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

**Title**

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

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## MEMORANDUM

**From:** Williams Institute

**Date:** September 2009

**RE:** **Colorado – Sexual Orientation and Gender Identity Law and Documentation of Discrimination**

### I. OVERVIEW

In 1992, Colorado voters passed Amendment 2 to the Colorado Constitution,<sup>1</sup> prohibiting enactment or enforcement of anti-discrimination protections for gay, lesbian and bisexual Coloradans. The Amendment provided:

“Neither the state of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of, or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be in all respects self-executing.”<sup>2</sup>

Amendment 2 would have rendered unconstitutional municipal ordinances already adopted in Aspen, Boulder and Denver prohibiting such discrimination, but it was enjoined pending the outcome of a litigation challenge. In *Romer v. Evans*,<sup>3</sup> the U.S. Supreme Court held Amendment 2 unconstitutional as a violation of the Equal Protection Clause of the Fourteenth Amendment. Writing for the Court, Justice Kennedy observed that, “the resulting disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence.”<sup>4</sup>

Shortly after the *Romer* decision, El Paso County Commissioner Betty Beedy claimed on ABC’s “The View” that since you cannot “see” sexual orientation, gays cannot be discriminated against and therefore do not need legal protections against discrimination.<sup>5</sup>

In conjunction with Amendment 2 and the other legislative ballot proposals of that year, the state prepared “The Report on Ballot Proposals of the Legislative Council of Colorado General Assembly, An Analysis of 1992 Ballot Proposals”<sup>6</sup> (“Report”) to

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<sup>1</sup> Colo. Const., Art. II, § 30b (1993).

<sup>2</sup> *Id.*

<sup>3</sup> 517 U.S. 620 (1996).

<sup>4</sup> *Id.*

<sup>5</sup> PEOPLE FOR THE AMERICAN WAY FOUNDATION, HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY 98 (1999 ed.).

<sup>6</sup> RESEARCH PUBL. NO. 369, 9-12 (1992).

provide a survey of the law on sexual orientation discrimination and policies existing as of 1992. While the Report did not take any positions, its findings were not supportive of Amendment 2.

According to the Report:

“Discussions with public agencies which maintain records on such discrimination complaints reveal that these individuals have been found to experience discrimination in access to employment, housing, military service, commercial space, public accommodations, health care, and educational facilities on college campuses. For example, of the 50 complaints reported to the Denver Agency for Human Rights and Community Relations in 1991, twenty-three were incidents of discrimination based on sexual orientation. Approximately 61 percent of these reports dealt with employment discrimination. Since 1988, the Boulder Office of Human Rights has investigated ten incidents of discrimination based on sexual orientation. Four of the No Protected Status complaints lacked sufficient evidence to be considered discrimination based on sexual orientation. It is generally recognized that discrimination complaints often go unreported because individuals fear the repercussions and further victimization associated with disclosure of their sexual orientation.”<sup>7</sup>

The Report went on to note that the state of the law in Colorado and the United States in 1992 was a “patchwork of federal, state, and local laws, regulations, and policies.”<sup>8</sup> Specific to Colorado were local ordinances in Aspen, Boulder and Denver, which protected “individuals from job, housing, and public accommodations discrimination when that discrimination is based solely on sexual orientation.”<sup>9</sup> The Report concluded that none of these ordinances afforded affirmative action or minority status, but rather that “these cities have determined that discrimination based on sexual orientation was a sufficient problem to warrant protections against discrimination in the areas of employment, housing, and public accommodations.”<sup>10</sup>

As of 1992, the only statewide antidiscrimination policy stemmed from an executive order and from the state insurance code. The Governor’s Executive Order in 1990 prohibited “discrimination based on sexual orientation in the hiring, promotion, and firing of classified and exempt state employees.”<sup>11</sup> This order broadly covered state agencies, including education and university education as well as other public agencies. According to the Report, the “only Colorado statute offering protection based on sexual

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<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

orientation prohibits health insurance companies from determining insurability based on an individual's sexual orientation.”<sup>12</sup>

The Report also mentioned that, “legislation was defeated in 1991 which would have expanded Colorado's ethnic intimidation law to include the right of every person, regardless of age, handicapping condition or disability, or sexual orientation, to be protected from harassment.”<sup>13</sup> Similar legislation would be defeated through 1999. There were several laws on hate crimes, civil rights and same sex marriage proposed during the period 1993-1999 as well, all of which were not passed or enacted.<sup>14</sup>

Recently, Colorado adopted the Colorado Antidiscrimination Act (2007), the current state law banning discrimination in employment, housing, public accommodations, and advertising, including on the bases of sexual orientation and gender identity. Formerly, discrimination on the basis of sexual orientation could only be claimed by alleging discrimination for engaging in any lawful activity off the employer's premises outside of working hours.

Documented examples of employment discrimination by state and local government employers against LGBT people in Colorado include:

- A professor at a Colorado state university who in 2007 reported being harassed on the job, denied promotion, and stripped of his courses because he was gay. The professor had been teaching for more than two decades and had long been open about being gay. He began to experience problems when the former provost of the university retired. Thereafter, the dean began making derogatory comments about him in meetings, including referring to him as a girl. He was then passed over as chair of his department in favor of a heterosexual woman with much less tenure, even though he previously had been the chair of a related department. The professor was also stripped of graduate courses that he taught for years and was given only undergraduate courses to teach, based on a false claim that he did not turn his lesson plans on time.<sup>15</sup>
- An employee of the Colorado Division of Youth Services who was harassed by co-workers based on his perceived sexual orientation. Doerr's co-workers subjected him to derogatory comments and gestures because they believed him to be a gay man. An internal investigation uncovered a pattern of inappropriate conduct towards Doerr that precipitated a directive to cease all conversations regarding an employee's sexual orientation in the workplace.<sup>16</sup> Doerr v. Colorado Division of Youth Services, 2004 WL 838197 (10th Cir. Apr. 20, 2004) The court dismissed his constitutional and Title VII claims after he was later terminated

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<sup>12</sup>*Id.*

<sup>13</sup>*Id.*

<sup>14</sup>*Id.*

<sup>15</sup> 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).

because he failed to exhaust administrative remedies on time and because the court found that his allegations that defendants had not adequately investigated and addressed his complaints was not supported by the record.<sup>17</sup>

- A female nurse employed by the County of Elbert, Colorado who alleged that she was discharged from her employment based upon her sexual orientation, age, race, sex and handicapped status, thereby violating her constitutionally protected rights of due process and equal protection. At trial, a jury returned a verdict for the nurse on her claim that the County had violated her due process rights by failing to provide her with an adequate opportunity to be heard, but not on any of her other counts and awarded attorneys fees to the county. Langseth v. County of Elbert, 916 P.2d 655 (Colo. App. 1996). On appeal, the court reversed the judgment awarding attorney’s fees to the defendants but affirmed in all other respects.<sup>18</sup>
- A librarian at the University of Colorado Law School who was forced out of her job after publishing an article about Amendment 2 in the newsletter of the American Association of Law Libraries. In 1994, the ACLU of Colorado announced that it settled the case. Under the settlement, the librarian received \$25,000, the reprimand was removed from her file, and she received a favorable recommendation letter for use in her job search.<sup>19</sup>
- An employee of the Denver Department of Health and Hospitals who was denied sick leave to care for his same-sex domestic partner. The Colorado Court of Appeals held that the denial of “family sick leave” did not violate the State Career Service Authority Rule 19-10(c) forbidding discrimination in state employment. Ross v. Denver Dept. of Health and Hospitals, 883 P.2d 516, 18 Empl. Benefits Cases (BNA), 1434 (Colo. Ct. App. 1994); *reh’g denied*, May 12, 1994.
- A gay public high school teacher who, in 2000, testified during a school board meeting that he was subjected to anti-gay taunts while teaching at Denver’s high schools.<sup>20</sup>
- A lesbian police officer, with a long and distinguished record of reliable service with the Denver Police Department, who for more than four years struggled to keep her job and withstand insults and constant surveillance. As a member of the department’s school resource program, the officer taught public safety to local public school students. She was consistently praised by the schools where she taught and was promoted. One day in 1986, she bought a few books in a lesbian bookstore, and soon afterward, her supervisors transferred her to street patrol.

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<sup>17</sup> *Doerr v. Colo. Div. of Youth Serv.*, 2004 WL 838197 (10th Cir. Apr. 20, 2004).

<sup>18</sup> 916 P.2d 655 (Colo. App. 1996).

<sup>19</sup> Lesbian & Gay L. Notes (July/August 1994), available at <http://www.qrd.org/qrd/usa/legal/lgln/1994/07.and.08.94>.

<sup>20</sup> PEOPLE FOR THE AMERICAN WAY FOUNDATION, *HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY* 123 (2000 ed.).

They told her that they had “damaging information” about her that could impair her integrity on the job. During roll call, other police officers began to make disparaging comments about lesbians. While on street patrol, her calls for backup often went unanswered, leaving her in serious danger. When she reported these incidents to her supervisors, they responded by stationing unmarked police cars at her home and the homes of friends she visited. When she consulted outside agencies, she was told that the law gave little protection against harassment based on sexual orientation and the local American Civil Liberties Union would not take her case. Finally, Denver enacted an anti-discrimination ordinance, and the police department approved new anti-discrimination and anti-harassment guidelines in 1990.<sup>21</sup>

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<sup>21</sup> Human Rights Campaign, *Documenting Discrimination: A special report from the Human Rights Campaign featuring cases of discrimination based on sexual orientation in America’s workplaces* (2001), available at <http://www.hrc.org/documents/documentingdiscrimination.pdf>.

## II. SEXUAL ORIENTATION & GENDER IDENTITY EMPLOYMENT LAW

### A. State-Wide Employment Statutes

#### 1. Scope of Statute

The Colorado Antidiscrimination Act<sup>22</sup> prohibits employment discrimination in the state, on many bases, including “sexual orientation,” which is defined to include “transgender status.” The statute covers discrimination based on actual or perceived sexual orientation. It applies to anyone employing persons within the state, the state itself, and any of its political subdivisions, commissions, departments, institutions or school districts, as well as those religious organizations or associations which are supported in whole or in part by taxes or public borrowing.

The relevant language of the statute provides, “it is unlawful to refuse to hire, discharge, promote or demote, to harass during the course of employment, or to discriminate in matters of compensation against any person otherwise qualified because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry.”

Under the statute, it is a discriminatory or unfair employment practice for an employer to terminate an employee for engaging in any lawful activity off the employer’s premises outside of working hours, unless the restriction relates to a bona fide occupational requirement, or is reasonably and rationally related to the employment.<sup>23</sup>

It is also unlawful under the statute to:

(a) classify any job, have separate lines of progression or maintain seniority lists on the basis of sexual orientation;<sup>24</sup>

(b) conduct any pre-employment inquiry related to sexual orientation, or any wage schedule or wages based on sexual orientation<sup>25</sup>; and

(c) advertise indicating a preference, limitation, specification, or discrimination based on sexual orientation, unless it is a bona fide occupational qualification.<sup>26</sup>

In order for the challenged conduct to be actionable, the employee must file a complaint at the workplace, and the employer must fail to initiate a reasonable investigation and take prompt remedial action.<sup>27</sup>

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<sup>22</sup> COLO. REV. STAT. §§ 24-34- 401-06 (2008).

<sup>23</sup> COLO. REV. STAT. § 24-34-402.5(1) (2008).

<sup>24</sup> 3 COLO. CODE REG. §708-1, Rule 81.3 (2007).

<sup>25</sup> 3 COLO. CODE REG. §708-1, Rule 81.5 (2007).

<sup>26</sup> 3 COLO. CODE REG. §708-1, Rule 81.10 (2007).

<sup>27</sup> COLO. REV. STAT. § 24-34-402 (2007); 3 COLO. CODE REG. §708-1, Rule 85.0 (2007).

Religious organizations or associations not supported by public funds are not covered.<sup>28</sup> There are also exceptions for bona fide occupational qualifications, among others. Employees may be required to conform to reasonable dress codes, so long as the policy is consistently applied,<sup>29</sup> but if there is a gender-specific dress code, then the employer must allow the employees to follow it in a manner consistent with their gender identity.<sup>30</sup>

## 2. Enforcement and Remedies

The complainant (or through an attorney) must make a written charge with the Division of Civil Rights (DORA) and notify the respondent.<sup>31</sup> Charges must be filed within 6 months of the alleged violation.<sup>32</sup> The DORA will investigate to determine probable cause. If probable cause is found, then the DORA will attempt to resolve the matter. After the administrative remedies are exhausted, including when probable cause is not found, the complainant may file a civil action.

The DORA may order the employer to cease and desist and take any other action it deems appropriate, including ordering back pay, hiring, reinstatement or upgrading of employees, restoration of membership in a labor organization, admission into an apprentice program, etc.<sup>33</sup>

Evidence of discrimination against individuals because of their sexual orientation helps to justify the need for and passage of the Colorado Antidiscrimination Act. The GLBT Community Center of Colorado reports that, as of the date of the publication of their annual report, 43 cases of anti-LGBT discrimination in employment have been filed since the law became effective as of August, 2007.<sup>34</sup>

The prior version of the statute<sup>35</sup> prohibited employment decisions based on lawful activities outside of work place and hours, and did not expressly cover sexual orientation discrimination.<sup>36</sup>

### B. Attempts to Enact State Legislation

None.

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

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<sup>28</sup> COLO. REV. STAT. § 24-34-402 (2007).

<sup>29</sup> *Id.*

<sup>30</sup> See *infra* Section III.A.2.

<sup>31</sup> COLO. REV. STAT. § 24-34-306(1) (2007).

<sup>32</sup> COLO. REV. STAT. § 24-34-403 (1989).

<sup>33</sup> COLO. REV. STAT. § 24-34-403.

<sup>34</sup> GLBT CMTY. CENTER OF COLO. ANNUAL REPORT 6 (2008).

<sup>35</sup> COLO. REV. STAT. § 24-34-401.5(1) (Supp. 1996).

<sup>36</sup> See *infra* Section III.A.2.



1. **Executive Orders**

A 1990 Executive Order<sup>37</sup> prohibited employment discrimination for all state employees on the basis of sexual orientation. Amendment 2 would have prohibited this policy, had it been implemented.

2. **State Government Personnel Regulations**

None.

3. **Attorney General Opinions**

From 1984 to 2008, there were no Colorado Attorney General Opinions dealing with sexual orientation, HIV/AIDS, or discrimination other than age discrimination and discrimination against out of state students.

D. **Local Legislation**

1. **City of Denver**

Denver's Municipal Code prohibits sexual orientation discrimination, providing: "it shall be a discriminatory practice to do any of the following acts based upon the race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability."<sup>38</sup>

2. **City of Aspen**

The Aspen Municipal Code<sup>39</sup> prohibits discrimination in employment, housing and public accommodations on the basis of sexual orientation.

3. **City of Boulder**

The Boulder Code<sup>40</sup> prohibits discrimination in employment, housing and public accommodations on the basis of sexual orientation.

E. **Occupational Licensing Requirements**

None.

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<sup>37</sup> Executive Order No. D0035 (Dec. 10, 1990).

<sup>38</sup> DENVER MUN. CODE Art. IV, §28-93-(a)(1) (1991).

<sup>39</sup> ASPEN MUN. CODE §13-98 (1977).

<sup>40</sup> BOULDER REV. CODE §§12-1-2 -4 (1987).

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

#### A. Case Law

##### 1. State & Local Government Employees

Doerr v. Colorado Division of Youth Services, 2004 WL 838197 (10th Cir. Apr. 20, 2004).

Doerr brought suit against his state agency employer and individual defendants under Title VII, the Equal Protection Clause, the Due Process Clause, and the First Amendment because of harassment he endured based on his perceived sexual orientation. Doerr's co-workers subjected him to derogatory comments and gestures because they believed him to be a gay man. An internal investigation uncovered a pattern of inappropriate conduct towards Doerr that precipitated a directive to cease all conversations regarding an employee's sexual orientation in the workplace. After the CDYS terminated Doerr, he filed suit but his claims were dismissed, in part because he failed to exhaust his administrative remedies as required by Title VII. The Tenth Circuit panel upheld the dismissal.<sup>41</sup>

Romer v. Evans, 517 U.S. 620 (1996).

This landmark case was brought in response to Amendment 2 to the Colorado Constitution.<sup>42</sup> A temporary injunction was granted on January 15, 1993, preventing Amendment 2 from becoming part of the Colorado Constitution because of its possible unconstitutionality. Before trial, the state appealed the injunction to the Colorado Supreme Court, which sustained the original injunction on July 19, 1993, finding that Amendment 2 violated the equal protection clause of the Fourteenth Amendment of the United States Constitution by denying equal rights in the normal political process because, if Amendment 2 were in force, the sole political avenue by which this class could seek such protection would be through the constitutional amendment process. The court applied strict scrutiny to the Amendment because it impeded access to the political process.

The Supreme Court of the United States ruled that Amendment 2 was unconstitutional. Justice Kennedy wrote the majority opinion, joined by Justices Stevens, O'Connor, Souter, Ginsburg, and Breyer.<sup>43</sup> The Court rejected the argument that Amendment 2 merely prevented special rights, and found that it imposed "a special disability upon those persons alone. Homosexuals are forbidden the safeguards that others enjoy and may seek without constraint," and the Court concluded that antidiscrimination laws are not special rights because they relate to fundamental rights enjoyed by all citizens. The Court did not apply strict scrutiny but rather held that

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<sup>41</sup> *Doerr v. Colorado Division of Youth Services*, 2004 WL 838197 (10th Cir. Apr. 20, 2004).

<sup>42</sup> *Romer*, 517 U.S. at 620.

<sup>43</sup> *Id.*

Amendment 2 “lacks a rational relationship to legitimate state interests.” The Court continued that Amendment 2 “is at once too narrow and too broad. It identifies persons by a single trait and then denies them protection across the board. The resulting disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence.” However, Justice Kennedy did not extensively analyze the claims put forward that were rejected, asserting that “it is not within our constitutional tradition to enact laws of this sort.”

Langseth v. County of Elbert, 916 P.2d 655 (Colo. App. 1996).

In *Langseth*, a female nurse employed by the county filed suit in a Colorado court against the County of Elbert, Colorado, alleging that she was discharged from her employment based upon her sexual orientation, age, race, sex and handicapped status, thereby violating her constitutionally protected rights of due process and equal protection.

At trial, a jury returned a verdict against Langseth on all counts except her 42 U.S.C. § 1983 claim that the County had violated her due process right by failing to provide her with an adequate opportunity to be heard. However, the court awarded attorney’s fees to the defendants.

On appeal, the court considered the issue of whether Langseth, by virtue of her favorable due process judgment, could claim “prevailing party” status for the purpose of recovering attorney’s fees on civil rights claims. The court reversed the judgment awarding attorney’s fees to the defendants but affirmed in all other respects.<sup>44</sup>

Ross v. Denver Dept. of Health and Hospitals, 883 P.2d 516, 18 Empl. Benefits Cases (BNA), 1434 (Colo. Ct. App. 1994); *reh’g denied*, May 12, 1994.

In *Ross v. Denver Dept. of Health and Hospitals*,<sup>45</sup> the Colorado Court of Appeals held that the denial of “family sick leave” to an employee to care for his same-sex domestic partner did not violate the State Career Service Authority Rule 19-10(c) forbidding discrimination in state employment.

## 2. Private Employers

James Miller v. AIMCO (2006).

In *Richard James Miller v. AIMCO*, a gay employee of AIMCO, an apartment landlord, claimed sexual orientation discrimination based on a work environment hostile to gay employees. When he complained to management, he had his hours cut, pay reduced, and the rent on his apartment increased, forcing him to vacate. The outcome of this case could not be ascertained.

In re Dower v. King Soopers, Inc. (2005).

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<sup>44</sup> 916 P.2d 655 (Colo. App. 1996).

<sup>45</sup> 883 P.2d 516, 18 Empl. Benefits Cases (BNA), 1434 (Colo. Ct. App. 1994); *reh’g denied*, May 12, 1994.

In *In re Dower v. King Soopers, Inc.*, a long-time pharmacist employee of King Soopers decided to change his gender, but was informed that he would be required to comply with the male dress code and would not be permitted into the pharmacy if he appeared in female dress. Dower interpreted this to mean that he would be fired, and so did not do so. This prevented him from proceeding with the one year period of publicly living as a woman that is required before sexual reassignment surgery. In finding probable cause, the Denver Anti-Discrimination Office of the Agency for Human Rights and Community Relations found that this constituted unlawful employment discrimination. John C. Hummel of The Center identified this as the first time an employer was subjected to an unlawful discrimination violation related to transsexual employees.<sup>46</sup>

Bryce v. Episcopal Church of Colo., 289 F.3d 648 (10th Cir. 2002).

In this Colorado employment case, Bryce, a lesbian church employee, and Reverend Sara Smith, her partner, asserted a sexual harassment claim against the church.<sup>47</sup> The Court dismissed the action on the basis of the church autonomy doctrine, that is, courts have “essentially no role in determining ecclesiastical questions, or religious doctrine and practice.”<sup>48</sup> The court found that the selection of youth minister was “rooted in religious belief.”<sup>49</sup>

Ozer v. Borquez, 940 P.2d 371 (Colo. 1997).

This Colorado employment case involved the termination of Robert Borquez, a gay associate in the Ozer & Mullen, P.C. law firm.<sup>50</sup> Borquez had kept his sexual orientation confidential until his partner was diagnosed with AIDS, at which point he informed Ozer because he did not believe he was in a mental state that day to handle the matters on which he was working, asking Ozer to keep his disclosure in confidence. Ozer informed the other partners, and Borquez was terminated only days after receiving his third merit-based salary increase. Ozer contended that the decision to fire Borquez had been made due to the law firm’s poor financial circumstances.<sup>51</sup>

Borquez claimed wrongful discharge and invasion of privacy. Borquez also alleged violation of the Denver Revised Municipal Code making it unlawful for a private employer in Denver County to discharge an employee because of homosexuality.<sup>52</sup> The jury awarded compensatory damages for the wrongful discharge, and compensatory and punitive damages on the invasion of privacy claim. The court of appeals affirmed.<sup>53</sup> The Colorado Supreme Court held that the jury verdict did not support the finding because the

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<sup>46</sup> GLBT Cmty. Center, Legal Initiatives Project, <http://bit.ly/2QTfGI> (last visited Sept. 5, 2009).

<sup>47</sup> *Bryce v. Episcopal Church of Colo.*, 289 F.3d 648 (10th Cir. 2002).

<sup>48</sup> *Id.* (citing *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116-17 (1952)).

<sup>49</sup> *Id.*

<sup>50</sup> *Ozer v. Borquez*, 940 P.2d 371 (Colo. 1997).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

jury instructions on both the wrongful discharge and the invasion of property claims were improper, and remanded the case.<sup>54</sup>

Phelps v. Field Real Estate Co., 991 F.2d 645 (10th Cir. 1993).

An HIV positive employee without symptoms was discharged allegedly due to poor work performance and company reorganization. Phelps was the head of a division of a real estate company. His division had not performed well since he came into that role, at least partly due to market conditions. Two years before his firing, staff members had written a note saying that they were uncomfortable with Phelps' condition, which was discussed at a 1988 board meeting. Phelps filed suit claiming ERISA violations and handicap bias under the Colorado Antidiscrimination Act. Both claims were dismissed because the trial court found that there had been a business judgment-based reason for his firing. The Court of Appeal affirmed.

**B. Administrative Complaints**

All complaints in the Colorado agencies are confidential.

**C. Other Documented Examples of Discrimination**

Colorado State University

In 2007, a professor at state university for more than two decades, who had long been open about his being gay, began to experience problems when the former provost of the university retired. The dean thereafter began making derogatory comments about the professor in meetings, including referring to him as a girl. The professor was then passed over as chair of his department in favor of a heterosexual woman with much less tenure, even though he previously had been the chair of a related department. The professor was also been stripped of graduate courses that he taught for years and was given only undergraduate courses to teach, based on a false claim that he did not turn his lesson plans on time.<sup>55</sup>

University of Colorado Law School

In 1994, the ACLU of Colorado announced that it settled a case where a librarian at the University of Colorado Law School was forced out of her job after publishing an article about Amendment 2 in the newsletter of the American Association of Law Libraries. Stacy Dorian, a lesbian, had permission from her supervisor to do the article, but allegedly not to publish her e-mail address at the university for those interested in responding to the article. Under the settlement, Dorian receives \$25,000, the reprimand

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<sup>54</sup> *Id.*

<sup>55</sup> 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).

is removed from her file, and she gets a favorable recommendation letter for use in her job search.<sup>56</sup>

### Denver Public School

During a school board meeting on the proposal to amend the Denver Public School's non-discrimination and anti-harassment codes, which cover both students & teachers, to include sexual orientation and gender identity as protected categories a gay teacher testified to the anti-gay taunts he received in Denver's high schools.<sup>57</sup>

### Denver Police Department

Angela Romero, a lesbian police officer, had a long and distinguished record of reliable service with the Denver Police Department. As a member of the department's school resource program, she taught public safety to local public school students. Romero was consistently praised by the schools where she taught and was promoted. She never discussed her sexual orientation with any other police officers. One day in 1986, Romero bought a few books in a lesbian bookstore, and soon afterward, her supervisors transferred her to street patrol. They told her that they had "damaging information" about her that could impair her integrity on the job. During roll call, other police officers began to make disparaging comments about lesbians. While on street patrol, Romero's calls for backup often went unanswered, leaving her in serious danger. When Romero reported these incidents to her supervisors, they responded by stationing unmarked police cars at her home and the homes of friends she visited. When Romero consulted outside agencies, she was told that the law gave little protection against harassment based on sexual orientation. The local American Civil Liberties Union would not take her case. Romero spent more than four years struggling to keep her job and withstand the insults and constant surveillance. Finally, in 1990, Denver enacted an anti-discrimination ordinance, and the police department approved new anti-discrimination and anti-harassment guidelines.<sup>58</sup>

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<sup>56</sup> Lesbian & Gay L. Notes (July/August 1994), *available at* <http://www.qrd.org/qrd/usa/legal/lgln/1994/07.and.08.94>.

<sup>57</sup> PEOPLE FOR THE AMERICAN WAY FOUNDATION, *HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY* 123 (2000 ed.).

<sup>58</sup> Human Rights Campaign, *Documenting Discrimination: A special report from the Human Rights Campaign featuring cases of discrimination based on sexual orientation in America's workplaces* (2001), *available at* <http://www.hrc.org/documents/documentingdiscrimination.pdf>.

#### **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**

The Colorado Antidiscrimination Act, in addition to employment discrimination, prohibits discrimination in housing,<sup>59</sup> public accommodation,<sup>60</sup> and advertising,<sup>61</sup> as do the local ordinances in Aspen, Boulder, and Denver, to the extent they are still in effect.

##### **B. Health Care**

Provisions in the Colorado Insurance Code<sup>62</sup> prohibit health insurance providers from determining insurability and/or premiums based on the sexual orientation of the applicant, insured or beneficiary.

##### **C. Parenting**

The Parent Adoption Bill (2007) allows gay couples to adopt children together. Previously, gay individuals could adopt children, but not same-sex couples, whereas married couples could adopt each other's children as stepparents.

##### **D. Recognition of Same-Sex Couples**

###### **1. Marriage, Civil Unions & Domestic Partnership**

Amendment 43 (2006) amended Article II of the Colorado Constitution to define "marriage" as between one man and one woman in Colorado.<sup>63</sup>

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<sup>59</sup> COLO. REV. STAT. § 24-34-501. I'M NOT SURE WHAT THESE SYMBOLS ARE SUPPOSED TO BE

<sup>60</sup> COLO. REV. STAT. § 24-34-601-605.

<sup>61</sup> COLO. REV. STAT. § 24-34-701-707.

<sup>62</sup> COLO. REV. STAT. § 10-3-1104(1)(f)(VI)(A & B) (2008).

<sup>63</sup> Colo. Const. Art. II, Amend. 43 (2006), *available at* <http://bit.ly/1bI09h>.