

Combating Discrimination Against People with HIV/AIDS

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DISCLOSURES

Presenters have no financial interests to disclose.

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LEARNING OBJECTIVES

At the conclusion of this activity, the participant will be able to:

1. Identify illegal discrimination against persons with HIV/AIDS in employment, housing, and the provision of public and private services.
 2. Identify and describe the federal civil rights laws that protect persons with HIV/AIDS from discrimination.
 3. File (or help someone else file) a complaint of HIV/AIDS-based discrimination with the appropriate federal agency.
 4. Describe the DOJ's role in addressing other types of discrimination experienced by the LGBTI community.
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<http://ryanwhite.cds.pesgce.com>



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National HIV/AIDS Strategy

July 2010 | aids.gov
July 2015 Update

Goals:

1. Reducing New HIV Infections
2. Increasing Access to Care and Improving Health Outcomes for People Living with HIV
3. Reducing HIV-Related Health Disparities
 - Reducing ***stigma and discrimination*** against people living with HIV



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1. Educate target populations through outreach
 2. Prioritize investigations of HIV discrimination
 3. Examine and report on HIV-specific sentencing laws and implications for people living with HIV
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Reform of HIV-Specific Criminal Laws

- March 2014 – Wrote a journal article with the CDC examining state and local laws that criminalize potential HIV exposure.
 - July 2014 – Released a Best Practices Guide recommending that any such laws reflect the contemporary understanding of HIV, including transmission routes and associated benefits of treatment.
 - Both available at www.ada.gov/aids
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The Americans with Disabilities Act

- Protects individuals with Disabilities in:
 - Employment
 - Public Services (state/local gov't)
 - Public Accommodations (Private providers of goods and services)
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Who does the ADA protect?

- Someone “substantially limited” in a “major life activity”
 - Now includes the operation of a “major bodily function,” including functions of the immune system
→ HIV/AIDS
- Someone regarded as having a disability
- Someone associated with a person with a disability

These protections are NOT limited to U.S. citizens.



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EMPLOYMENT

The ADA Employment Provisions Do Not Apply to:

- Private employers with <15 employees
 - Private Membership Clubs
 - Native American Reservations
 - Churches and Parochial Schools
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The ADA Covers:

- All employment practices, including:
 - Recruitment, advertising, applying, hiring
 - Compensation, promotion & advancement
 - Terms, conditions & privileges of employment, (e.g., leave & fringe benefits, training)
 - Tenure, layoffs, firing
 - Failure to provide reasonable accommodations
-



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What is a Reasonable Accommodation?

- A feasible change in the job environment or in performance of job duties to enable a *qualified individual with a disability* to perform the *essential functions*
 - Only required for **known** limitations: Employee must ask, BUT no “magic words” or formal written request required
 - Employer may request documentary proof of *disability* and of *functional limitation*
 - Employer may choose the less expensive or less burdensome accommodation, as long as it is effective



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When Can An Employer Inquire About a Disability?

- Before making a job offer: **Never**
- After making a conditional offer and before an individual starts: **Sometimes**
 - if all candidates are required to take the same medical exam and/or respond to the same inquiries
- For employees: **Only if:**
 - Medical exams or inquires are *job-related* and *consistent with business necessity*



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Confidentiality

- Information from all medical exams and inquiries must be kept apart from general personnel files as a separate, confidential medical record, available only under limited conditions.
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Retaliation

- It is illegal for an employer to fire, demote, harass or otherwise “retaliate” against an individual for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination.
 - The ADA also protects individuals from coercion, intimidation, threat, harassment, or interference in the exercise of their rights (or encouragement of someone else exercising their rights) granted by the ADA.
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Enforcement & Remedies

Goal is to make individual whole:

- Back pay, front pay
 - Restored benefits
 - Reasonable accommodations
 - Compensatory damages (for intentional discrimination)
 - Reinstatement
-



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Filing a Complaint

Equal Employment Opportunity Commission

- www.eeoc.gov | info@eeoc.gov
 - 1-800-669-4000 | 1-800-669-6820 (TTY)
 - 53 field offices –
 - Washington, DC: 131 M Street, NE, Fourth Floor
 - Employee often has only 180 days to file
 - (300 days if state has parallel statute)
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Employment Resources

U.S. Department of Labor,
Office of Disability Employment Policy

- *Getting to Work: An Online Training Curriculum for HIV/AIDS Service Providers and Housing Providers*
- A Resource Guide for Individuals Seeking to Enter or Reenter the Workforce

<http://www.dol.gov/odep/topics/HIVAIDS/>



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State and Local Government Services

- Police Departments
 - Probation Programs
 - Jails and Prisons
 - County Hospital
 - Public Libraries
 - Public Schools
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Public Accommodations – Private Providers of Goods and Services

- Restaurants, hotels, theaters, libraries
 - Doctors' offices, dentists' offices, hospitals
 - Retail stores, health clubs, museums
 - Private schools and daycare centers
 - *NOT private clubs or religious organizations*
-



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Recent DOJ enforcement actions

- ✓ Milton Hershey School – refused to consider a child for enrollment after his mother disclosed that he has HIV
 - School was required to adopt a policy prohibiting discrimination and requiring equal opportunity for students with disabilities in the school’s programs and services
 - School was also required to provide training to staff and administrators on the requirements of the ADA
 - \$700,000 damages | \$15,000 civil penalty

For more information, visit: www.ada.gov/aids



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Medical-Related Settings

- Current DOJ Investigations include:
Medical Spa | Nursing Facility
Plastic Surgeon
 - Use of Universal Precautions
 - Healthcare providers may not refer an individual with HIV to another provider or “specialist,” unless they would refer any individual seeking or requiring the same treatment or services.
-



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Discrimination in health care

- ✓ Pain Management Care (Indiana)
 - After reviewing medical records, provider left a voicemail for prospective patient stating that they would not treat him “due to the risks involved with needles and blood due to [his] condition of being HIV positive”
- ✓ Genesis Healthcare System (Ohio)
 - When a patient called looking for a general primary care provider, the physician instructed her staff to tell the individual they do not take individuals with HIV

For more information, visit: www.ada.gov/aids



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Discrimination in health care (cont.)

- ✓ **Bariatric Clinics (Pennsylvania; Michigan)**
 - Three different patients were turned away from weightloss surgery because of clinic policies not to take patients with HIV
- ✓ **Castlewood Treatment Center (Missouri)**
 - An eating disorder clinic refused to admit a woman, because of her HIV, but repeatedly led her to believe she would be admitted any day, while encouraging her to go elsewhere. During this delay of up to seven months, her health declined considerably.
 - \$115,000 damages | \$25,000 civil penalty

For more information, visit: www.ada.gov/aids



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Settlements & Consent Decrees

- Injunctive Relief
 - Training
 - Treatment
 - Reporting
 - Compensatory Damages
 - Actual damages
 - Pain & suffering
 - Civil Penalty (for private entities)
-



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To file an ADA complaint

- Provide us with the details of the discrimination and mail, fax, or use our online complaint form:

U.S. Department of Justice
Disability Rights Section – NYA
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Fax: (202) 307-1197

www.ADA.gov

- For more information, please call the ADA Information Line:
800-514-0301 (voice) | 800-514-0383 (TTY)
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Information and Technical Assistance on the Americans with Disabilities Act

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Fighting Discrimination Against People with HIV/AIDS

The Americans with Disabilities Act (ADA) gives Federal civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications.

An individual is considered to have a "disability" if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. Persons with HIV disease, either symptomatic or asymptomatic, have physical impairments that substantially limit one or more major life activities and thus are protected by the ADA.

Persons who are discriminated against because they are regarded as being HIV-positive are also protected. For example, the ADA would protect a person who is denied an occupational license or admission to a school on the basis of a rumor or assumption that he has HIV or AIDS, even if he does not.

What's New?

[Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States](#) -- A journal article, co-authored by the Department of Justice and the Centers for Disease Control and Prevention



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Affordable Care Act, Section 1557

- Forbids discrimination on the basis of:
 - Disability
 - Race
 - Color
 - National origin
 - Sex (including gender identity)
 - In “any health program or activity” receiving any federal funding
-



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Section 1557 enforcement

- Section 1557 applies to:
 - Private insurers receiving any federal funding
 - Any insurance plan offered on an exchange
 - Plans administered by HHS
 - Enforcement:
 - Private litigation
 - Complaints with Department of Health and Human Services, Office of Human Rights
 - Can refer cases to DOJ to file a lawsuit
-



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Current Section 1557 actions

- NHeLP & AIDS Institute complaint with HHS OCR
 - Challenges insurers' higher pricing for drugs that treat HIV/AIDS, including generics
 - Doe v. Aetna, Doe v. Coventry
 - Challenges requirement to order HIV/AIDS drugs via mail, rather than at a pharmacy
 - Numerous actions re transgender care
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To file a Section 1557 complaint

- Download a complaint form or file online at <http://www.hhs.gov/civil-rights/filing-a-complaint/complaint-process/index.html>
 - Email complaint to OCRComplaint@hhs.gov
 - Mail a complaint to
Centralized Case Management Operations
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, D.C. 20201
-



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Fair Housing Act (FHA)

Prohibits housing discrimination on the basis of:

- race
 - color
 - religion
 - sex (including sexual harassment)
 - disability (including HIV/AIDS)
 - familial status
 - national origin
-



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Fair Housing Act – Dwellings

Prohibits discrimination in public and private “dwellings,” including:

- Houses, townhouses, apartments, condominiums, mobile homes, trailers
- Nursing homes and assisted living centers
- Group homes
- Student housing
- Homeless shelters*
- Vacation time shares*

** Courts differ on required lengths of stay*



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Fair Housing Act prohibits:

- Refusing to sell or rent after making a bona fide offer
 - Refusing to negotiate for sale of rental of dwelling
 - Otherwise making unavailable or denying a dwelling
 - Setting different terms, conditions, or privileges or providing different services or facilities
 - Making, printing, or publishing a statement or advertisement indicating a preference or limitation
-



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Fair Housing Act prohibits (cont'd):

- Falsely representing that a dwelling is unavailable
 - Refusing to make reasonable accommodations in rules or services for a person with a disability (including HIV/AIDS) to use the housing
 - Refusing to allow a person with a disability (including HIV/AIDS) to make reasonable modifications to his or her dwelling
 - Intimidating, threatening, or interfering with any person for exercising his or her housing rights
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Fair Housing Act – limitations

- Single family homes sold/rented by owner without real estate agent
- Owner-occupied buildings with no more than four units
- Dwellings owned by religious organizations or private clubs for their own members' use
- Housing for older persons (only where certain requirements are met)

These exemptions are construed narrowly and entail various requirements.



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Filing a Fair Housing Act complaint

The U.S. Department of Housing and Urban Development (HUD) handles **individual** complaints:

- Hotline: 800-669-9777 (voice); 800-927-9275 (TTY)
- Online: www.hud.gov → Topic Areas → Housing Discrimination
- Complaint must be filed within 1 year of the discriminatory act

DOJ's Housing and Civil Enforcement Section has jurisdiction over allegations of a “**pattern or practice**” of discrimination

- fairhousing@usdoj.gov
 - 800-896-7743 (voice); 202-305-1882 (TTY)
-



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Recent DOJ Enforcement Actions

- The Department filed *United States v. Wren* in the Northern District of Illinois, alleging that the owner and property manager of a two-unit building in Chicago violated the Fair Housing Act on the basis of disability and/or familial status by refusing to rent to a woman because she was HIV+ and/or because she had a minor child. The defendant also engaged in a pattern or practice of similar discrimination based on familial status.
 - The court found in favor of the United States, holding that the owner violated the Fair Housing Act when she asked the woman the nature of her disability, voiced disapproval of her HIV, and refused to rent to her because she has HIV. The court also awarded the woman \$10,000 in damages.
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Equal Credit Opportunity Act (ECOA)

- Prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, **receipt of public assistance**, and because a person has exercised rights under the Consumer Credit Protection Act
 - Covers any type of credit transaction, including mortgages, auto loans, and unsecured consumer loans
 - To file an individual lending discrimination complaint, contact the Consumer Financial Protection Bureau (CFPB)
 - www.consumerfinance.gov/fair-lending
 - 855-411-2372 (voice); 855-729-2372 (TTY)
 - DOJ has pattern or practice authority; bank regulators also refer matters to us
-



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Recent DOJ enforcement actions

- ✓ Gomez v. Quicken Loans (C.D. Cal.)
 - Lawsuit alleges that Quicken Loans improperly required loan applicants with disabilities—including the plaintiff, who has HIV/AIDS—to provide medical information about their disabilities as a condition of receiving a mortgage.
 - DOJ filed a Statement of Interest in the Ninth Circuit arguing that the district court erred in dismissing the plaintiff's FHA (disability) and ECOA (receipt of public assistance) claims. The appeal was heard on June 5, 2015.

For more information, visit: <http://www.justice.gov/crt/about/hce/caselist.php>



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Protecting the Rights of Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Individuals



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“Put simply, we understand that this nation’s ongoing fight for equality has many fronts, and we cannot afford to grow complacent when there is so much left to do. We must – and we will – keep working to bring about the more equal society, the more just future and the more perfect Union to which we must always aspire.”

—Attorney General Loretta Lynch, Lambda Legal Annual Reception, June 18, 2015



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The Division's LGBTI Working Group

- Advises the Division's leadership on legal and policy issues relating to sexual orientation, gender identity, and discrimination based on HIV/AIDS;
 - Explores how existing civil rights laws might address discrimination experienced by LGBTI individuals and identifies appropriate matters and cases for the Division;
 - Provides technical assistance and conducts outreach to other Department components, to other federal agencies, and to relevant stakeholders; and
 - Assists the Department with various diversity and education initiatives.
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Protecting the Rights of LGBTI Individuals

Fighting Sex Discrimination

- The Division enforces a number of federal laws that prohibit various forms of discrimination in areas covering education, employment, housing, police practices, and other Department-funded programs.
 - Although these laws do not explicitly refer to sexual orientation or gender identity, they prohibit **sex discrimination**.
 - **Sex discrimination**: protects all people (**including LGBTI people**) from gender-based discrimination
 - **Gender-based discrimination**: includes discrimination based on a person's **nonconformity with stereotypes** associated with that person's real or perceived gender and **gender identity**.
-



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Defending the Constitutional Rights of People in Institutions

Under the **Civil Rights of Institutionalized Persons Act (CRIPA)**, the Division has authority to remedy a pattern or practice that deprives people of their constitutional rights in state or local jails and prisons, juvenile detention centers, and other institutions. Examples of constitutional violations include:

- Failure of prison officials to protect LGBTI inmates from violence,
 - Denial of certain kinds of medical treatment to individuals diagnosed with gender dysphoria (formerly referred to as Gender Identity Disorder or GID), and
 - Unjustified segregation of LGBTI individuals.
-



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Recent DOJ Enforcement Actions

- **Pittsburgh, Pennsylvania:** In 2014, the Division resolved an investigation after criminal prosecutions were brought against officers for assaulting and sexually abusing vulnerable prisoners.
 - After 2 years of working cooperatively with DOJ, the jurisdiction had significantly improved security policies and practices, particularly aimed at protecting gay, transgender, and gender nonconforming prisoners from harm and discrimination.
 - These improvements included statewide reforms to oversight and accountability measures, abuse and misconduct investigations, prisoner screening procedures, and the grievance system.
 - ***Diamond v. Owens, et al:*** We filed a statement of interest in the Middle District of Georgia stating that the Eighth Amendment mandates individualized assessment and medical care for prisoners diagnosed with gender dysphoria.
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Prison Rape Elimination Act of 2003

- In 2012, the DOJ issued a final rule to prevent, detect, and respond to sexual abuse in confinement facilities, in accordance with the **Prison Rape Elimination Act of 2003 (PREA)**.
 - This landmark rule sets national standards for four categories of facilities: adult prisons and jails, lockups, community confinement facilities, and juvenile facilities.
 - This is the first-ever federal effort to set standards aimed at protecting inmates in all such facilities at the federal, state, and local levels.
 - The Division played a key role in developing this rule, including developing provisions **to protect LGBTI prisoners from abuse and discrimination**, and continues to be heavily involved in providing interpretive guidance, training PREA auditors, and providing frequent input on implementation.
-



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Prison Rape Elimination Act (cont.)

- The standards require, among other things, that:
 - Facilities must screen all individuals at admission and upon transfer to assess their risk of experiencing or perpetrating abuse, including **identifying those who may be at risk because of their transgender status, gender nonconformity, sexual orientation, or intersex condition.**
 - In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, **an agency may not simply assign the inmate to a facility based on genital status or assigned gender at birth.**
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Discrimination by Law Enforcement

The **Violent Crime Control and Law Enforcement Act of 1994**, 42 U.S.C. § 14141, allows the Division to review the practices of law enforcement agencies that may be violating people's federal rights.

- The Division can also use the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968, and Title VI of the Civil Rights Act of 1964, which forbid discrimination on the basis of race, color, sex, or national origin by agencies receiving federal funds.
 - The Division may act if we find a pattern or practice by a law enforcement agency that systemically violates people's rights.
 - The problems addressed in our cases have included use of excessive force; unlawful stops, searches, or arrests; and discriminatory policing.
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Recent DOJ Enforcement Actions

- **New Orleans, Louisiana:** In 2012, the Department entered into a consent decree with the City of New Orleans to resolve findings of a pattern or practice of constitutional violations by the New Orleans Police Department.
 - **Puerto Rico:** In 2013, the Department entered into a consent decree with the Commonwealth of Puerto Rico to resolve findings of a pattern or practice of constitutional violations by the Puerto Rico Police Department.
 - These agreements included provisions specifically aimed at eliminating policing practices that discriminate on the basis of sexual orientation, gender identity, or gender expression.
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Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009

- Criminalizes acts of violence that cause bodily injury (and attempts to do so with a dangerous weapon) when motivated by a person's actual or perceived:
 - Race, Color, Religion, National Origin; or
 - Gender, Sexual Orientation, Gender Identity, or Disability (IF the offense is in or affecting interstate/foreign commerce).

To report a hate crime, contact your local FBI field office, which can be found at: www.fbi.gov/contact-us/field/field-offices.



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Recent DOJ Prosecutions

- **Atlanta, Georgia:** A federal prosecution stemming from the assault of an Atlanta man resulted in the first conviction under the sexual orientation provision of the Shepard-Byrd Act.
 - In this case, two men pleaded guilty to assaulting a 20-year-old gay man as he left a grocery store in Atlanta's Pittsburgh neighborhood.
 - A video taken by the perpetrators and their friends caught both the physical violence and the use of anti-gay slurs.
 - The two men were sentenced to serve 10 months in prison on federal hate crimes charges and were sentenced to additional time on state charges.
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Shaping Federal Civil Rights Laws

- **Marriage equality:** On June 26, 2015, the Supreme Court struck down state bans on marriage equality in *Obergefell v. Hodges*.
 - The Department filed an amicus brief in the case urging the Supreme Court to strike down the bans.
 - The Department argued, and the Supreme Court agreed, that the bans violated the protected dignity of same-sex couples.
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