loses Benefits With Move*, A.P., Mar. 31, 2008, available at <http://abcnews.go.com/TheLaw/wireStory?id=4555406>.

⁸⁴ *Some Shops Reject Same-Sex Wedding Cards: Owners Of Several Idaho Hallmark Stores Won't Sell New Line Catering To Same-Sex Partners*, CBS NEWS, Aug. 26, 2008, available at <http://www.cbsnews.com/stories/2008/08/26/business/main4383948.shtml>.

⁸⁵ Jody May-Chang, *Nampa ID Recreation Center Denies Same-Sex Families*, PRIDE DEPOT, Feb. 2, 2009, <http://www.pridedepot.com/modules/wordpress/?p=738862#more-738862>.

⁸⁶ *Id.*