"Our Militancy is in Our Openness": Gay Employment Rights Activism in California and the Question of Sexual Orientation in Sex Equality Law

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On Good Friday of 1973, members of San Francisco's homosexual community staged a public demonstration amidst the skyscrapers in the business district.[1] Shen Hayes, described as a "frail nineteen-year-old," claimed to embody the suffering of the city's gay population. Hayes dragged a telephone pole "cross" on his back while throngs of protesters cheered and chanted. The local minister leading the action likened gays' lack of rights to murder, and the caption accompanying Hayes' photo in the newspaper claimed that he and other gay Californians had been

1. Title quote from Leo Laurence, co-chairman of the Committee for Homosexual Freedom, in "Pink Panthers Gay Revolution Toughening Up," *Berkeley Barb*, April 18–24, 1969, 11, folder 44, box 1, Charles Thorpe Papers, James C. Hormel Gay and Lesbian Center, San Francisco Public Library San Francisco, CA (hereafter CTP).

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"crucified."[2] Despite, despite the protest's religious intensity, its objective was secular. Activists had convened to oppose discrimination against those workers whom Pacific Telephone & Telegraph (PT&T) had labeled "manifest homosexuals": employees and job applicants who either claimed or *seemed* to be gay.[3]

Despite facing such activist pressure, PT&T did not recognize its workers' right to enact or imply a gay identity on the job. Whereas its parent AT&T had reached a landmark $38,000,000 settlement with women and minorities alleging systemic sex and race discrimination that same year, the company openly defended its policy of denying employment to workers who did not fit heterosexual norms.[4] A PT&T executive who witnessed the Good Friday demonstration said that the protestors he saw in "unisex dress…looked like maniacs." By contrast, he observed, the "more conventionally dressed participants…looked like human beings."[5] When questioned by the *Advocate*, PT&T official Jack Fiorito acknowledged that the company likely employed many gays who successfully hid their sexual orientation; PT&T's policy was aimed at overt expressions of homosexuality and gender nonconformity. He explained, "If an applicant tells me, 'I am a homosexual,' he is saying, 'Well, here I am. What are you going to do about it?' We judge that as a behavior characteristic that does not meet our employment standards. Why does he have to say that? We don't ask that question." Further, although the

2. "Ma Bell Zapped in San Francisco," *The Advocate,* May 23, 1973, 5.

3. Progressive religion was a crucial ideological engine of many social movements in the 1960s and 1970s. See David L. Chappell, *A Stone of Hope: Prophetic Religion and the Death of Jim Crow* (Chapel Hill: University of North Carolina Press, 2004); Edward E. Curtis, *Black Muslim Religion in the Nation of Islam, 1960–1975* (Chapel Hill: University of North Carolina Press, 2006); Charles Marsh, *The Beloved Community: How Faith Shapes Social Justice from the Civil Rights Movement to Today* (Basic Books: New York, 2006); Doug Rossinow, *The Politics of Authenticity: Liberalism, Christianity, and the New Left in America* (New York: Columbia University Press, 1998); and Johnny E. Williams, *African American Religion and the Civil Rights Movement in Arkansas* (Oxford, MS: University Press of Mississippi, 2003).

4. Lois Kathryn Herr, *Women, Power, and AT&T: Winning Rights in the Workplace* (Boston: Northeastern University Press, 2003); and Harvey D. Shapiro, "Women on the Line, Men at the Switchboard: Equal Employment Opportunity Comes to the Bell System," *New York Times Magazine* May 20, 1973, 280. Marjorie Stockford, *The Bell Women: The Story of the Landmark AT&T Sex Discrimination Case* (New Brunswick, NJ: Rutgers University Press, 2004), 189.

5. "Ma Bell Zapped." On debates about gender presentation within San Francisco's gay liberation movement at this time, see Betty Luther Hillman, "'The Most Profoundly Revolutionary Act a Homosexual Can Engage In': Drag and the Politics of Gender Presentation in the San Francisco Gay Liberation Movement, 1964–1972," *Journal of the History of Sexuality* 20 (2011): 153–181.

simultaneous women's lawsuit successfully pressured the company to stop treating sex as a relevant employment characteristic, PT&T officials claimed that the company would be similarly vulnerable to costly legal struggles if disgruntled customers encountered open or suspected gay workers. Fiorito explained, "All it takes is one screaming liberal to go to a customer's home and to in any way offend that customer and the lawsuits would never stop."[6] To PT&T, outward expressions of gender nonconformity and homosexuality signaled deviance, irresponsibility, political radicalism, and unfitness for employment, creating a legal liability for the company.[7]

The 1973 Good Friday protest against PT&T was a single moment in activists' decades-long campaign to expand gender and sexual diversity in the American workplace. Starting in the 1950s, homosexuals waged a multifront struggle for the right to express a gay identity at work. Their activism was coterminous with similar workplace rights campaigns fought by women and racial minorities; however, it necessarily diverged from those struggles. Women and minorities who faced discrimination because of race or biological sex won explicit new protections under Title VII in 1964. Therefore, challenging discrimination against women and minorities increasingly required leveraging existing abstract legal rights into the kinds of substantive gains women and minorities had won from AT&T.[8] By contrast, gay rights advocates had to convince courts, legislators, and employers of their right to be open and themselves. Further, whereas gay men and lesbians alike prioritized fighting workplace discrimination, they held different conceptions of the problem and its solution. The contemporary flourishing of lesbian feminism, lesbians' simultaneous experience of sexism and homophobia, and the

6. "Ma Bell Zapped."

7. At the time of the 1973 PT&T protest, many workplaces explicitly banned known or suspected homosexuals from employment. See Dudley Clendinen and Adam Nagourney, *Out for Good: The Struggle to Build a Gay Rights Movement in America* (New York: Simon and Schuster, 1999); John D'Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940–1970* (Chicago: University of Chicago Press, 1983); and David K. Johnson, *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* (Chicago: University of Chicago Press, 2006). To employers such as PT&T, gender nonconformity (i.e., men who were feminine or women who were masculine) and homosexuality were intertwined and, therefore, equally objectionable; specifically, one's outward gender nonconformity was thought to denote one's deviant internal sexual desires. Of course, gender and sexuality are not perfect proxies—many lesbian women are also feminine, for example. However, these activists saw the right not to conceal one's homosexuality and the right to express a range of gender characteristics as interrelated and equally significant objectives.

8. Herr, *Women, Power, and AT&T*; Shapiro, "Women on the Line, Men at the Switchboard."

diverse priorities of lesbians' law-oriented organizations put gay men at the front lines of struggles for workplace integration.[9]

In California, the epicenter of the gay employment rights movement, activists conceived of sexual orientation discrimination as a new legal and social harm. They created job training and placement services, built coalitions with labor unions, staged public protests to embarrass businesses and shape consumer behavior, lobbied government agencies to add sexual orientation clauses to existing workplace equality laws, and argued in court that the sex discrimination provisions of state and federal laws should be reinterpreted to include sexual orientation. Their fundamental claim was that a worker's gender and sexual orientation were irrelevant to his or her ability to perform a job, but that the freedom to signal those identities was an essential element of workplace equality.[10] Therefore, whereas gay rights activists sought the substantive equality—removal of barriers to jobs as well as more representation therein—pursued by women and racial minorities, they also framed a more tolerant workplace culture in which they could safely come out as a state-protected entitlement. In so doing, they sought to capitalize on the political climate of expanding popular rights to social welfare, freedom of expression, and self-determination.[11] They found some local success against city governments and individual employers and in state courts. However, by the early 1980s, the combination of defeated state and federal campaigns, homophobic grassroots

9. Lillian Faderman, *Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth-Century America* (New York: Penguin, 1991); Marcia M. Gallo, *Different Daughters: A History of the Daughters of Bilitis and the Rise of the Lesbian Rights Movement* (New York: Carroll & Graf Publishers, 2006); Stephanie Gilmore and Elizabeth Kaminski, "A Part and Apart: Lesbian and Straight Feminist Activists Negotiate Identity in a Second-Wave Organization," *Journal of the History of Sexuality* 16 (2007): 95–113; Martin P. Levine and Robin Leonard, "Discrimination Against Lesbians in the Work Force," *Signs* 9 (Summer 1984): 700–710; Rhonda R. Rivera, "Queer Law: Sexual Orientation Law in the Mid-Eighties," *University of Dayton Law Review* 10 (1984–1985): 459–540; and Ann Rostow, "NCLR Earns Its Stripes," The Advocate, June 7, 2005, 33–36.

10. Scholars have observed that expression and communication have been crucial to the formation of gay identities and communities. D'Emilio, *Sexual Politics, Sexual Communities;* Anne Enke, *Finding the Movement: Sexuality, Contested Space, and Feminist Activism* (Durham, NC: Duke University Press, 2007); and Martin Meeker, *Contacts Desired: Gay and Lesbian Communications and Community, 1940s–1970s* (Chicago: University of Chicago Press, 2006). Janet E. Halley has argued that unlike other forms of identity, sexuality must be enacted in order to be embodied. Halley, "Gay Rights and Identity Imitation: Issues of the Ethics of Representation," in *The Politics of Law: A Progressive Critique*, 3rd ed., ed. David Kairys (New York: Basic Books, 1998), 115–46.

11. See *Goldberg v. Kelly,* 397 U.S. 254 (1970) and Charles A. Reich, "The New Property," *Yale Law Journal* 73 (1964): 733–87.

conservatism, and the burgeoning AIDS crisis stymied and shifted the focus of the movement for gay rights at work.[12]

An examination of struggles for gay workplace rights in California challenges existing narratives that divide the postwar gay rights movement into distinct and dissimilar eras animated by the tension between activists who prioritized integration and state-protected rights and those who fought for liberation from societal norms and institutions. According to scholars, liberationist activists displaced their more moderate counterparts at the vanguard of gay politics in the late 1960s until their energy dissipated and the civil rights impulse recaptured the movement in the mid-1970s.[13] However, gay workplace rights campaigns illuminate bedrock consistencies among gay activists across those tumultuous and transformative years. For whereas liberation infused gay politics with innovative claims and tactics, the fight for workplace rights took new forms, but remained central to gay activism. Even liberationists who saw themselves as part of the radical counterculture channeled the street politics and cultural objectives of gay liberation into viable workplace rights claims, perceived the state as a potential ally, and collaborated with more moderate law-oriented groups toward that objective. Further, although the liberationist impulse weakened after several years, gay plaintiffs wove liberationists' demands for freer gender expression into their workplace rights claims

12. Jean-Manuel Androite, *Victory Deferred: How AIDS Changed Gay Life in America* (Chicago: University of Chicago Press, 1999); Chai R. Feldblum, "Workplace Issues: HIV and Discrimination," in *Aids Agenda: Emerging Issues in Civil Rights,* ed. Nan Hunter and William Rubenstein (New York: Norton, 1992), 271–330; Nan D. Hunter, *Epidemic of Fear: A Survey of AIDS Discrimination in the 1980s and Policy Recommendations for the 1990s* (New York: American Civil Liberties Union, 1990); Lisa McGirr, *Suburban Warriors: The Origins of the New American Right* (Princeton: Princeton University Press, 2002); Jeffrey A. Mello, *AIDS and the Law of Workplace Discrimination* (Boulder: Westview, 1995); Michelle Nickerson, "Politically Desperate Housewives: Women and Conservatism in Postwar Los Angeles," *California History* 86 (2009): 4–21; Craig Rimmerman, *From Identity to Politics: The Lesbian and Gay Movements in the United States* (Philadelphia: Temple University Press, 2001); and Urvashi Vaid, *Virtual Equality: The Mainstreaming of Gay and Lesbian Liberation* (New York: Anchor Books, 1995).

13. Dudley Clendenin and Adam Nagourney, *Out for Good: The Struggle to Build a Gay Rights Movement in America* (New York: Simon & Schuster, 1999); D'Emilio, *Sexual Politics, Sexual Communities,* 150–57; Johnson, *The Lavender Scare*; Martin Meeker, "Behind the Mask of Respectability: Reconsidering the Mattachine Society and Male Homophile Practice, 1950s and 1960s," *Journal of the History of Sexuality* 10 (2001): 78–116; Toby Marotta, *The Politics of Homosexuality* (Boston: Houghton Mifflin, 1981); Rimmerman, *From Identity to Politics*, 2; and Leila J. Rupp, "The Persistence of Transnational Organizing: The Case of the Homophile Movement," *American Historical Review* 116 (2011): 1014–39.

before state and federal courts in the later 1970s. Gay rights activists adopted a range of tactics, but they shared the objective of a more open workplace, and their arguments were successive rather than isolated. Therefore, *DeSantis v. PT&T* and *Gay Law Students Association v. PT&T*, the era's most significant court cases to challenge gay workers' exclusion from workplace protections—both decided in California in 1979—represented not the spontaneous complaints of a few disgruntled workers, but the culmination of years of grassroots activism, collaboration, and legal strategizing that embodied some of the most universal and consistent claims at the heart of the modern gay rights movement.[14]

Further, analysis of the movement for gay rights at work illuminates the challenges of breathing life into new sex equality laws. In the mid-1960s, a wave of federal provisions banned discrimination on the basis of a worker's sex, race, religion, and national origin.[15] Studies of this era tend to emphasize workers' successful identity-based rights claims, landmark legal victories that gave force and teeth to antidiscrimination provisions, and the resulting spread of workplace equality. Such accounts tend to blame the swelling grassroots conservatism of the late 1970s and the Reagan revolution of the 1980s for setting the outer limit of workers'

14. *DeSantis v. Pacific Telephone & Telegraph,* 608 F.2d 327 (9th Cir. 1979) and *Gay Law Students v. Pacific Telephone,* 24 Cal. 3d 458 (1979); Elizabeth Armstrong, *Forging Gay Identities: Organizing Sexuality in San Francisco, 1950–1994* (Chicago: University of Chicago Press, 2002); Mary Bernstein, "Identities and Politics: Toward a Historical Understanding of the Lesbian and Gay Movement," *Social Science History* 26 (2002): 531–81; Enke, *Finding the Movement*; Terence Kissack, "Freaking Fag Revolutionaries: New York's Gay Liberation Front, 1961–1971," *Radical History Review* 62 (1995): 104–34; Meeker, "Behind the Mask of Respectability"; Meeker, *Contacts Desired*; Kevin J. Mumford, "The Trouble With Gay Rights: Race and the Politics of Sexual Orientation in Philadelphia, 1969–1982," *Journal of American History* 98 (2011): 49–72; and Marc Stein, *City of Sisterly and Brotherly Loves: Lesbian and Gay Philadelphia, 1945–1972* (Philadelphia: Temple University Press, 2004). Margot Canaday argues that as the American bureaucratic state expanded, it increasingly and systematically stigmatized homosexuals; however, gays and lesbians also found ways to make explicit demands upon the state. See Canaday, *The Straight State: Sex and Citizenship in Twentieth Century America* (Princeton: Princeton University Press, 2009). Further, many types of gay rights struggles ultimately yielded workplace discrimination claims. On librarian Mike McConnell's 1971 legal struggle to retain his appointment as a librarian at the University of Minnesota amidst his public struggle to marry law student Jack Baker, see Clendinen and Nagourney, *Out for Good,* 56–57, 226.

15. The Equal Pay Act of 1963 (Pub. L. No. 88–38, 77 Stat. 56) outlawed wage discrimination on account of sex. Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352, 78 Stat. 241) banned discrimination by private employers, labor unions, and employment agencies on the basis of race, religion, sex, national origin, and color. Executive Order 11246, signed by President Lyndon B. Johnson on September 24, 1965, outlawed similar discrimination in workplaces holding government contracts surpassing $10,000 annually.

progress.[16] Gay rights claims and their outcomes bring this narrative into question. Like women and minorities, gay workers sought to capitalize on the climate of expanding identity-based rights in the aftermath of new laws.[17] They attempted to stretch nascent workplace discrimination

16. Sara Evans, *Tidal Wave: How Women Changed America at Century's End* (New York: Free Press, 2003); Alice Kessler–Harris, *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th-Century America* (New York: Oxford University Press, 2001); Nancy MacLean, *Freedom is Not Enough: The Opening of the American Workplace* (Cambridge: Harvard University Press, 2006); and John David Skrentny, *The Minority Rights Revolution* (Cambridge: Belknap Press of Harvard University, 2004). Landmark court decisions that enabled Title VII to bring about substantive gains to working women included *Weeks v. Southern Bell,* 408 F. 2d 228 (5th Cir. 1969), which held that employers could not deny employment to women based on stereotypes about their physical weakness compared with men; *Bowe v. Colgate–Palmolive,* 416 F.2d 711 (7th Cir. 1969), which held that employers could not classify employees based on sex, and must enforce weight-lifting limits on a gender-neutral basis; *Griggs v. Duke Power Company,* 401 U.S. 424 (1971), which legitimated the disparate impact theory that facially neutral employment policies can be discriminatory if they adversely affect members of protected classes; *Dothard v. Rawlinson,* 433 U.S. 321 (1977), in which the United States Supreme Court ruled that height and weight requirements must bear a close relationship to job performance and cannot serve as a pretext for excluding female employees; *Meritor Savings Bank v. Vinson,* 477 U.S. 57 (1986), in which the United States Supreme Court established sexual harassment as a violation of Title VII; and massive settlements brokered by the EEOC in the 1970s and early 1980s against AT&T, General Electric, General Motors, Ford, and the nation's nine largest steel producers. See Warren Brown, "Ford Agrees to $23 Million Settlement of Sex, Race Discrimination Complaint," *Washington Post*, November 2, 1980, A6; "Discrimination Suits Hit More Companies," *Business Week,* July 8, 1972, 20; "GE To Pay $32 Million in Job Bias Settlement," *Chicago Tribune,* June 16, 1978, 1; Herr, *Women, Power and AT&T;* "Job Bias Agency Pushes Law Suits: Unit Says it Has Begun Era of Increased Enforcement," *New York Times,* April 7, 1973, 21; Tim O'Brien, "Firms, Unions Charged With Job Bias," *Washington Post,* September 18, 1973, A8; Philip Shabecoff, "Steel and Union to Adopt a Plan on Job Equality," *New York Times,* April 14, 1974, 1; Shapiro, "Women on the Line, Men at the Switchboard;" and Donald Woutat, "GM Settles Sex, Race Bias Case for $42 Million," *Los Angeles Times,* October 19, 1983, 1.

17. On claims-making and legal strategizing by women and racial minorities, see Tomiko Brown–Nagin, *Courage to Dissent: Atlanta and the Long History of the Civil Rights Movement* (Oxford: Oxford University Press, 2011); Deborah Dinner, "The Universal Childcare Debate: Rights Mobilization, Social Policy and the Dynamics of Feminist Activism, 1966–1974," *Law and History Review* 28 (2010): 577–628; Risa Goluboff, *The Lost Promise of Civil Rights* (Cambridge: Harvard University Press, 2008); Felicia Kornbluh, *The Battle for Welfare Rights: Politics and Poverty in Modern America* (Philadelphia: University of Pennsylvania Press, 2007); MacLean, *Freedom is Not Enough;* Serena Mayeri, *Reasoning From Race: Feminism, Law and the Civil Rights Revolution* (Cambridge: Harvard University Press, 2011); and Annelise Orleck, *Storming Caesar's Palace: How Black Mothers Fought Their Own War on Poverty* (Boston: Beacon Press, 2005). Craig J. Konnoth argues that homophile attempts to analogize gay rights with the rights of racial minorities transformed gays' perceptions of their own

provisions such as Title VII to fit their specific needs, arguing that sexual orientation was like sex: an immutable identity rather than an element of personal style or behavior that could be forcibly concealed in the interest of conformity or employer preference. In claiming the right to be openly gay at work, these activists reframed access, substantive inclusion, and workplace culture that welcomed and affirmed sexual diversity as equally significant rights that merited state enforcement. Therefore, the promise and applicability of Title VII were contested questions, not foregone conclusions.[18]

However, the law proved to be more of a stumbling block than a stepping stone to equality, because gay attempts to reach beyond isolated local protections and win workplace rights from courts and state legislatures were largely unsuccessful. Judges evaluated gay workplace rights claims within frameworks already defined and interpreted in terms of women, and ultimately rejected gay workers' varied attempts to prove that sexual orientation discrimination was a kind of discrimination based on sex. Therefore, gay activists' attempts to gain new protections yielded the devastating unintended outcome of strong new legal precedents articulating profound differences between gay rights and women's rights. In so doing, courts effectively severed sex from gender and sexual orientation before the law and reinforced notions of sex as biological and natural, unlike gender and sexual orientation, which—akin to political speech—

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group identity and minority status. Konnoth, "Created in Its Image: The Race Analogy, Gay Identity, and Gay Litigation in the 1950s–1970s," *Yale Law Journal* 119 (2009): 316–72. Like gay rights activists, women analogized their rights claims to African Americans'—engaging a strategy whose historical antecedents dated to antebellum America. See Serena Mayeri, "'A Common Fate of Discrimination': Race/Gender Analogies in Legal and Historical Perspective," *Yale Law Journal* 110 (2001): 1045–87. On constitutional rights claims as context dependent, see Hendrik Hartog, "The Constitution of Aspiration and 'The Rights that Belong to Us All,'" *Journal of American History* 74 (1987): 1013–34.

18. Legal scholar Kenneth Mack and historian Nancy MacLean and have debated whether Title VII's promise to workers was self-evident. See Mack, "Bringing the Law Back into the History of the Civil Rights Movement: Legal History Dialogue with Nancy MacLean," *Law and History Review* 27 (2009): 657–69; and MacLean, "Response to Ken Mack—and New Questions for the History of African American Legal Liberalism in the Age of Obama," *Law and History Review* 27 (2009): 671–79. Many scholars suggest that the sex equality laws were always assumed to address workplace discrimination solely across the male/female binary. See Kathleen M. Barry, *Femininity in Flight: A History of Flight Attendants* (Durham: Duke University Press, 2007); Dorothy Sue Cobble, *The Other Women's Movement: Workplace Justice and Social Rights in Modern America* (Princeton: Princeton University Press, 2004); Evans, *Tidal Wave*; Kessler–Harris, *In Pursuit of Equity*; MacLean, *Freedom is Not Enough;* and Winifred Wandersee, *On the Move: American Women in the 1970s* (Boston: Twayne Publishers, 1988).

were enacted rather than essential, and, therefore, involved some element of deliberateness and choice.[19]

This outcome yielded profound consequences for the gay rights movement and the American workforce. Certainly, such defeats helped gay activists to remain a coherent minority and spared gay workers the frustrating "hollow hopes" of courtroom victories that failed to yield substantive change.[20] However, by denying to gays and lesbians the legal protections that provided women and racial minorities a path to good jobs, such court decisions shifted the terrain of gay rights activism to battles for local gains and cultural change and accelerated the divergence between the movement for gay rights and those of other minorities.[21] Further, this result also

19. *DeSantis v. Pacific Telephone & Telegraph*, 327; and *Gay Law Students v. Pacific Telephone*, 458. If the courts had ruled on behalf of the gay plaintiffs, they would have forced federal and state agencies to reverse their policies of denying relief to victims of sexual orientation discrimination. The EEOC never investigated sexual orientation discrimination claims despite receiving such complaints as early as 1965. In response to growing activist pressure to reexamine the issue, the EEOC issued a public statement in 1976. It claimed that Congress intended sex discrimination to refer only to "disparities in employment opportunities between males and females;" that homosexuality was "a condition which relates to a person's sexual proclivities or practices, not to his or her gender;" and that "concepts of sexual proclivity and gender are in no way synonymous." The California State FEPC, the sole California agency charged with protecting employees from discrimination by private sector employers, issued a similar statement that same year. See Compliance Director to Executive Director, Equal Employment Opportunity Commission, re: "Summary of Complaints Received from Men Alleging Discrimination Based on Sex," December 20, 1965, Compliance: Summary of Investigative Reports folder, box 1, EEOC Compliance Division Files, 1965–1966, Record Group 403, National Archives and Records Administration, College Park, MD; "EEOC Rejects Charges Filed by Gays," *Sexual Law Reporter* 2 (1976): 21; "EEOC Ruling: Commission Refuses to Protect Gays," *It's Time: Newsletter of the National Gay Task Force,* March 1976, folder 12, box 1, Los Angeles Gay and Lesbian Center Records, ONE National Gay and Lesbian Archives, Los Angeles, CA (hereafter LAGLC); William Parker, "Homosexuals and Employment," 1970, folder 39, box 1, CTP; and "Employment Commission Disclaims Jurisdiction for Gays," *Sexual Law Reporter* 2 (1976): 65. Scholars currently understand the terms "sex" and "gender" to have distinct meanings; sex refers to one's biological status, and gender refers to the cultural meanings and behaviors ascribed to that status. However, these terms were used fairly interchangeably in the early years of sex discrimination law. Ruth Bader Ginsburg, then a pioneering litigator in the field, began to substitute "gender" for "sex" in her legal writings in order to "ward off distracting associations" in her readers' minds. See Mary Anne Case, "Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence," *Yale Law Journal* 105 (1995): 10.

20. Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?,* 2nd ed. (Chicago: University of Chicago Press, 2008).

21. In 1981, Wisconsin passed the nation's first state law banning discrimination based on sexual orientation; however, legislators were careful to differentiate sexual orientation discrimination from sex and race discrimination by explicitly banning affirmative action based on sexual orientation. No other state passed a comparable law until 1990. William Turner, "The Gay

enabled conservative arguments that homosexuality was an issue of immorality rather than identity—and could therefore be suppressed or even eradicated—as well as contributed to the continuing subordination of workers embodying feminine characteristics, whether male or female. An examination of the growth, aspirations, and outcomes of the movement for gay employment rights reveals that the 1970s was a turning point in the legal status of female, racial minority, and gay workers alike, but with increasingly different, although intertwined, results.[22]

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In the first half of the twentieth century, self-aware gay communities formed in cities throughout the United States even as the growing federal state penalized homosexuality.[23] By mid-century, gay men and women

Rights State: Wisconsin's Pioneering Legislation to Prohibit Discrimination Based on Sexual Orientation," *Wisconsin Women's Law Journal* 22 (2007): 94.

22. Recent scholarship has examined the interrelationships among sex, gender, and sexual orientation and the uneven application of sex equality law across these categories. Case, "Disaggregating Gender from Sex and Sexual Orientation"; Marc A. Fajer, "Can Two Real Men Eat Quiche Together? Storytelling, Gender-Role Stereotypes, and Legal Protections for Lesbians and Gay Men," *University of Miami Law Review* 46 (1992): 511–652; Taylor Flynn, "'Transforming' The Debate: Why We Need to Include Transgender Rights in the Struggles for Sex and Sexual Orientation Equality," *Columbia Law Review* 101 (2001): 392–420; Kenneth A. Karst, "Constitutional Equality as a Cultural Form: The Courts and the Meanings of Sex and Gender," *Wake Forest Law Review* 38 (2003): 513–52; Sylvia A. Law, "Homosexuality and the Social Meaning of Gender," *Wisconsin Law Review* 187 (1988): 187–236; Leigh Megan Leonard, "A Missing Choice in Feminist Legal Theory: The Heterosexual Presumption," *Women's Rights Law Reporter* 12 (1990): 39–49; Christine A. Littleton, "Reconstructing Sexual Equality," *California Law Review* 7 (July 1987): 1279–337; Kristen Schilt, *Just One of the Guys?: Transgender Men and the Persistence of Gender Inequality* (Chicago: University of Chicago Press, 2010); and Francisco Valdes, "Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of 'Sex,' 'Gender,' and 'Sexual Orientation' in Euro-American Law and Society," *California Law Review* 83 (1995): 1–377. On how attempts to eradicate sexual expression and diversity harm female and gay workers, see Vicki Schultz, "The Sanitized Workplace," *Yale Law Journal* 112 (2003), 2061–193; and Kenji Yoshino, *Covering: The Hidden Assault on our Civil Rights* (New York: Random House, 2006). Other scholars argue that Title VII should be reinterpreted to include sexual orientation because sexual orientation discrimination represents the kind of sex stereotyping that Title VII was designed to combat. I. Bennett Capers, "Sex(ual Orientation) and Title VII," *Columbia Law Review* 91 (1991): 1158–87; and Andrew Koppelman, *The Gay Rights Question in Contemporary American Law* (Chicago: University of Chicago Press, 2002). Cary Franklin argues that prominent opponents of sex discrimination in the 1970s conceptualized Title VII as a weapon against sex role stereotyping. Franklin, "The Anti-Stereotyping Principle in Constitutional Sex Discrimination Law," *NYU Law Review* 85 (2010): 83–173.

23. Canaday, *The Straight State*; George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World 1890–1940* (New York: Basic Books,

increasingly found each other, conceived of themselves as a distinct social group, and began to advocate for change. Organizations such as the Mattachine Society, founded in Los Angeles in 1950, and the Daughters of Bilitis, founded in San Francisco in 1955, embodied this new perspective of the gay community as a proud and coherent minority group with its own distinct needs. They stressed gays' respectability and sought integration and inclusion. Opposing employment discrimination became a key tenet of homophile organizing, and such activists attempted to persuade businesses and public officials to end discrimination against workers whose homosexuality was discovered. However, detecting and rooting out instances of discrimination proved difficult, for those who were found to be gay by one employer typically avoided publicity that might disqualify them from another job.[24]

Workers who took great pains to conceal their homosexuality from employers were not being overly paranoid. At mid-century, employers widely regarded open or suspected homosexuality to be a relevant factor when evaluating current or potential workers. Many employers, including the military and civilian government agencies, perceived all gays to be unsuitable for any employment. A 1950 special U.S. Senate subcommittee declared homosexuality among federal employees to be "immoral and scandalous," arguing that gay workers would discredit the government.[25] Government officials similarly justified their postwar purges of suspected gays from federal employment by deeming them "security risks" who were morally corrupt and easily blackmailed.[26] Similarly, private employers claimed that gays' willingness to violate sodomy laws indicated their general immorality. Employers often went to great lengths to determine an employee's sexual proclivities, checking military records, observing workers' behavior, and obtaining statements from other employees. An

1994); D'Emilio, *Sexual Politics, Sexual Communities*; and Eisenbach, *Gay Power: An American Revolution* (New York: Carroll & Graf, 2006).

24. D'Emilio, *Sexual Politics, Sexual Communities*, esp. 109; Faderman, *Odd Girls and Twilight Lovers*; Gallo, *Different Daughters;* Stein, *City of Sisterly and Brotherly Loves*, esp. 308–9; Marotta, *The Politics of Homosexuality*, esp. 42–43. Men's struggles to become flight attendants in the 1960s demonstrate that airlines appealed to homophobic fears as a business strategy in seeking to limit that labor force to sexy young women. See Phil Tiemeyer, "'Male Stewardesses': Male Flight Attendants as a Queer Miscarriage of Justice," *Genders* 45 (2007).

25. E. Carrington Boggan, Marilyn G. Haft, Charles Lister and John P. Rupp, *The Rights of Gay People: The Basic ACLU Guide to a Gay Person's Rights* (New York: Discus, 1975), 24.

26. Allan Berube, *Coming Out Under Fire: The History of Gay Men and Women in World War Two* (New York: Free Press, 2000); D'Emilio, *Sexual Politics, Sexual Communities*, 42–43; Faderman, *Odd Girls and Twilight Lovers*, 190; and David K. Johnson, *The Lavender Scare*, 9.

American Civil Liberties Union (ACLU) publication warned, "Any of the various forms that applicants and employees are required to fill out may disclose information that leads to evidence of homosexual conduct."[27] One man who was denied a job in 1964 was told, "You are 30 years old, unmarried, and live in San Francisco. Don't you get the point? We don't want your kind."[28] Even hinting at gender nonconformity could prove costly, as a male teacher learned when he wore an earring to a job interview. At mid-century, a worker courted unemployment in revealing that he or she did not conform to dominant sexual norms, even in leisure time.[29]

However, even as employers articulated sweeping condemnations of homosexual employees, the changing legal and social climate opened new possibilities. A string of U.S. Supreme Court decisions asserted individuals' right to privacy, particularly when matters of sexuality and reproduction were at stake.[30] Advocates followed suit, as the ACLU reversed its earlier stance and broadened its conception of the relationship between civil liberties and sexual freedom in the mid-1960s.[31] A 1967 ACLU position paper on homosexuality called for "the end of criminal sanctions for homosexual practices conducted in private between consenting adults" because sexual orientation involved a sacred entity that should be protected from state encroachment: "a person's inner most feelings and desires." The same position paper also urged government officials to ignore employees' sexual preferences. "There have been, and undoubtedly are today, in the vast stretches of government service, men and women who perform their duties competently, and in their private hours engage in different kinds of sexual activity—without any harmful impact on the agency that employs

27. Boggan, Haft, Lister and Rupp, *The Rights of Gay People,* 25.

28. William Parker, "Homosexuals and Employment," 1970, folder 39, box 1, CTP.

29. Tom Ammiano, "My Adventures as a Gay Teacher," in *Smash the Church, Smash the State!: The Early Years of Gay Liberation,* ed. Tommi Avicolli Mecca (San Francisco: City Lights Books, 2009), 40–42. For more such anecdotes, see "Hearings of the Police, Fire and Safety Committee of San Francisco Board of Supervisors," March 9, 1978, "Gay Rights Ordinance" folder, box 8, Harvey Milk–Scott Smith Collection, James C. Hormel Gay and Lesbian Center, San Francisco Public Library (hereafter HM-SS).

30. Beginning at mid-century, a number of federal court decisions and dissents discerned a right to privacy emanating from the "penumbras" of the Bill of Rights. See *Skinner v. Oklahoma ex. Rel. Williamson,* 316 U.S. 535 (1942); *Poe v. Ullman,* 367 U.S. 497 (1961); *Griswold v. Connecticut,* 381 U.S. 479 (1965); *Stanley v. Georgia,* 394 U.S. 557 (1969); *Eisenstadt v. Baird,* 405 U.S. 438 (1972); and *Roe v. Wade,* 410 U.S. 113 (1973).

31. "ACLU Official Hails Gays," *The Advocate,* March 31–April 13, 1971, 14; "ACLU Position on Homosexuality," January 7, 1967, folder 7, box 1127, American Civil Liberties Union Archives, 1950–1990, Series 3 (hereafter ACLU); Diane Garey, *Defending Everybody: A History of the American Civil Liberties Union* (New York: TV Books, 1998); and Judy Kutulas, *The American Civil Liberties Union and the Making of Modern Liberalism, 1930–1960* (Chapel Hill: University of North Carolina Press, 2005).

them. . .the burden of proof should be placed on the government to show that a homosexual is not suited for a particular job because of the nature of that job."[32] The ACLU also joined advocates in Washington, D.C., where gay federal employees used such arguments to win job protections in court. In 1965 and 1969, respectively, the United States Court of Appeals for the District of Columbia Circuit ruled that workers could not be disqualified or dismissed from federal employment solely because of their homosexuality. Therefore, arguments that framed gay workers' rights in terms of sexual privacy and the irrelevance of homosexuality to effective job performance began to gain legal traction.[33]

In tandem with these legal developments, the late 1960s saw an expanded movement for gay workplace rights that was embedded within an explicitly radical gay politics. Gay liberation, which mirrored the more militant style of protest adopted by contemporary social movements, demanded cultural expression and freedom from shame. Whereas gay liberationists were deeply suspicious of many of the institutions that ordered heteronormative society, rallying around such phrases as "Smash the church! Smash the state!" they did not universally eschew capitalism or participation in the workforce; rather, many sought inclusion on their own terms.[34] Therefore, gay liberationists rejected arguments for workplace rights that were rooted in homophile concerns about sexual privacy, which assumed that people could—or should—leave their sexual identity behind at the office door. They asked for the same rights and privileges held by other workers, proclaiming that one's sexual orientation was irrelevant to his or her ability to perform a job. However, they also argued that

32. "ACLU Position on Homosexuality."

33. *Scott v. Macy,* 121 U.S. App. D.C. 205, 349 F 2d 182 (1965); and *Norton v. Macy,* 135 U.S. App. D.C. 214, 417 F 2d 1161 (1969). Further, in 1975, the United States Civil Service Regulations were amended to state that employees could not be fired because of their homosexuality alone, other workers' real or anticipated reactions, or the fear that gay employees would "bring public service into contempt." 5 C.F.R. 731.202(b). This regulation modified the existing de facto ban on openly gay federal employees because of their "infamous, immoral, or notoriously disgraceful conduct." See also Patricia A. Cain, "Litigating for Lesbian and Gay Rights: A Legal History," *Virginia Law Review* 79 (1993), 1576–78; D'Emilio, *Sexual Politics, Sexual Communities,* 150–57; and David K. Johnson, "Homosexual Citizens: Washington's Gay Community Confronts the Civil Service," *Washington History* (Fall–Winter 1994–95): 44–63. However, these gains did not represent blanket protection for gay workers. In 1972, John Singer, an employee of the Equal Employment Opportunity Commission, was fired for "flaunting and broadcasting" his homosexuality at work. The Ninth Circuit Court of Appeals upheld his dismissal. *Singer v. U.S. Civil Service Commission*, 530 F 2d 247 (9th Cir. 1977). The Supreme Court later vacated the decision because of the 1975 changes in the Civil Service Regulations, 429 U.S. 1034 (1977).

34. See "Introduction," *Smash the Church! Smash the State!,* ix–xvi.

sexuality was an essential element of one's personhood that should therefore be acknowledged and respected at work. The liberationist impulse energized and sharpened the focus of gay workplace rights campaigns on workers' freedom to come out at work rather than protecting their sexual privacy. From grassroots organizing to advancing claims upon corporations, legislators, and courts, gay workplace rights advocates used formal and informal channels of protest to advocate for reforms in the law and employment practices that would free gay employees from pressures to conceal their homosexuality or face persecution.[35]

Gay men and lesbians alike experienced the pressures to muffle their sexual identities, and both groups opposed discrimination against homosexuals.[36] However, their divergent relationships to power in the workplace caused many lesbians to conceive of that problem differently than did gay men. Lesbians understood sexual orientation discrimination to be of a piece with their exploitation as working women. The contemporary assumptions about women's attachment to wage-earning men—used to justify the low pay and dead-end nature of most female-dominated jobs—seemed especially egregious to women who did not couple up with men.[37] Further, by the early 1970s, the tenets of radical feminism began to color much of lesbians' activism. Even members of the homophile group Daughters of Bilitis who had strategized with and demonstrated alongside of gay men in the 1960s increasingly wondered whether men could be trusted allies.[38] Historian Lillian Faderman argues that many lesbians "became aware of the need for lesbian-feminist political goals that were far more radical than those of gay revolutionaries whose aim was equality with heterosexuals."[39] Lesbian feminists were increasingly suspicious of hierarchy in all forms—including that between workers and employers—and they doubted that integration alone could ever create meaningful equality between men and women, gays and straights.[40]

35. Terence Kissack, "Freaking Fag Revolutionaries"; Eisenbach, *Gay Power*; Clendin and Nagourney, *Out for Good*; and Marotta, *The Politics of Homosexuality*.

36. On workplace discrimination against lesbians in this era, see Virginia Brooks, *Minority Stress and Lesbian Women* (Lexington, MA: Lexington Books, 1981); Janet S. Chafetz, Patricia Sampson, Paula Beck and Joyce West, "A Study of Homosexual Women," *Social Work* 19 (1974): 714–23; and Levine and Leonard, "Discrimination Against Lesbians in the Work Force".

37. On the primacy of ideology rather than impartial markets in determining women's wages, see Alice Kessler–Harris, *A Woman's Wage: Historical Meanings and Social Consequences* (Lexington: University of Kentucky Press, 1991).

38. Gallo, *Different Daughters*, 154–56.

39. Faderman, *Odd Girls and Twilight Lovers*, 209.

40. Gilmore and Kaminski, "A Part and Apart," 103; Faderman, *Odd Girls and Twilight Lovers*, 211–220; and Gallo, *Different Daughters*, 186.

Further, whereas not all lesbians offered a critique of capitalism or advocated separatism, lesbians' law-related efforts in the 1970s focused on a wider variety of targets than those of gay men. Like gay men, lesbians protested discriminatory city codes and state laws that penalized homosexuality.[41] The Lesbian Rights Project (LRP) was founded in San Francisco in 1977 to fight for lesbians' legal rights. Although LRP took on a variety of challenges, including defending a woman denied employment as a deputy sheriff in Contra Costa County, California because of her homosexuality, the organization focused primarily on protecting lesbian families: particularly helping mothers maintain custody rights after they came out and left their heterosexual marriages. Therefore, lesbians and gay men held distinct relationships to the law and the workplace. Whereas lesbians critiqued the power and hierarchy in capitalist institutions and sexist assumptions about family composition and women's dependency, gay men offered a more consistent push for workplace integration and advocated more single-mindedly for the freedom to be out at work.[42]

* * *

California, home to some of the nation's earliest and most vibrant gay populations, saw fervent and sustained gay workplace rights organizing at the local, city, and state levels.[43] In theorizing about California's rich gay heritage, scholars often point to the military bases that drew thousands of unattached men and women to the West Coast during World War II. There they encountered dozens of gay bars, a bohemian atmosphere, and a prosperous economy. Los Angeles also had burgeoning film and cultural industries, whereas in San Francisco, gays found an international port city that contained what scholar Nan Alamilla Boyd has termed "a legacy of sex and lawlessness" and a "live and let live sensibility."[44] Other

41. Faderman, *Odd Girls and Twilight Lovers,* 198.

42. *In Re Kreps*, N-14221, Civil Service Commission, Contra Costa County, California, March 3, 1980. See also Rivera, "Queer Law," 459–540; and Ann Rostow, "NCLR Earns Its Stripes," *The Advocate,* June 7, 2005, 33. The Lesbian Rights Project was renamed the National Center for Lesbian Rights in 1989. See National Center for Lesbian Rights, "NCLR Timeline: A Glimpse at Our History," http://www.nclrights.org/site/PageServer?pagename=about_timeline (March 2, 2012).

43. Protesters in New York City, led by the Gay Activist Alliance, held a public struggle for employment rights in city jobs in the early 1970s. However, in terms of the amount and significance of activism, the epicenter of gay employment rights activism was California. See "Employment Discrimination Against Homosexuals," presented by Gay Activist Alliance to New York City Commission on Human Rights, July 14, 1970, "Employment Discrimination–2002 and Before" subject file, ONE National Gay and Lesbian Archives, Los Angeles, CA (hereafter ONE); and Marotta, *The Politics of Homosexuality.*

44. Nan Alamilla Boyd, *Wide Open Town: A History of Queer San Francisco to 1965* (Berkeley: University of California Press, 2003), 5, 7.

scholarship explains California's unique gay enclaves in terms of the history of tourism, the moral laxity of frontier life, and the sexual practices of nineteenth century soldiers and missionaries.[45] Although grassroots conservatives decried homosexuality and vice squads targeted and punished gays and lesbians—particularly in Los Angeles—this oppression seems to have helped the gay community to cohere and strategize for its survival.[46] California was home to the first gay-oriented periodical—first published in 1947—as well as some of the nation's earliest and most sustained homophile activity and organizing for gay rights at work.[47] California also saw the first courtroom victory for gay rights in the United States when, in 1951, the state Supreme Court ruled that a state agency could not suspend the liquor licenses of bars and restaurants because they catered to open homosexuals.[48]

In Los Angeles, gay employment activism was driven by local political, direct-service, and religious groups. In 1965, the ACLU of Southern California became the first ACLU affiliate to adopt a policy statement

45. Armstrong, *Forging Gay Identities;* Berube, *Coming Out Under Fire*; Boyd, *Wide Open Town*; John D'Emilio, "Gay Politics and Community in San Francisco Since World War II," in *Hidden from History: Reclaiming the Gay and Lesbian Past*, eds. Martin Duberman, Martha Vicinus, and George Chauncey (New York: Penguin, 1989), 456–73; Hillman, "'The Most Profoundly Revolutionary Act a Homosexual Can Engage In'"; and C. Todd White, *Pre-Gay LA: A Social History of the Movement for Homosexual Rights* (Urbana: University of Illinois Press, 2009), 1–7.

46. D'Emilio, *Sexual Politics, Sexual Communities;* McGirr, *Suburban Warriors;* Robert O. Self, "Sex in the City: The Politics of Sexual Liberalism in Los Angeles, 1963–79," *Gender and History* 20 (2008): 288–311; Michelle Nickerson, "Politically Desperate Housewives: Women and Conservatism in Postwar Los Angeles," *California History* 86 (June 2009): 4–21; and White, *Pre-Gay LA.*

47. San Francisco was also a frequent destination for gay individuals such as Harvey Milk and Tom Ammiano, who moved west in search of a freer social climate and became leaders of the gay community there. Milk was one of the most visible and iconic figures of the gay rights movement and the first openly gay elected public official in the United States. Ammiano became the first public school teacher in San Francisco to publicize his homosexuality. He founded the campaign to defeat the Briggs Initiative, which would have banned gay people from teaching in California, and went on to serve on the San Francisco Board of Education, the San Francisco Board of Supervisors, and in the California State Assembly. See Tom Ammiano, "My Adventures as a Gay Teacher," in *Smash the Church, Smash the State!,* 40–42; D'Emilio, *Sexual Politics, Sexual Communities,* 117; Gallo, *Different Daughters;* Randy Schilts, *The Mayor of Castro Street: The Life and Times of Harvey Milk* (New York: St. Martin's Press, 2008); and White, *Pre-Gay LA*.

48. *Stoumen v. Reilly,* 234 P. 2d 69 (Cal. 1951). After *Stoueman*, the California legislature passed a new provision enabling authorities to revoke the liquor license of an establishment if it catered to "illegal possessors or users of narcotics, prostitutes, pimps, panderers or sexual perverts." (1953 Cal. Stat. 986). The California Supreme Court overturned the provision in *Vallegra v. Department of Alcoholic Beverage Control*, 347 F. 2d 909 (Cal. 1959). See Cain, "Litigating for Lesbian and Gay Rights," 1567–69.

affirming the civil rights of gays. The chapter began defending local workers who were fired or denied employment on account of alleged homosexuality.[49] In 1973, the chapter organized the ACLU's first Rights of Homosexuals Committee, which quickly renamed itself the ACLU of Southern California Gay Rights Chapter (GRC). The GRC dedicated itself to aiding gays in "their struggle for first-class citizenship" by "helping to ensure their civil liberties." Freedom from job discrimination was one crucial such right, and the GRC especially decried existing federal employment practices. "The nation's largest employer, the federal government, has been unswervingly consistent. . .[and] has continued to accept the tax revenues of the homosexual minority. It has continued to rip them off in a variety of ways, most notably by refusing employment and by labeling significant portions of the minority as unfit for many types of employment."[50] Led by the GRC, gay rights activists in Los Angeles filed test cases with city job rights agencies and initiated a decade-long fight to add nondiscrimination provisions to city employment codes. Local activists achieved that objective in 1979, when the Los Angeles City Council passed a civil rights ordinance prohibiting discrimination in employment, housing, credit, and public accommodation.[51]

Whereas the ACLU fought legal battles on behalf of the local gay community, other organizations sought to meet the practical needs of gay job seekers. The Los Angeles Gay and Lesbian Center provided job counseling and training for the underemployed, even matching gay inmates with job

49. Jay Murley, Chairman, ACLU-SC, to Gay Rights Committee, May–June 1973, folder 1, box 5, Rob Cole Papers, ONE National Gay and Lesbian Archives, Los Angeles, CA (hereafter RCP); "A History: The Los Angeles Gay Rights Movement," ACLU Human Rights Award Dinner, June 1, 1979, folder 11, box 2, RCP; and Undated memo re: Chapter History, folder 1, box 1, American Civil Liberties Union of Southern California Lesbian and Gay Rights Chapter Records, ONE National Gay and Lesbian Archives, Los Angeles, CA (hereafter ACLU-GRC).

50. First among the GRC's initial six long-term goals was to improve employment rights by extending antidiscrimination provisions to include sexual orientation. Press Release, ca. May 1973, folder 12, box 4, ACLU-GRC. The other founding principles included pursuing the revision of criminal codes that penalized sexuality, assisting imprisoned gays, aiding gay college students, fighting for tax exempt status for gay institutions, and promoting lesbian mothers' rights. "Possible Areas of Attack: Gay Military Discharges," April 2, 1973, folder 1, box 5, RCP.

51. By 1979, with 1200 members, the GRC was the largest gay rights organization in Southern California. Aslan Heindorn to John David Loren, November 23, 1979, folder 3, box 8, ACLU-GRC; "First Gay Complaint Filed in LA Job Equality Office," *The Advocate,* May 26–June 8, 1971, 14; Douglas Sarff, "Police Testimony Stalls LA Employment Bill," *The Advocate,* January 1, 1975, 14; Erwin Baker, "Council OK's Gay Rights Ordinance," *Los Angeles Times*, May 30, 1979, A1; and "Los Angeles Passes Strong Gay Ordinance," *The Advocate,* July 12, 1979, 8.

opportunities, clothing, and transportation to help expedite their release from prison.[52] The types of advertised jobs varied widely, suggesting the range of skills and backgrounds of gay applicants. One monthly job bulletin advertised available employment in a variety of fields: "professional, general clerical, restaurant/bar/hotel, clerk/cashier, domestic, building/construction/trades, adult services, accountants and bookkeepers, maintenance, house cleaning, yard work, construction, painting, moving, odd jobs."[53] The Center also helped individual employees to maintain their jobs and credentials and worked to convince reluctant employers to hire gay applicants.[54]

Members of the local religious community were also on the front lines of this struggle. The Metropolitan Community Church (MCC) provided crucial job-related support and assistance to Los Angeles gays. The church, founded in Los Angeles by gay pastor Troy Perry in 1968, regarded social activism as a cornerstone of its ministry. In March 1970, Perry led a gay rights march of 250 protestors advocating legal reform and announced his intent to fast until discriminatory federal laws were repealed.[55] Like the ACLU, the MCC protested laws that penalized homosexuality. The MCC also helped its members to find employment and to exercise their rights on the job. MCC Director of Personnel Services Bob Richards told *The Advocate* in 1971, "We are more than just a referral agency. When a person comes to us, they are going to get the help they need. We are not going to shuffle them off to some agency. It's time the gay community dealt with the social needs of its own."[56] Toward that end, the church hosted weekly meetings of the Greater Los Angeles Coalition to Guarantee Fair Employment Practices and held legal workshops on

52. "Gay Community Services Center Acquires Site," 1971 Press Release, Gay Community Services Center (GCSC), folder 5, box 4, LAGLC; GCSC Press Release, March 15, 1978, folder 10, box 4, LAGLC; Helen McElroy to Jerry Gold, July 5, 1974, folder 59, box 7, LAGLC; and Joan Johnson, Employment Counselor at Metropolitan Community Church of Los Angeles, to Jerry Gold, undated, folder 59, box 7, LAGLC.

53. Job Announcement from Employment Department at GLCS, undated, folder 27, box 11, LAGLC.

54. In one instance, LAGLC counselors sought legal assistance from the GRC for a cosmetologist threatened with losing his professional license because of his arrest record. He had endured "eight or nine arrests over a several year span largely relating to cross-dressing." Memo to the Rights of Homosexuals Committee re: Proposed Attack Strategy on State Professional Licensing Discriminatory to Gays, ca. 1973, folder 12, box 4, ACLU-GRC.

55. "Rev Perry Leads 250 in LA March for Rights," *The Advocate*, March 1970, 1; and Troy D. Perry and Thomas L.P. Swicegood, *Don't Be Afraid Anymore: The Story of Reverend Troy Perry and the Metropolitan Community Churches* (New York: St. Martin's Press, 1992).

56. Douglas Brown to *The Advocate*, August 13, 1971, folder 4, box 5, RCP.

job rights issues. The MCC also coordinated a full service job placement agency, attempting to convince employers to hire openly gay applicants and training and placing the unemployed.[57] In Los Angeles, gay workplace rights activists sought pragmatic gains through community organizing and local legal reform.

Hundreds of miles to the northwest, the San Francisco fight for gay rights at work was equally tenacious, yet more confrontational. San Francisco was home to a strong culture of dissent and, like Los Angeles, a vibrant gay community.[58] There, gay employment rights advocates organized through pre-existing homophile organizations and formed new liberationist groups that articulated demands, pressured local employers and politicians, and built alliances with labor movement leaders. Further, well-established homophile and liberationist activists collaborated and cross-pollinated: homophile groups adopted some of the tactics of more vanguard groups whereas new liberationist organizations directed their attention-grabbing methods toward the longstanding homophile goal of workplace integration.

Fighting for gay employment rights was a key focus of the Society for Individual Rights (SIR), founded in San Francisco in 1964. With a mailing list of 3000, SIR was the nation's largest homophile organization prior to the Stonewall rebellion of 1969.[59] SIR viewed the state as a powerful potential ally for gays and fought many of its hallmark battles in the legal arena. In the 1960s, SIR held public forums on gay issues for local political candidates, retained attorneys to fight police raids of gay gatherings, and distributed to members a pamphlet entitled "In Case of Arrest: The Pocket Lawyer." SIR also organized a successful 1970 petition that compelled the San Francisco Human Rights Commission to condemn

57. For the MCC, which endured public threats by the Ku Klux Klan and myriad acts of arson against church buildings, protesting for gay rights was also a survival strategy. "MCC Speaking Up," *Metropolitan Community Church of San Francisco Newsletter* 2, October 10, 1971, folder 12, box 1, RCP; "Dear Friends," September 1972, ibid.; "Fair Employment Feb. 1975," in "Employment Discrimination III" subject file, ONE; "UFMCC 9/2/72," folder 12, box 1, RCP; and Perry and Swicegood, *Don't Be Afraid Anymore.* On gay rights theology, see also Gary David Comstock, *Gay Theology Without Apology* (Cleveland: Pilgrim Press, 1993); and Nancy Wilson, *Our Tribe: Queer Folks, God, Jesus and the Bible* (Estancia, NM: Alamo Square Press, 2000).

58. D'Emilio, *Sexual Politics, Sexual Communities*, 117; and Schilts, *The Mayor of Castro Street.*

59. Leo Laurence, "Glide Boycotts SF Firms that Won't Hire Homosexuals," *The Advocate,* November 1967, 2; "A Guide to Revolutionary Homosexual Draft Resistance," folder 1, box 9, Records of the Pacific Counseling Service and Military Records, Bancroft Library, University of California at Berkeley, Berkeley, CA (hereafter PCS). "Homo Revolt: Don't Hide It," *Berkeley Barb* March 28–April 3, 1969, 5, folder 1, box 1, CTP.

discrimination against homosexuals.[60] SIR also provided financial and legal support to workplace discrimination plaintiffs. In a 1973 federal suit filed in the Northern District of California, SIR charged the Department of Agriculture with discriminating against gay workers. SIR's political chairman Jim Foster told reporters that the group filed the suit because "As taxpayers ourselves, gay people very much resent being asked to subsidize the discrimination practiced against them." Foster accused the federal government of "foreclos[ing] peaceful avenues" and "driving gays into militant action." He reasoned, "When you have restricted or limited a person's right to livelihood, you have fairly well destroyed the individual."[61]

Gay liberation had introduced just such militant tactics to the fight for gay rights in San Francisco. The divergence between homophile and liberationist approaches were embodied by the gay activist and journalist Leo Laurence. He began his journalism career as a political moderate whose supervisor at ABC-KGO radio in San Francisco knew he was gay. However, Laurence was "radicalized" when he covered the 1968 Democratic National Convention. Thereupon, he was more forthcoming about his homosexuality with all of his coworkers and confronted the station's sports director after he called Laurence "sissy" and "fairy" on the air.[62] However, it was Laurence who lost his job in the fallout. SIR immediately hired him to edit *Vector*, the group's official publication.[63] In 1969, several months into his tenure there, Laurence published an editorial challenging SIR members to be more forthcoming about their sexuality. He disavowed the tactics of polite advocacy for incremental change. Rather, he argued, gays should not hesitate to come out to their families and their employers. Further, when a worker was fired for being openly gay, other homosexuals had a moral imperative to fight for his or her job reinstatement.[64] SIR leadership declared the editorial to be too radical and ousted him from the *Vector* editorship. Laurence told the underground

60. Cain, "Litigating for Lesbian and Gay Rights," 1564; Society for Individual Rights, "In Case of Arrest: The Pocket Lawyer" (San Francisco: P.R.I.D.E., ca. 1970); Roxanna Thayer Sweet, "Political and Social Action in Homophile Organizations" (PhD diss., University of California, 1968), 207; "S.F. Commission Backs Gay Job Rights," *The Advocate,* April 29–May 12, 1970, 1; and "Gay, Straight Leaders Push SF Hiring Law," *The Advocate*, September 15–28, 1971, 14.

61. "Class Suit Challenges Federal Hiring Bias," *The Advocate,* February 28, 1973, 21.

62. "ABC's of Love," *Berkeley Tribe,* January 9–15, 1970, 8, folder 48, box 1, CTP; "Fact Sheet: Gay Liberation vs. American Broadcast Companies, Inc.," January 1970, folder 17, reel 28, carton 8, Gay Movement 1969–1982 Collection, Bancroft Library, University of California at Berkeley.

63. Leo Laurence, "Don't Hide It," *Berkeley Barb,* April 1–9, 1969, 9, folder 45, box 1, CTP.

64. "Homo Revolt: Don't Hide It," *Berkeley Barb*, March 28–April 3, 1969, 5, folder 1, box 1, CTP.

newspaper the *Berkeley Barb*, "*Vector* was beginning to show our gay leadership for what it really is: a bunch of middle class, uptight, bitchy old queens."[65] Laurence severed his ties with SIR and fought to regain his job at ABC-KGO through labor arbitration, ultimately succeeding in 1970.[66]

Laurence's desire to initiate more radical workplace rights politics proved infectious. In the spring of 1969, his friend Gale Whittington, described by the *Berkeley Barb* as "an attractive, 21 year old blond accounting clerk," had just finished modeling for a fashion photo shoot for that newspaper. Laurence attended the photo shoot, and on a whim, embraced Whittington from behind when both men were bare-chested. Another friend captured the hug on camera. The photograph was published in the *Barb* and accompanied by the taglines "Don't Hide It" and "Homo Revolt." Although Whittington was not a highly skilled worker, he had received one promotion and two pay raises within his year of employment at States Lines Steamships. However, he began to fear for his job security when he saw one of his bosses with the photo from the *Barb*.[67] Whether or not Whittington's coworkers were aware of his homosexuality, the photo publicly outed him, and Whittington was fired immediately. Whittington went to the ACLU for guidance, where he was told that no current laws protected him.[68]

The two men decided to pursue Whittington's reinstatement through a more confrontational and assertive gay politics. They vowed to "remove our masks and engage in direct action" and to "fight in the streets."[69] Through their new organization, the Committee for Homosexual Freedom (CHF), Laurence and Whittington began a daily noontime protest at the States Lines headquarters in downtown San Francisco. Approximately thirty protesters attended the first day.[70] Only a week later, more than 100 protesters attended daily. A CHF publication proclaimed that the attendees "sing freedom songs and songs of joy and love, while they enjoy the sun, hold hands and do what comes naturally. In fact, the pickets on California Street are acting in public just as all homosexuals have been saying for years that we should be able to act in public.'"[71] Whittington himself seized

65. "Homo Revolt Blasting Off On Two Fronts," *Berkeley Barb,* April 11–17, 1969, 11, folder 3, box 1, CTP.

66. "Leo Wins!", *Berkeley Tribe,* February 13–20, 1970, 14, folder 48, box 1, CTP.

67. "Gay Rebel Gets Shafted by Uptight Boss," *Berkeley Barb,* April 4–10, 1969, 11, folder 44, box 1, CTP.

68. "Homo Revolt Blasting Off On Two Fronts."

69. *Committee for Homosexual Freedom Newsletter,* April 22, 1969, folder 3, box 1, CTP; Leo Laurence, "Don't Hide It."

70. "Homo Revolt Blasting Off On Two Fronts."

71. "Spirited Line Downtown," *Committee for Homosexual Freedom Newsletter,* May 20, 1969, folder 3, box 1, CTP.

the opportunity to be more forthcoming about his sexual orientation in the workplace, wearing his "Gay-Is-Good" button to job interviews.[72] Whittington's dismissal thus galvanized the organizers of CHF to express their sexuality in ways employers could not ignore.[73]

CHF marshaled the direct-action tactics of gay liberation toward the goal of workplace inclusion. A CHF publication listed the "vital and basic human rights" that were at stake for gay workers: "the right to fully and openly express our needs, without fear of intimidation or reprisal; the right not to be judged by some inaccurate stereotype, but as individuals; and the right to enter fully, without concealing our homosexuality, the political, social and economic fabric of America."[74] CHF also described the fear that compelled gay workers to downplay aspects of their identities to avoid Gale's fate at States Lines; Gale was "a human being who has lost his livelihood just for being himself."[75] CHF publications also framed the objectives of the gay workplace rights movement as distinct from other contemporary rights struggles. "Our militancy is in our openness, our pride in gayness, rather than the violence that some associate with militancy."[76] However, displaying this openness might require CHF members to be more confrontational in order to "prove that all homosexuals are not the scared, limp-wristed types typical of the stereotypical homosexuals." Laurence cautioned CHF members that they should prepare "to face the realities of a sit-in situation. Thinking about handcuffs, bookings, jail, courtrooms etc gives me jitters. But other militant minorities have gone through it. . . . So can we, if it's necessary!"[77]

CHF initially worked solely on Whittington's behalf. The group presented States Lines with a formal list of demands, which included Whittington's immediate reinstatement with back pay, a fair employment pledge to protect gay employees and applicants, amnesty for employees who joined the picket lines, and a promise to encourage other steamship companies to sign similar pledges. They proclaimed that if their demands were not met, CHF members would picket executives' homes and stage a sit-in in company offices, remaining in the building until States Lines

72. "Pink Panthers Gay Revolution Toughening Up."

73. Although CHF did not publish its membership numbers, 2000 leaflets had been distributed after 6 weeks of lunchtime protests. Dal McIntire and Ed Jackson, "States Lines Picketing Spreads to Los Angeles," *The Advocate,* June 1969, 1.

74. Untitled Committee for Homosexual Freedom flyer, folder 4, box 1, CTP.

75. "What's All the Fuss About?," undated, folder 4, box 1, CTP.

76. "Pink Panthers Gay Revolution Toughening Up."

77. Leo Laurence, "An Historic Battle," *Committee for Homosexual Freedom Newsletter,* May 13, 1969, folder 3, box 1, CTP.

negotiated.[78] CHF also encouraged sympathizers to jam States Lines phones by calling the switchboard each day. When States Lines personnel answered, they advised, "Rap with them if you wish, but maybe you'll not feel like saying anything at all. If they hang up, wait a couple minutes, and dial again. 'Keep them calls coming in.' It will show them our numbers (even greater than those on the picket line); it will lose them business; [and] they will have to explain the whole situation to customers who call and get a busy signal."[79] CHF's confrontational strategy was designed to pressure States Lines into hiring and retaining openly gay workers.

Despite months of CHF protesting, States Lines never reinstated Whittington. The group found more success in another direct action campaign against a local retailer, Tower Records. Frank Denero was a salesclerk who was fired when managers learned that he had winked at a customer. After witnessing the gesture, a private security guard asked Denero whether he was gay. He responded, "I'm not gay or straight. I'm bi if anything."[80] When managers dismissed Denero, they told him that they did not "tolerate that free spirit around here."[81] CHF organized a daily protest and boycott of the store. A CHF publication declared, "Those of you who believe, with us, that job performance, not sexual orientation, [should] be the criteria for employment please support the boycott of Tower Records. Don't buy at Tower until they agree to our fair and just demands," which included reinstating Denero with full back pay and pledging not to discriminate against homosexual workers and applicants.[82] A CHF publication encouraged its members to consider their own precarious employment situations and to rally to Denero's side. "One of our brothers was fired from his position at this store because it was suspected that he may have been a homosexual. This sort of thing has been happening far too long and we will not tolerate such mindless bigotry any longer. Help us show this company and their owners in Sacramento that the people of San Francisco not only disagree with such harassment, but that they will stand with those of us who are fighting for our freedom."[83] Whereas a grassroots consumer boycott against States Lines would have been impossible, a retailer such as Tower Records was more sensitive to customer behavior.

78. "Escalation in the Campaign Begins," *Committee for Homosexual Freedom Newsletter,* May 6, 1969, folder 3, box 1, CTP.

79. *Committee for Homosexual Freedom Newsletter,* April 22, 1969, ibid.

80. "Pickets Win: Tower Records Rehires Boy," *The Advocate,* August 1969, 6.

81. "Second Front Opens at Tower," *Committee for Homosexual Freedom Newsletter,* May 20, 1969, folder 3, box 1, CTP.

82. "Don't Buy at Tower!" folder 6, box 1, CTP.

83. "Give a Damn, Don't Buy at Tower!" folder 6, box 1, CTP.

CHF justified the Tower boycott by pointing out the hypocrisy of businesses that peddled a liberal spirit but were run by conservatives. "Tower is a store which hires clerks who look hip, caters to hip customers, and sells hip records. Why? Because they're hip to the movement? Hell no! They do it only because it's good business. The managers are purely 'pigs with mustaches.' It's a beautiful example of how the uptight monied class capitalizes on serious social trends for their own profit." CHF decried Tower's attempt to cash in on current trends while embodying outdated homophobic values. "Tower's sign advertises a Joan Baez album. While Joan sings of love, freedom and brotherhood, the management says, 'we don't tolerate that free spirit around here.' They don't tolerate it from Frank but they make money from it with Joan. These kinds of capitalist pigs would—and do—sell human flesh for a profit."[84] Despite such militant rhetoric, CHF did not advocate the dismantling of capitalism or the destruction of the store, but fought to help Denero regain employment. CHF estimated that the activism turned away approximately 30% of Tower business. After 2 weeks of demonstrations, CHF attained a complete victory for Denero. He was reinstated in his job, an independent arbitrator was appointed to set back pay, and Tower management promised to end sexual orientation discrimination in hiring.[85]

Therefore, even as CHF leaders critiqued capitalism as exploitative, pursuing gays' right to be out at work was one of their group's bedrock principles. CHF directed its radical rhetoric toward obtaining legal reform and state-protected civil rights. Leaders hoped that voters, and, ultimately, courts, would support their efforts to ban employment discrimination against homosexuals. They drafted and circulated a petition for a ballot measure to ban employment discrimination against homosexuals in San Francisco city and county, a provision that they claimed was "our most ambitious and, we feel, meaningful undertaking."[86] The press release announcing the signature-gathering drive for the petition stated, "As homosexuals are becoming aware of their inherent right to constitutionally guaranteed liberties, so are established groups and governmental bodies become aware. The courts have recently upheld the right of homosexuals to employment in civil service, and it was recently reported that restrictions on the employment of homosexuals by civil service are being changed."[87] Therefore, even as Laurence

84. "Second Front Opens at Tower."

85. "Pickets Win: Tower Records Rehires Boy;" "V-T Day: Victory Scored at Tower Records," *Committee for Homosexual Freedom Newsletter,* June 5, 1969, folder 3, box 1, CTP.

86. "Fair Employment Proposition," *Committee for Homosexual Freedom Newsletter,* August 25, 1969, folder 3, box 1, CTP; CHF; and "A New Movement: Homosexual Liberation," folder 50, box 2, CTP.

87. CHF, "Press Statement," September 18, 1969, folder 7, box 1, CTP.

proclaimed that "The people of Viet Nam are being oppressed by the same system, the same America spelled with a triple 'k' that is oppressing me right here," he sought a revolution in sexual openness and tolerance rather than a systemic political or economic overhaul.[88]

Although SIR and Laurence had parted ways, SIR was influenced by CHF's tactics and began to combine methods of levying formal claims upon state agencies with more confrontational pressure tactics.[89] In July 1970, SIR and the Gay Activist Alliance cosponsored a "work-in" in a San Francisco federal building. Early one workday, twenty demonstrators entered the building, wearing badges that labeled them "homosexual[s] working for the government." They operated building elevators and swept hallways. When they were ousted from the building, they declared themselves "fired" and set up a makeshift "unemployment office" on the building steps.[90]

Further, liberationist, homophile, and civil rights groups fought for local workplace rights protections. Activists collaborated starting in the late 1960s to add a ban on sexual orientation discrimination to city hiring provisions.[91] In 1970, SIR organized a hearing before the Employment Committee of the San Francisco Human Rights Commission, and SIR's president Larry Littlejohn asked Laurence to testify. Laurence agreed when Littlejohn promised that SIR would support his struggle to be rehired by ABC.[92] Political candidate Harvey Milk worked simultaneously to convince gay people to be forthcoming about their sexual orientation, and to implement nondiscrimination provisions to help those who did. He reasoned that although the homosexual "can melt into society,. . .open avowal of homosexuality is necessary for gays in every walk of life" to enable gays to attain full citizenship.[93] In 1978, as a San Francisco City Supervisor, Milk introduced and helped to pass a gay rights ordinance in

88. "ABC's of Love."

89. Throughout the summer of 1969, CHF targeted discriminatory employers in similar smaller campaigns. CHF held demonstrations at the San Francisco Federal Building, ABC-KGO, and a stretch of Market Street referred to as "Funland." "CHF Pickets Federal Building," *Committee for Homosexual Freedom Newsletter,* July 8, 1969, folder 3, box 1, CTP; "CHF to Begin Picketing Funland," *Committee for Homosexual Freedom Newsletter,* July 8, 1969, folder 3, box 1, CTP; "Fair Employment Proposition," *Committee for Homosexual Freedom Newsletter,* August 25, 1969, folder 3, box 1, CTP.

90. "Federal Building 'Work-In' Protests US Hiring Policy," *The Advocate,* July 7–20, 1969, 4.

91. "Gay, Straight Leaders Push SF Hiring Law," *The Advocate,* September 15–28, 1971, 14.

92. "Big Battle Looms," *Berkeley Barb,* January 16–22, 1970, 7, folder 45, box 1, CTP.

93. Untitled Speech by Harvey Milk, January 8, 1974, Speeches, Articles folder, box 9, HM–SS.

Figure 1. Howard Wallace and other gay and labor rights activists collaborated to boycott Coors beer. Source: Courtesy of Howard Petrick. Howard Wallace Papers, San Francisco History Center, San Francisco Public Library.

the City Council.[94] Fellow supervisor Gordon Lau framed the ordinance in terms of human rights and fundamental fairness. "All this says is that gay people are OK. It says, 'If gay people can do the job, hire them; if they can pay the rent, rent to them.' It affirms a basic right to be treated as a human being."[95] After years of concerted and coordinated effort, activists in San Francisco and Los Angeles won gay workplace rights provisions at the city level in the late 1970s.

The San Francisco gay community also forged connections with the local labor movement. In the mid-1970s, Allan Baird, a Teamster representative for Beer Drivers Local 888, asked Harvey Milk for help with the Teamsters boycott of Coors beer (see Figure 1). Milk agreed when Baird

94. Press Release, Supervisor Harvey Milk, February 9, 1978, Gay Rights Ordinance folder, box 8, HM-SS; and "Legislative Update," *The Advocate,* May 3, 1978, 8.

95. "S.F. Outlaws Bias Against Gays in Jobs and Housing," *Los Angeles Times,* March 22, 1978, B3.

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promised to find jobs for openly gay people within the union.[96] The movement to combine gay rights and labor rights was at times embodied by the same individuals. Howard Wallace, an organizer with the California American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), founded Bay Area Gay Liberation (BAGL) in the mid-1970s. To Wallace and other members of BAGL, gay rights and workers' rights were mutually constitutive. "The crude and lurid stereotypes of gay people are just as false as the bumbling 'Archie Bunker' image of this country's workers," wrote Wallace.[97] He also encouraged gay workers to hone their labor consciousness. Wallace observed, "Being gay and working for a gay boss is obviously not enough" to protect gay workers from exploitation, for wages on Castro Street were as low, and labor conditions as exploitative, as elsewhere in San Francisco.[98] Toward that objective, Wallace facilitated a meeting among twenty-two Bay area labor leaders and gay rights leaders. The labor officials promised to fight for gay rights clauses in future union contracts, while BAGL promised to oppose eight antilabor ballot initiatives. Jack Crowley, secretary–treasurer of the San Francisco Labor Council, pledged his support, calling the provision "a matter of simple justice."[99] Teamster Allan Baird helped facilitate an affirmative action program for gay truckers. Wallace himself was the first driver hired.[100]

Another organization, the Committee on Rights Within the Gay Community, drafted and publicized its "Bill of Rights for Patrons and Employees of Gay Establishments." The statement proclaimed that workers in gay establishments should have certain labor protections, including "the right to job security and to organize and bargain collectively

96. Duncan Osborne, "Lavender Labor: A Brief History," in *Homo Economics: Capitalism, Community, and Lesbian and Gay Life,* eds. Amy Gluckman and Betsy Reed (New York and London: Routledge, 1997), 223–28.

97. Bay Area Gay Liberation, "A Call for Labor Leadership and Action on Human Rights," October 2, 1975, Howard Wallace Papers, unprocessed, James C. Hormel Gay and Lesbian Center, San Francisco Public Library, San Francisco, CA (hereafter HWP); and Ammiano, "My Adventures as a Gay Teacher."

98. "Time to Organize! Time to Fight Back!" HWP.

99. "Labor Unions Join Gay Movement," *Bay Area Reporter,* October 28, 1976, ibid.; "A New Breakthrough," ibid.

100. "Gay to Join Teamsters," *San Francisco Bay Guardian,* April 19–May 2, 1975, HWP. Kitty Krupat argues that as women and minorities brought identity-based concerns to the bargaining table in the 1960s and 1970s, organized labor's gay advocates successfully framed gay rights within the established "dialectic of right and wrong" because activists could easily analogize homophobia to racism and sexism. Krupat, "Out of Labor's Dark Age: Sexual Politics Comes to the Workplace," in *Out at Work: Building a Gay-Labor Alliance,* Krupat and Patrick McCreery, eds., (Minneapolis: University of Minnesota Press, 2000), 32–34, 39.

over wages, job conditions and other issues." It condemned the sexual abuse of workers by customers and discrimination based on gender presentation. Local gay rights groups described sexual autonomy, expression, and dignity as fundamental workplace rights.[101]

Gay rights activists across California also sought statewide workplace protections. They recruited allies in state government who advocated extending state employment discrimination provisions to include sexual orientation. State Senator Art Agnos first introduced a gay rights bill to the California Senate in 1977. Agnos had been a long-time advocate for disempowered minorities, from homosexuals to the homeless and the mentally ill. His bill addressed sexual orientation along with myriad other aspects of gender presentation and personal style. Assembly Bill 1302 proposed to amend the state labor code to outlaw employment discrimination based on sexual orientation, as well as pregnancy, "a person's refusal to grant sexual favors," and "the outward appearance of any person with regard to manner of dress, hair style, facial hair, facial features, [and] disproportion of weight to height." Agnos argued that categorizing or dividing workers based on any of these characteristics should be considered forms of unlawful sex discrimination. These explicit amendments were necessary, he claimed, because "Currently, the California Fair Employment Practice Act makes it unlawful to discriminate in employment on the basis of 'sex,' but does not define what such discrimination is." To Agnos, the category of 'sex' reached far beyond one's anatomy and should protect gay workers from persecution.[102]

Gays were heartened by Agnos' attempt to stretch existing sex discrimination laws to include them. They reasoned that the bill would pass easily "if the opposition considers it to be merely a women's rights issue."[103] However, the bill did not advance out of committee that year, and the GRC urged its members to find inspiration to redouble their efforts by reflecting on their own work situations. "How do you know you haven't been discriminated against? What promotions have you missed? How closeted do you have to be at work to protect yourself? Wouldn't you like to know the law says you're safe even if the boss finds out you're gay? When times are tough, old prejudices revive. We're entitled to our right to work and entitled to a law that guarantees it."[104] In January 1978, more than 100

101. Gay Action/Bar Committee, "Bill of Rights for Patrons and Employees of Gay Establishments," Gay Rights I folder, box 7, HM-SS.

102. California State Senator Art Agnos, Sixteenth District Assemblyman, May 5, 1977, folder 2, box 7, ACLU–GRC.

103. Paul D. Hardman, California Committee for Equal Rights, to John Monzakis, ACLU Legislative Committee, May 5, 1977, folder 2, box 7, ACLU-GRC.

104. "It's Your Job That's On The Line!" folder 10, box 20, ACLU–GRC; "News Flash," folder 5, box 4, ACLU–GRC.

gay rights activists lobbied state legislators in Sacramento, but the bill still did not pass. Therefore, although the struggle for gay workplace rights inspired concerted and diverse activism throughout California, campaigns before employers and elected officials left gay workers with only inconsistent protection from discrimination.[105]

* * *

Gay workers across California lobbied legislators to add sexual orientation to existing workplace rights provisions, and activist groups such as the CHF adopted confrontational tactics to attack workplace discrimination; a practice they condemned as a manifestation of society's disdain for homosexuality. However, the workers who fought discrimination in court used well-established tactics to fight for workplace protections within pre-existing legal channels even as the arguments they offered were controversial. In state and federal lawsuits against PT&T, they sought to prove that sexual orientation discrimination was a kind of sex discrimination that was already outlawed by state and federal law.

105. *ACLU of Southern California Gay Rights Newsletter,* February 1978, folder 2, box 17, ACLU-GRC. The national legislative arena also saw efforts to include sexual orientation as a protected category within workplace discrimination laws. Congressperson Bella Abzug introduced the Equality Act of 1974, which would amend Title VII of the Civil Rights Act of 1964 to include "sexual orientation, sex or marital status" to the list of antidiscrimination provisions. Indebted to the sizeable gay and lesbian constituency in her New York district, Abzug advocated for gay rights as part of a broad progressive agenda. Abzug also championed women's rights and environmental protection, and she was the first member of Congress to call for Richard Nixon's impeachment—because of his part in perpetuating alleged human rights abuses in Vietnam, not due to the Watergate scandal. She declared gays and lesbians to be "a very extensive minority who have suffered discrimination and who have the right to participation in the promise and the fruits of society at as every other individual." Abzug introduced the Equality Act every year from 1974 until she left Congress in 1977, when Manhattan Democratic Representative Ed Koch took up the mantle. Koch amended the bill to clarify that it would not require employers to fill hiring quotas of homosexuals. The bill was never passed, but some version of Abzug's Equality Act has been introduced in Congress every year since 1974. In 1994, the bill was renamed the "Employment Non-Discrimination Act." In 1996, the law missed passage in the United States Senate by a single vote. "Rights Struggle Shifts to Capitol Hill," *The Advocate,* July 31, 1974, 1; David L. Aiken, "Bella's Bill: 'Time to Enjoy the Fruits,'" *The Advocate,* April 23, 1975, 4; Doug Ireland, "Lessons from the ENDA Mess," in *Smash the Church, Smash the State!,* 263–68; "Koch Says 'No Quotas,'" *The Advocate*, September 17, 1977, 10; Suzanne Braun Levine and Mary Thom, *Bella Abzug: How One Tough Broad from the Bronx Fought Jim Crow and Joe McCarthy, Pissed Off Jimmy Carter, Battled for the Rights of Women and Workers, Railed Against War and For the Planet, and Shook Up Politics Along the Way* (New York: Farrar, Straus and Giroux, 2007), 109, 149; Patrick McCreery, "Beyond Gay: 'Deviant' Sex and the Politics of the ENDA Workplace," in Krupat and McCreery, eds., *Out at Work,* 32–34; and Vaid, *Virtual Equality.*

The California subsidiary of AT&T was one of the largest employers in the state. PT&T operated 80% of California's telephones and employed 93,000 people statewide. A protected monopoly, PT&T was regulated by the California Public Utilities Commission (PUC).[106] Targeting PT&T at the state level made sense to activists because its parent company gave each of its twenty-two individual operating companies significant flexibility. One operating company president remarked, "We are pretty much left to our own devices…in the end, a lot flows back to earnings; if your earnings are good, AT&T is very permissive; if not, it isn't."'[107] The New York AT&T subsidiary claimed not to "differentiate among employees based on their sexual preferences," and a 1976 publication claimed that AT&T welcomed gay employees nationwide. In reality, however, personnel policies varied by locality.[108]

If the gay employment rights movement in California was at the leading edge of antidiscrimination struggles, PT&T was at the vanguard of explicit homophobia. Advocate groups such as SIR and city employment agencies in Los Angeles and San Francisco had received numerous complaints about PT&T's treatment of homosexual employees and applicants by the early 1970s (see Figure 2). SIR had already sparred with PT&T in 1968, when the company rejected as offensive a proposed telephone book advertisement that read, "Homosexuals, know and protect your rights. If over twenty-one write or visit the Society for Individual Rights." SIR appealed before the PUC and lost in early 1971. SIR vowed to appeal to the state Supreme Court, and PT&T agreed to print the advertisement several months later.[109]

PT&T made no similar concessions to gay employees. Although AT&T agreed to a $38,000,000 settlement for female and minority employees in 1973, PT&T did not fear similar court involvement on behalf of gay

106. Richard Gayer, Employment Rights Committee, ACLU of Northern California, to Roger Taylor, Assistant to the Chief, Fair Employment Practices Commission, July 25, 1973, re: Appearance Before Commission, August 2, 1973, "Fair Employment Practices Commission (California)" subject file, ONE; and PT&T Anti Gay Policy, "Fair Employment Practices Commission (California)" subject file, ONE.

107. John Brooks, *Telephone: The First Hundred Years* (New York: Harper and Row, 1975), 10.

108. "Openly Gay at AT&T?" *The Advocate,* October 20, 1976, 9; "Northwestern Settles Past Bias as Ma Bell Decrees: No More!" *The Advocate,* August 28, 1974, 2; and George Mendenhall, "Ma Bell Clings to Anti-Gay Policy in Liberated SF," *The Advocate,* January 3, 1973, 6.

109. Mendenhall, "Ma Bell Clings to Anti-Gay Policy in Liberated SF"; "State Agency Upholds Pacific Telephone's Rejection of SIR Ad," *The Advocate,* January 6–19, 1971, 1; and "Ma Bell Gives In to SIR–But Gays Want It To Be Legal," *The Advocate,* September 1–14, 1971, 6.

Figure 2. Pacific Telephone and Telegraph employees took to the streets to demand the right to be openly gay at work. Source: Courtesy of Howard Petrick. Howard Wallace Papers, San Francisco History Center, San Francisco Public Library.

employees.[110] Instead, officials declared their refusal to employ workers "whose reputation, performance, or behavior would impose a risk to our customers, other employees, or the reputation of the company." Citing the objections of a fictional homophobic customer, they explained that telephone companies held significant "responsibilities to the community at large" and required "tremendous amounts of public contact." Therefore, PT&T was "not in a position to ignore commonly accepted standards of conduct, morality or lifestyles."[111] Company hiring officials routinely probed applicants' personal and military records for signs of homosexuality, and interviewers were trained to spot homosexual applicants by asking questions about marital status, living arrangements, and military discharges. PT&T flagged the applications of admitted or suspected gay applicants with "Code 48-Homosexual." Although company officials assumed that PT&T already employed many homosexuals who

110. Herr, *Women, Power, and AT&T*; and Shapiro, "Women on the Line, Men at the Switchboard."

111. "Won't Hire Gay, Says Ma Bell, But. . ." *The Advocate,* November 10, 1971, 5; and Mendenhall, "Ma Bell Clings to Anti-Gay Policy in Liberated SF."

successfully hid their sexual orientation, they summarized PT&T's policy thus: "If you're known to be gay, please stay away."[112]

Gay workplace rights activists found some initial success against PT&T at the local level in San Francisco. In 1972, a new clause in the San Francisco city code prohibited employment discrimination based on sexual orientation, and at first, PT&T refused to comply.[113] PT&T held contracts with the San Francisco Department of Public Works to install and maintain telephone booths on city sidewalks. In 1973, the city Human Rights Commission claimed that the sidewalk telephones served an "essential public need," and that PT&T was, therefore, exempt from the nondiscrimination provision.[114] Gay rights advocates, led by the Pride Foundation, demonstrated that the pay phones produced an annual revenue of $250,000 for PT&T.[115] After 5 years of continued haggling, gay rights advocates triumphed, forcing PT&T's San Francisco operation to cease sexual orientation discrimination. However, the ruling was unenforceable beyond that city, and PT&T had proved to be an intransigent foe.[116]

In 1973, activists' campaign against PT&T hit a roadblock, and they began to contemplate a court-centered strategy. The ACLU tried to lodge an official employment discrimination complaint against PT&T before the state Fair Employment Practices Commission (FEPC), but was rebuffed.[117] Similarly, members of the PUC told advocates that although they were personally supportive of gay rights, gay workers had no standing under current state nondiscrimination provisions, which did not apply to sexual orientation.[118] Thereupon, San Francisco gay activists set up test cases against PT&T to force judges to weigh in on the constitutionality of sex

112. Letter from Don to Rob Coleman, July 31, 1972, "Telephone-Gay Issues" subject file, ONE; Mark Vandervelden, "Pacific Bell to Pay $3 Million to Gays: Company Settles Out of Court in Antigay Discrimination Suit," *The Advocate,* January 6, 1987, 13; and "Won't Hire Gay, Says Ma Bell, But…"; "Ma Bell Clings to Anti-Gay Policy in Liberated SF."

113. "PT&T Eyes Hiring Policy," *The Advocate,* July 5, 1972, 13.

114. George Mendenhall, "S.F. Rights Commission Takes on Ma Bell," *The Advocate,* July 30, 1975, 4.

115. "Pacific Telephone Challenged," *The Advocate,* March 13, 1974, 5; and "Equal Opportunity Breakthroughs and Setbacks," *The Advocate,* March 9, 1977, 17.

116. Human Rights Commission of the City and County of San Francisco, 12th Annual Report, January 1976–January 1977, Human Rights Commission 12th Annual Report folder, box 8, HM-SS.

117. Richard Gayer, Employment Rights Committee, ACLU of Northern California, to Roger Taylor, Assistant to the Chief, Fair Employment Practices Commission, July 25, 1973, re: Appearance Before Commission, August 2, 1973, re: PT&T Anti-Gay Policy, "Fair Employment Practices Commission (California)" subject file, ONE.

118. "Utility Officials Agree: Employment Equality 'Just Goal,'" *The Advocate,* August 15, 1973, 5.

discrimination provisions that excluded sexual orientation discrimination claims.[119] Such a move was inherently risky. Activists acknowledged that "the phone company will undoubtedly resist more than someone else." However, a positive outcome would yield unprecedented rewards. One activist reasoned, "They are the largest business in the state. If we defeat them and their high priced lawyers, it will have an important psychological impact." Such an outcome would force smaller firms to yield; therefore, it seemed "better to go after the big one and settle the issue once and for all."[120] In 1974, advocates began to organize state and federal lawsuits against PT&T to test the legitimacy of workplace equality laws that excluded sexual orientation.

The plaintiffs in the federal suit, *DeSantis v. PT&T,* included unsuccessful applicants and former employees of PT&T. The lead plaintiff was Robert DeSantis, a clerical worker and pastor. DeSantis had held a variety of low-level office jobs by the time he sought a position at PT&T in 1974.[121] His stint as a seminarian at the MCC in Los Angeles seems to have galvanized his sense of social justice. In a church newsletter, DeSantis wrote that religious faith could "build up the egos of each individual gay person by showing each person that they are worth something to themselves, others, and God."[122] DeSantis sought employment at PT&T while he worked as a part-time minister, but his application was tossed out when the interviewer told him she knew "what the MCC is." A second plaintiff had been harassed, then fired from PT&T and refused assistance from the state FEPC; a third plaintiff had faced sexual orientation-based harassment at PT&T and quit under duress, then learned that notes in his personnel file marked him as ineligible for rehire. The *DeSantis* plaintiffs argued that they were victims of sex discrimination and entitled to relief under Title VII.[123]

119. "Dear Friend," Hastings College of Law Gay Law Students Association, January 26, 1976, "Attorneys" subject file, ONE. Several months later, the ACLU filed similar charges against Northwestern Bell, headquartered in Minnesota. In 1974, Northwestern Bell promised to comply with the Minneapolis city ban against homosexual discrimination. "Battle of Ma Bell Spreads to Minnesota," *The Advocate,* August 29, 1973, 13; and "Ma Bell Will Switch, Not Fight Law," *The Advocate,* May 8, 1974, 12.

120. Don to Rob Coleman, July 31, 1972, "Telephone-Gay Issues" subject file, ONE.

121. "Minister's Personal Data Sheet," August 7, 1974, Personal and MCC Professional Correspondence folder, box 1, Robert DeSantis Papers, The Gay, Lesbian, Bisexual, Transgender Historical Society, San Francisco, California (hereafter RDP); "Second Application to Become a Licensed Minister," June 23, 1974, Personal and MCC Professional Correspondence folder, box 1, RDP.

122. Robert DeSantis, "With Unity," *MCC Newsletter,* April 16, 1972, Personal and MCC Professional Correspondence folder, box 1, RDP.

123. "Class Action Suit Filed Against Ma Bell," *The Advocate,* November 1975, 15; Wayne Chew, "Title VII Rights of Homosexuals," *Golden Gate Law Review* 10 (1980):

Gays' attempts to analogize sexual orientation discrimination to sex discrimination engaged some of feminists' most innovative legal arguments.[124] The plaintiffs offered three arguments to support their right to enact a gay identity at work: that Congress had intended the sex discrimination provision of Title VII to include sexual orientation; that PT&T engaged in sex discrimination by penalizing men, but not women, who preferred male sexual partners; and that sexual orientation discrimination disproportionately affected men because there were more gay men than gay women in society. Both the District Court and the Ninth Circuit Court of Appeals rejected all three arguments, but the Ninth Circuit consolidated two other cases under *DeSantis* and offered a lengthier opinion. To answer the question of Congressional intent, the Court referenced a 1977 opinion addressing the rights of transsexuals that declared that Title VII was only intended to refer to "traditional notions of sex."[125] The Court also cited two 1976 published Equal Employment Opportunity Commission (EEOC) opinions stating that Congress used the word "sex" to refer to "a person's gender, an immutable characteristic with which a person is born." By contrast, the EEOC framed sexuality as "a condition which relates to a person's sexual proclivities or practices, not his or her gender; these two concepts are in no way synonymous."[126] To the allegation of sex discrimination based on the sex of one's partner, the Court stated, "whether dealing with men or

53; and Arthur S. Leonard, *Sexuality and the Law: an Encyclopedia of Major Legal Cases* (New York and London: Garland Publishing, 1993), 406–9. To address the question of homosexuality under Title VII, the Ninth Circuit consolidated under the aegis of *DeSantis* a number of related cases that turned on the question of sexual orientation and Title VII. In *Lundin v. Pacific Telephone,* PT&T employees Judy Lundin and Barbara Buckley asserted that they were fired because they were in a lesbian relationship. In *Strailey v. Happy Times Nursery,* Donald Strailey was allegedly discharged for wearing an earring to school, presumed to be gay, and fired. See *DeSantis v. Pacific Telephone and Telegraph*, 327.

124. *Phillips v. Martin Marietta Corporation,* 400 U.S. 542 (1971); and *Griggs v. Duke Power Co.,* 424.

125. *DeSantis v. Pacific Telephone and Telegraph*, 330. See also *Holloway v. Arthur Andersen & Co.,* 566 F 2d 659, 662–3 (9th Cir. 1977). The "traditional notions of sex" interpretation was upheld in the 2002 case *Rene v. MGM Grand Hotel,* 305 F.3d 1061 (9th Cir. 2002), in which the Ninth Circuit held that "sex" and "gender" may be interchangeable, but that neither encompassed sexual orientation. See "Employment Law. Title VII. Sex Discrimination. Ninth Circuit Extends Title VII Protection to Employee Alleging Discrimination Based on Sexual Orientation. *Rene v. MGM Grand Hotel, Inc.,* 305 F.3d 1061 (9th Cir. 2002) (en banc), Petition for Cert. Filed, 71 U. S. L. W. 3444 (U. S. December 23, 2002) (No. 02-970)," *Harvard Law Review* 116 (2003): 1889–96.

126. EEOC Decision No. 76–75, 1976 Empl. Prac. Guide CCH EEOC Decisions (1983), 6495; and EEOC Decision No. 76–67; 1976 Empl. Prac. Guide CCH EEOC Decisions (1983), 6493.

women the employer is using the same criterion: it will not hire or promote a person who prefers sexual partners of the same sex."[127] Finally, the Court rejected the disparate impact argument because unlike women, gay men were not a protected group. The Ninth Circuit thus drew a bright new line between sex and sexual orientation in employment law.[128]

The plaintiffs in the state-level action were only moderately more successful, and as in *DeSantis*, the court refused to analogize sex and sexual orientation. The plaintiffs in *Gay Law Students v. PT&T* were a handful of law students from the University of California at Hastings and Boalt Hall who claimed that they were gay and that they had sought or would seek employment at PT&T.[129] The students were assisted by attorneys from the Neighborhood Legal Assistance Foundation and SIR, and they created a new brief bank that they hoped would help deepen their legal research on gay issues. They filed suit against PT&T for alleged sex discrimination and against the state FEPC for dismissing their claims. The plaintiffs lost in trial court and district court, and they appealed to the state Supreme Court in 1977. In 1979, the Court rejected the students' argument that sexual orientation discrimination was a form of sex discrimination and refused the plaintiffs' assertion that the state FEPC should add sexual orientation to existing nondiscrimination codes.[130]

However, in explicitly differentiating sexual orientation from sex, the majority opinion offered a concession to gay rights advocates by framing "coming out of the closet" as a protected activity.[131] Judge Matthew

127. *DeSantis v. PT&T,* 331.

128. DeSantis followed a line of decisions permitting sanctions against workers who revealed their homosexuality on the job. See *Gaylord v. Tacoma School District No. 10,* 88 Wash. 2d (1977); *Safransky v. State Personnel Board*, 62 Wisconsin 2d 464 215 N.W. 2d 379 (1979); and *McConnell v. Anderson*, 451 F.2d 193 (8th Cir. 1971).

129. One of the student-attorneys on the case was Dick Gayer. His homosexuality had disqualified him from receiving a government security clearance several years earlier; therefore, he would have been summarily rejected from employment at PT&T. The Gay Law Students Association was one of an estimated between 200 and 250 gay student groups on university campuses in 1974. That same year, the California State Department of Health gave a $30,000 grant to the Gay People's Union at Stanford University to enable the group to expand mental health services for gay students. Other such groups on campuses nationwide served as social and intellectual outlets for gay students. Iver Peterson, "Homosexuals Gain Support on Campus," *New York Times,* June 5, 1974, 1.

130. *Gay Law Students v. PT&T,* 458; Gay Law Students Association, UC-Hastings College of Law, "Dear Friend," January 26, 1976, "Attorneys" subject file, ONE; "Landmark California Court Ruling," *The Advocate,* July 12, 1979, 7; Leonard, *Sexuality and the Law,* 410–17.

131. The California Supreme Court ruled that the GLSA had three causes of action against PT&T: the Equal Protection Clause of the state Constitution barred PT&T from arbitrary employment discrimination; the state Public Utilities Code prohibited employment

Tobriner wrote, "A principal barrier to homosexual equality is the common feeling that homosexuality is an affliction which the homosexual worker must conceal from his employer and his fellow workers. Consequently one important aspect of the struggle for equal rights is to induce homosexual individuals to 'come out of the closet,' acknowledge their sexual preferences, and to associate with others in working for equal rights."[132] Thus, the California Supreme Court outlined protections for sexual orientation in terms of free speech rather than a fixed, essential status. By contrast, gay workplace rights advocates had framed their claims in terms of their inherent identities—in whatever form they were enacted—rather than choices that they made about how to express them. Through the language of the "manifest homosexual," the court implied that homosexual *status* was unprotected; what was protected was the act of making it known.[133] Following that decision, members of the Gay Law Students Association turned the case over to the newly founded National Gay Rights Advocates—a public interest law firm dedicated to assisting gays and lesbians—to challenge PT&T under the free speech provisions of state labor and utility codes. In the parties' 1987 settlement, PT&T established a $3,000,000 fund for gay employees, but maintained its innocence.[134]

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discrimination by a public utility; and sections 1101 and 1102 of the state Labor Code barred employers from interfering with workers' political activities. Section 1101 of the California Labor Code stated: "No employer shall make, adopt, or enforce any rule, regulation or policy: a. forbidding or preventing employees from engaging or participating in politics. . .b. controlling or directing, or tending to control or direct the political activities or affiliations of employees." Section 1102 states: "No employer shall coerce or influence or attempt to coerce or influence his employees through or by means of threat of discharge or loss of employment to adopt or follow or refrain from adopting or following any particular course or line of political action or political activity." quoted in Douglas Warner, "Homophobia, Manifest Homosexuals and Political Activity," *Golden Gate Law Review* 11 (1981): 641.

132. *Gay Law Students v. Pacific Telephone,* 488.

133. Eugene Robinson, "Gays Win in High Court on Job Bias," *San Francisco Chronicle*, June 1, 1979; and Don Knutson, "Landmark Rights Case for Gays: An Analysis," *The Advocate,* July 12, 1979, 9.

134. In the settlement, PT&T admitted no wrongdoing, but covered the plaintiffs' legal fees and created a $3,000,000 fund to compensate the aggrieved individuals. Mark Vandervelden, "Pacific Bell to Pay $3 Million to Gays: Company Settles Out of Court in Antigay Discrimination Suit," *The Advocate,* January 6, 1987, 13; Advocate.com Editors, "LGBT Journalists Honored for Pioneering Work," August 3, 2010, http://www.advocate.com/News/Daily_News/2010/08/03/LGBT_Journalists_Honored_for_Pioneering_Work/ (March 2, 2012); and Leonard, *Sexuality and the Law,* 410, 417. In 1992, the California legislature amended its state labor code to include an explicit ban on employment discrimination against homosexuals in all public and private employment, except nonprofit organizations. See Cal. Lab. Code 1102.1.

In refusing to define sexual orientation discrimination as a form of sex discrimination prohibited by Title VII, the District Court judges in *DeSantis* were in line with contemporary federal courts that denied Title VII applicability to gender nonconformity and transsexuality.[135] Law professor Rhonda R. Rivera, writing in 1985, declared that attempting to use Title VII to pursue remedies for sexual orientation discrimination against private employers was a "dead end route."[136] By contrast, advocates hailed the decision in *Gay Law Student Association* as "groundbreaking," if narrow; the decision marked the first time any court held sexual orientation discrimination unconstitutional when practiced by an employer apart from the federal or state government. Advocates hoped it would spur similar suits against "any discriminating employer who enjoys substantial market power or who can be characterized as a 'public service enterprise,'" including newspapers, labor unions, and universities.[137] However, other state courts did not follow suit, and lower California state courts and agencies reached conflicting interpretations of the decision. In the early 1980s, although the Civil Service Commission of Contra Costa County found in favor of a lesbian whose application for a deputy sheriff position was rejected solely because of her homosexuality, relief was denied to a Disneyland employee who was fired in part because he insisted on wearing a button identifying himself as gay when he interacted with customers.[138]

For gay rights activists in the late 1970s, asking courts to compare sexual orientation discrimination with sex and race discrimination was a sensible move. Title VII protections had yielded stunning victories for working

135. See *Parfitt v. D. L. Auld Co.,* No. 74–437 (S.D. Ohio 1975); and *Blum v. Gulf Oil Co.,* 597 f 2d 936 (5th Cir. 1979). Courts adjudicating Title VII cases based on gender nonconformity and transsexuality reached similar conclusions. In *Smith v. Liberty Mutual Insurance Co.,* 569 f 2d 325 (5th Cir. 1978), the Fifth Circuit Court held that Title VII did not apply to discrimination against effeminate men. In *Holloway v. Arthur Andersen & Co.,* 566 F 2d 659 (9th Cir. 1977), the Ninth Circuit Court held that Title VII did not ban discrimination against transsexuals. See also *Ulane v. Eastern Air Lines Inc.,* 742 f 2d 1081 (7th Cir. 1984). However, in 2008, the United States District Court for the District of Columbia ruled that discrimination against a transsexual librarian did constitute sex discrimination under Title VII. *Schroer v. Billington,* 577 F.Supp.2d 293 (U.S. District Court for the District of Columbia, 2008). See also John Cloud, "A Transsexual vs. the Government," *Time*, September 12, 2008, http://www.time.com/time/nation/article/0,8599,1840754,00.html (March 3, 2012).

136. Rivera, "Queer Law," 471.

137. Don Knutson, "Landmark Rights Case for Gays: An Analysis," *The Advocate,* July 12, 1979, 9.

138. *In Re Kreps; County of Orange v. Orange County Employees Association,* No. 72-30-0201-81, July 27, 1981; Rivera, "Queer Law," 508–14; National Center for Lesbian Rights, "NCLR: Celebrating 35 Years of Making History," *On the Docket* (2011): 1 http://www.nclrights.org/site/DocServer/NCLR_Newsletter_Fall2011.pdf?docID=9101 (February 2, 2012).

women and minorities.[139] However, judges did not accept gays' analogy between sex and sexual orientation, and gay advocates had thus unwittingly compelled jurists to articulate differences between those categories before the law. Judges' reasoning left gays vulnerable to the conservative arguments, already gaining steam, that homosexuality was an immoral expression that could and should be contained or even eradicated. *DeSantis* and *Gay Law Students Association* thus set the course for future gay rights jurisprudence and activism.

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The outcome of the gay workplace rights campaigns of the 1970s was a piecemeal set of provisions that substituted voluntary corporate action, interest group pressure, and scattered local laws and court decisions in place of strong, uniform protections from discrimination. In California and nationwide, activists' battles for state-enforced gay workplace rights produced heated struggles at the local level, unlike the situation with women and racial minorities, whose discrimination claims could be fielded by the EEOC and adjudicated by federal courts.[140] Starting in the 1970s, city governments began to amend employment discrimination provisions to include gays and lesbians.[141] In California, a decade of grassroots organizing yielded significant local victories. Within a 3 year span in the early 1980s, the San Francisco Police Department held a recruiting drive to attract gay police officers, the University of California system extended nondiscrimination provisions to protect homosexual employees, and California's governor issued an executive order to prohibit discrimination against gays and lesbians employed by state agencies.[142]

139. MacLean, *Freedom Is Not Enough*; Skrentny, *The Minority Right Revolution;* and see note xvi above.

140. Anita Bryant, *The Anita Bryant Story: The Survival of Our Nation's Families and the Threat of Militant Homosexuality* (Old Tappan, NJ: Revell, 1977); Clendinen and Nagourney, *Out for Good*; Rimmerman, *From Identity to Politics*; and Vaid, *Virtual Equality*.

141. In some cities, such provisions held broad public and political support; in Los Angeles, the ordinance was passed by a vote of thirteen to two. In 1975, such laws existed in fifteen cities in the United States and Canada, including Seattle, Ithaca, Ann Arbor, and Toronto. "ACLU-Southern California Gay Rights Guardian," July 1979, folder 3, box 17, ACLU-GRC; and "Employment Rights Round-Up—Where We Are, Where We're Going," *The Advocate*, January 29, 1975, 9.

142. "Sexual Orientation and Employment Discrimination," ca. 1980, folder 12, box 3, Jim Long Papers, ONE National Gay and Lesbian Archives, Los Angeles, CA; Philip Hager, "SF Police Going After Gays…To Join the Force," *Los Angeles Times,* April 1, 1979, 1; "New Protections For Homosexuals," *Los Angeles Times,* June 21, 1983, C4; "ACLU-Southern California Gay Rights Guardian," August 1979, folder 3, box 17, ACLU-GRC.

However, gay rights provisions often generated fierce debate, even among proximate communities. Voters in San Jose, California, rejected a proposed nondiscrimination city ordinance. Dean Wycoff, executive director of Moral Majority, proclaimed that San Jose voters did not share their neighbors' permissive attitudes: '"We don't want the cancer of homosexuality spreading from San Francisco down to Santa Clara County.'"[143] Further, AB 1, the proposed addition of nondiscrimination provisions for gay workers to public and private employment codes, remained bitterly divisive in the California legislature into the 1990s.[144] In the absence of state or federal protection, activists replicating these campaigns in different states and localities felt they were reinventing the wheel by fighting the same battles over and over to mixed results.[145]

143. Philip Haver, "San Jose Area Voters Reject 2 Gay Rights Ordinances," *Los Angeles Times,* June 5, 1980, B21. Similar ordinances in Dade County, Florida and St. Paul, Minnesota, were either repealed or rejected at the polls. In Eugene, Oregon, Catholic organizers attempting to repeal a gay rights ordinance collected 10,000 signatures in a week. Eugene voters repealed the ordinance by a two-to-one margin. In Wichita, Kansas, a similar petition, which called for both the repeal of the provision and the ousting of the city commissioners who had supported the law, gathered 30,000 signatures. Gay rights advocates also raised concerns that existing local provisions were ineffective because they were often not publicized and did not effectively deter discrimination. Randy Schilts, "City Rights Laws–Are They Just Toothless Paper Tigers?" *The Advocate,* March 10, 1976, 6; "Rights Repeal Attempts," *The Advocate,* January 25, 1978, 8; and "Eugene, Ore. Residents Vote to Repeal Gay Rights Ordinance," *Washington Post,* May 24, 1978, A3.

144. From the 1970s to the 1990s, California state legislators struggled to pass sexual orientation discrimination protections. In January 1980, AB 1 remained in committee for lack of one vote. In 1982, a new articulation of the bill suggested adding sexual orientation to the existing categories of "race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or age." This bill passed both Houses of the state legislature in 1984, only to be vetoed by California's governor. Text of AB 1, Introduced December 4, 1978, "AB-1 1983" subject file, ONE; Text of AB 1, introduced December 6, 1982, "AB-1 1983" subject file, ONE; David G. Moore, "Looking Back: A Chronology," folder 10, box 3, in ONE Institute 30th Anniversary Program, RCP; and Douglas Schuit, "Gay Job Rights Bill Vetoed by Deukmejian," *Los Angeles Times,* March 14, 1984, OC1.

145. As of 2009, 21 states and the District of Columbia prohibited employment discrimination on the basis of sexual orientation, and twelve states and the District of Columbia prohibited employment discrimination on the basis of gender identity. See U.S. Government Accountability Office, GAO-10-135R, *Sexual Orientation and Gender Identity Employment Discrimination: Overview of State Statutes and Complaint Data* 1 (Oct. 7, 2009). Government employment provides another example of uneven and halting steps toward protections from discrimination for gays and lesbians. After *Norton v. Macy* and the 1975 amendments to the United States Civil Service Regulations, homosexual civilian employees of the federal government have significant protections from discrimination, particularly if their sexuality can be proven to have no detrimental effect upon their job performance. However, in 1981, the United States Army passed regulations mandating the discharge

Further, the growing visibility of gay rights struggles mobilized the New Right, indicating that the politics of homophobia could yield political gold. Gay members of certain professions faced systematic campaigns to oust them from their positions. In 1978, conservative state legislator John Briggs introduced Proposition 6 (also called the Briggs Initiative), a ballot measure designed to restrict teachers from "advocating, imposing, encouraging or promoting homosexual activity."[146] In the statewide "No on 6" campaign, gay men and lesbians revealed themselves to friends, family, and coworkers to let them know that gay people included those they knew and cared about. Gay and lesbian activists framed Proposition 6 as an attempt to interfere with free speech, disrupt gay teachers' ability to make a living, and undermine job security and collective bargaining (see Figure 3).[147] "Proposition 6 would be the first law to require job discrimination against all members of a minority group," claimed "No on 6" literature.[148] In a debate with John Briggs, lesbian and public health advocate Josette Mondanaro disputed the contention that gay and gay-friendly teachers would corrupt children. She claimed, "Lord knows we have been raised in a heterosexual society, watching heterosexual television, reading heterosexual magazines and books, and it never rubbed off on us. You don't have to like us, but you don't have to beat on us either."[149] After

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of all homosexuals, regardless of rank or merit. In addition, gays could not obtain the security clearances that were required for many high-ranking government jobs until the early 1990s. President Barack Obama certified the repeal of "don't ask, don't tell," which required members of the military to hide their homosexuality or face dismissal, in 2011. Elisabeth Buhmiller, "A Final Phase for Ending 'Don't Ask, Don't Tell,'" *New York Times*, July 22, 2011, A13; Nan D. Hunter, Sherryl E. Michaelson, and Thomas B. Stoddard, *The Rights of Lesbians, Gay Men, Bisexuals, and Transgender People: The Basic ACLU Guide to a Gay Person's Rights*, 3rd ed. (Carbondale: Southern Illinois University Press, 1992), 16; and Randy Schilts, *Conduct Unbecoming: Gays and Lesbians in the United States Military* (New York: Ballantine Books, 1994), 376–80.

146. cad, "gays battle briggotry," *off our backs* 8 (1978): 7; Margaret Cruikshank, "Reflection," *The Radical Teacher* 7 (2003), 15; Al Martinez, "Snubs, Name-Calling Greet Gay Working to Defeat Prop. 6," *Los Angeles Times,* October 9, 1978, A3; and Judith Michaelson, "Briggs Submits Signatures for Anti-Gay Initiative," *Los Angeles Times,* May 2, 1978, B22. On Anita Bryant and the Dade County Campaign that inspired Briggs to introduce Proposition 6, see "Battle Over Gay Rights," *Newsweek,* June 6, 1977, 16–20.

147. "Boycott Carl's Jr.!" Briggs folder, box 6, HM-SS.

148. "A Self-Serving Politician Has Dreamed up a Moral Crusade. And He Wants You to Pay for It," box 6, HM-SS.

149. Dennis J. Opatrny, "Briggs–Mondanaro Showdown," *San Francisco Chronicle,* October 17, 1978. Josette Mondanaro was a physician and public official who conducted pioneering research and advocacy on behalf of drug addicted pregnant women and their

Figure 3. In 1978, California gay rights activists came together to defeat Proposition 6, which would have banned workers in California public schools from signaling a gay identity or "promoting" homosexuality. Source: GLC Poster Collection, San Francisco History Center, San Francisco Public Library.

a highly organized campaign, Proposition 6 was soundly defeated in November 1978, even in conservative sections of the state.[150]

offspring. Described as "the only self-avowed gay person" in California state government, Mondanaro was fired from her position as director of the Drug Abuse Division of the California Department of Health in 1977 because of the governor's thinly veiled fears about the potential threat she could pose to his political future. A 1978 public hearing forced her reinstatement, and her book became a classic in the field. Mondanaro, *Chemically Dependent Women: Assessment and Treatment* (Lexington, MA: Lexington Books, 1989). See also Eden E. Mondanaro, "A Pioneer of Chemical Dependency Treatment: Dr. Mondanaro Takes No Prisoners," *American Journal of Public Health* 94 (2004): 1300–1303; Murray Olderman, "A Public Servant Has Some Private Battles," *Merced [CA] Sun-Star,* August 31, 1978, 7; and Bobette Perrone, H. Henrietta Stockel, and Victoria Krueger, *Medicine Women, Curanderas and Women Doctors* (Norman, OK: University of Oklahoma Press, 1993): 159–65.

150. Ammiano, "My Adventures as a Gay Teacher"; William Endicott, "Gay Teacher and Antismoking Initiatives Lose," *Los Angeles Times,* November 8, 1978, A6; and Jeffrey

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Amidst fierce local battles for workplace rights, gay and lesbian workers and their advocates found some success courting corporate favor. Workers lobbied their employers for such benefits as bereavement leave and spousal medical benefits.[151] By 1978, major corporations including Bank of America, IBM, NBC, and Honeywell publicly claimed to be equal opportunity employers (though no government office tracked or verified these claims).[152] Such corporations as Quaker Oats and American Express claimed to follow local laws pertaining to gay workplace rights; however, in 1990, only 16% of American Express operations were in areas with gay workplace rights provisions.[153] Organizations such as the National Gay Task Force and Human Rights Campaign have successfully pressured employers to voluntarily change their policies.[154] Publications such as *The Advocate* have surveyed employers about employment practices, and interest groups monitor and publish businesses' treatment of gay and lesbian employees.[155] Further, throughout the 1990s, gay, lesbian, and bisexual employee groups won domestic partner benefits from their corporate employers. By 2004, 42% of Fortune 500 companies provided equal partner benefits.[156]

Another method of advocating for gay workplace rights has been to mobilize as consumers. Many corporations have discovered that courting gay customers can be good for business. In 1994, American Airlines launched a campaign to re-brand itself as gay-friendly. "Gay men and lesbian women are some of our most loyal and frequent customers," lectured a staff sensitivity-training video. American Airlines promoted special gay-friendly flights from San Francisco to New York in anticipation of Gay

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Perlman, "'Battle Is Not Over,' Briggs Vows to Prop. 6 Supporters," *Los Angeles Times*, November 9, 1978, OC_A1.

151. On such a campaign at the *Village Voice* newspaper in New York, see the interview of Jeff Weinstein, Interviews, Notes re: Domestic Partnership folder, box 1, Lesbian and Gay Labor Network Records, Wagner Archives, Tamiment Library, New York University; and Krupak, "Out of Labor's Dark Age," 10–12. On this internal mobilization process, see Nicole Raeburn, *Changing Corporate America From Inside Out: Lesbian and Gay Workplace Rights* (Minneapolis: University of Minnesota Press, 2004).

152. Bob Levering, "The Boys in the Barracks," *San Francisco Bay Guardian,* May 14–26, 1976, 8–9, folder 1, box 9, PCS.

153. Gaines Hollingsworth, "Corporate Gay Bashing: Which Companies Discriminate Against Gays and Lesbians, and How to Fight Back," *The Advocate,* September 11, 1990, 28.

154. Warner, "Homophobia, Manifest Homosexuals and Political Activity," 635.

155. "Corporate Policies on Gay Rights," *The Advocate,* May 31, 1978, 12; and Human Rights Campaign, "Corporate Equality Index," http://www.hrc.org/issues/workplace/cei.htm (March 31, 2010).

156. Raeburn, *Changing Corporate America from the Inside Out,* esp. 2.

Games IV and the twenty-fifth anniversary of Stonewall.[157] A rival business, United Airlines, felt the anger of the gay community when it filed suit in court to oppose a San Francisco equal benefits ordinance in 1997. Gay activists launched a nationwide boycott, distributing buttons, stickers, and flyers bearing the slogan "United Against United," and gathered to burn their United frequent flyer cards outside the company's San Francisco offices. In 1999, the San Francisco Gay Men's Chorus publicly returned to United a $15,000 sponsorship check. After 2 years in court, United dropped its suit and extended benefits to domestic partners of its employees and retirees.[158] Some prominent corporations sensing a business advantage or facing targeted activist pressure have taken steps to accommodate gay workers and customers.[159]

157. John Gallagher, "American Airlines Says it Wants to Repair its Contentious Relationship with Gays and Lesbians, But is it Sincere?" *The Advocate,* September 6, 1994, 29.

158. George Raine, "Policy Change Benefits United: Gays Applaud Airline's Shift on Domestic Partners," *San Francisco Chronicle,* October 3, 1999; "Gay Activists Launch TV Ad Campaign Boycotting United Airlines," *Business Wire,* March 31, 1999, http://www.allbusiness.com/marketing-advertising/marketing-advertising-overview/6776468-1.html (May 14, 2010); and Michael Arndt, "United Tries for Gay-Friendly Skies," *Business Week,* May 24, 2000, http://www.businessweek.com/bwdaily/dnflash/may2000/nf00524b.htm (May 14, 2010).

159. However, other businesses have perceived explicitly denouncing homosexuals to be a key business advantage. The problem of gay workers' lack of legal protections is especially evident in the case of Cracker Barrel, which has faced charges of sex, race, and sexual orientation discrimination in the past two decades. A 1991 personnel policy required workers to display "normal heterosexual values which have been the foundation of families in our society." At least eleven employees were immediately fired. For 12 years, activists boycotted, occupied, and otherwise protested Cracker Barrel. However, only pressure by a major stockholder, the New York City Employees Retirement System, convinced corporate leaders to rescind the policy. The fired workers were never compensated or rehired. Peter T. Kilborn, "Gay Rights Groups Take Aim at Restaurant Chain That's Hot on Wall Street," *New York Times,* April 9, 1992, A12; M.V. Lee Badgett, "A Win at Cracker Barrel," *The Nation,* January 23, 2003, 7; and Jeremy Quittner, "Cracker Barrel Buckles," *The Advocate,* February 4, 2003, 24–25. A 2006 EEOC suit compelled Cracker Barrel to pay $2,000,000 to fifty-one aggrieved employees, provide sensitivity training to all employees, and submit to years of EEOC monitoring. Similar sexual harassment settlements in New Mexico and Tennessee awarded thousands of dollars in back pay and attorneys' fees to aggrieved workers and forced Cracker Barrel to modify employment practices and retrain employees. "Cracker Barrel To Pay $2 Million for Race and Sexual Harassment at Three Illinois Restaurants: EEOC Settles Major Suit for 51 Employees in Bloomington, Mattoon and Matteson," *LawMemo,* March 10, 2006, http://www.lawmemo.com/eeoc/press/3-10-06b.htm (March 31, 2010); *EEOC v. Cracker Barrel Old Country Store Inc.,* (D.N. M., No. CIV-06-0920), consent decree approved August 24, 2007; and EEOC Press Release, "Cracker Barrel To Pay $255,000 for Sex Harassment And Retaliation;

Because gay workers have not obtained protection under Title VII and other antidiscrimination provisions, employment rights activists have relied on isolated and local struggles and the tactics of persuasion and protest rather than the protections of state-backed rights. However, the emergence of AIDS in the 1980s also shifted and refocused gay activists' own workplace efforts. In the 1980s, activist organizations that had been at the forefront of the workplace discrimination struggle pursued acceptance of HIV-positive coworkers and the inclusion of HIV/AIDS within state and federal disability provisions.[160] Discriminatory employers cited contagion metaphors and healthy coworkers' fears in firing both the HIV-positive and gay employees, who were assumed to be infected.[161] In a 1990 ACLU survey of 260 employment discrimination reporting agencies, 30% of complainants reported discrimination because they were perceived to be HIV-positive.[162] Cities including Los Angeles began to focus on education to keep the disease from spreading, promote tolerance, and reduce panic, rather than upon protecting all gay employees from discrimination.[163] AIDS spurred the collaboration and the formation of stronger, coordinated national institutions, which replaced previously local, targeted activism. Additionally, the ACLU and other civil rights advocates took on AIDS discrimination cases, rather than continuing campaigns to expand employment provisions for all gay workers. Responding to the challenges of the 1980s—the AIDS crisis, anti-gay conservative mobilization, and legislative defeats—consolidated and refocused the gay rights movement.[164]

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Settlement Includes Training," April 10, 2009, http://www.eeoc.gov/eeoc/newsroom/release/4-9-09.cfm (March 30, 2010).

160. William B. Ruenstein, *Lesbians, Gay Men, and the Law;* Memo to all state agencies and employee organizations from California State Personnel Board re: AIDS and Employment Discrimination, April 8, 1987, folder 8, box 102, AIDS History Project Collection, ONE National Gay and Lesbian Archives, Los Angeles, CA (hereafter AHC); and Scott Harris, "AIDS Ruled No Basis for Firing," *Los Angeles Times,* February 11, 1987, B1.

161. Terence Roth, "Many Firms Fire AIDS Victims, Citing Health Risk to Co-Workers," *Wall Street Journal,* August 12, 1985, 1; Feldblum, "Workplace Issues: HIV and Discrimination"; Jeffrey A. Mello, *AIDS and the Law of Workplace Discrimination* (Boulder: Westview, 1995); and Michael Daly, "Aids Anxiety," *New York Times Magazine*, June 20, 1983, 23–29.

162. Nan D. Hunter, *Epidemic of Fear: A Survey of AIDS Discrimination in the 1980s and Policy Recommendations for the 1990s* (New York: American Civil Liberties Union, 1990), 1.

163. "City of Los Angeles Policy on the HIV/AIDS Epidemic," folder 8, box 2, AHC.

164. Nan D. Hunter, "AIDS Discrimination," in *Liberty at Work: Expanding the Rights of Employees in America* (American Civil Liberties Union Public Policy Report, 1988), 31–32; Hunter, Michaelson, and Stoddard, *The Rights of Lesbians, Gay Men, Bisexuals, and*

The gay workplace rights movement of the 1970s struggled against the pressures of gender conformity and sex typing that still structure the American workplace. These activists framed their rights claims not in the terms of freedom from persecution for a set of private behaviors, but in terms of freedom to express an immutable identity.[165] They argued that gender and sexual orientation were not essential to the performance of any job, and they demanded the right not to conceal their homosexual status. But they did not want that status to define them. This strategy could have been a powerful aid to another group simultaneously fighting to boost its workplace status in the 1970s: women. Unlike gay rights activists, the workplace-focused feminists of the 1970s did not have the choice to conceal what made them different, but they could downplay and de-emphasize their sex. Liberal feminists fought to both open male-dominated jobs to women and to enable women to perform a less restrictive gender identity at work. However, feminist activism tended to prioritize gaining women's access to all-male enclaves of the workforce. Such campaigns often denied or downplayed difference in order to strengthen claims for equality. By contrast, gays stressed only respect for attributes that allegedly made them different, and thus, they levied a more focused attack upon the assumptions of inferiority and pressures for conformity that have historically faced workers who were not male, white, able-bodied or heterosexual.[166]

Transgender People; Ray O'Loughlin, "SF Judge Closes Ten Gay Baths, Sex Clubs," *The Advocate,* November 13, 1984, 8; Vaid, *Virtual Equality,* 74; and Jean–Manuel Androite, *Victory Deferred: How AIDS Changed Gay Life in America* (Chicago: University of Chicago Press, 1999), 2.

165. They framed their claims as positive, affirmative rights rather than negative rights. By contrast, the 1986 and 2003 cases that upheld, then denied, states' rights to penalize sodomy hinged on protections for private acts rather than the affirmative freedom to signal one's essential identity. David A.J. Richards, *The Sodomy Cases: Bowers v. Hardwick and Lawrence v. Texas* (Lawrence: University Press of Kansas, 2009).

166. Theorist Judith Butler conceptualizes gender as an identity that must be enacted, in the sense that "it is real only to the extent that it is performed." She argues that bodies become gendered "through a series of acts which are renewed, revised, and consolidated through time." Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge Classics, 2006), 278; and Butler, "Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory," in *Performing Feminisms: Feminist Critical Theory and Theatre,* ed. Sue-Ellen Case (Baltimore: Johns Hopkins University Press, 1990), 274. Numerous scholars have argued that employees are expected to embody their race and gender at work. See Thomas Jessen Adams, "The Servicing of America: Political Economy and Service Work in Postwar Southern California," (PhD diss., University of Chicago, 2009), esp. 145–79; and Eileen Boris, "Desirable Dress: Rosies, Sky Girls, and the Politics of Appearance," *International Labor and Working Class History* 69 (2006): 123–42. Workers can also manipulate customers' gendered stereotypes. For example, Dorothy Sue Cobble describes waitresses who draw upon the stereotype of the sexy mistress, the doting

The framing of homosexuality as enacted rather than essential crippled gay workers' campaigns to expand workplace diversity and to liberalize workplace culture. The legally protected freedom of workplace gender expression envisioned by activists in the 1970s has not come to pass. Since then, working women have found that they must downplay their femininity to compete with men for elite jobs, yet avoid seeming unfeminine.[167] Judges still struggle to untangle the intersections of sex, gender, and sexual orientation in the workplace, as the United States Supreme Court has interpreted Title VII to protect masculine women, but the rights of effeminate men remain unclear.[168] Many gay employees experience

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mother, or the sweet daughter to raise their tips. Cobble, *Dishing it Out: Waitresses and their Unions in the Twentieth Century* (Urbana: University of Illinois Press, 1992). Further, manipulating gender stereotypes is essential to the work of drag queens. See Leila J. Rupp and Verta Taylor, *Drag Queens at the 801 Cabaret* (Chicago: University of Chicago Press, 2003). Questions such as whether women could wear pants, whether they could gain weight, and how they should style their hair became heated as working women strived to detach ideas of femaleness from assumptions about servility and subordination. Kathleen Barry describes the incredibly restrictive conditions under which flight attendants toiled—arguing that the creation of the perception of luxury through attentive service by a sexy female was central to flight attendants' labor. Barry, *Femininity in Flight.* On women's fight to wear pants to work, see Herr, *Women, Power, and AT&T,* 1–3. On Betsy Wade's efforts to "look unsexy" by cutting her hair and wearing "austere" clothes when she became a copy editor at the New York Times in 1956, see Nan Robertson, *The Girls in the Balcony: Women, Men, and the New York Times* (New York: Random House, 1992), 84–85. Employers may still require female employees to do more primping than men in order to display the employer's preferred image. See Jennifer C. Pizer, "Facial Discrimination: Darlene Jespersen's Fight Against the Barbie-Fication of Bartenders," *Duke Journal of Gender Law & Policy* 14 (January 2007): 285–319.

167. Although the second wave sought and won women's access to many jobs that were previously closed to them, women have had to "act like men" in the workplace while continuing to shoulder domestic responsibilities—all the while remaining silent about those home-based tasks at work, lest they seem like disloyal employees. See Ann Crittenden, *The Price of Motherhood: Why the Most Important Job in the World is Still the Least Valued* (New York: Holt, 2002); Maureen Dowd, "Blue is the New Black," *New York Times,* September 19, 2009, WK9; Joan Williams, *Unbending Gender: Why Family and Work Conflict and What to Do About It* (Oxford: Oxford University Press, 2001); and Yoshino, *Covering*.

168. In the 1989 case *Price Waterhouse v. Hopkins,* 490 U.S. 228 (1989), an employer that discriminated against a female worker because of her masculine qualities was found to violate Title VII. By contrast, the effeminate man remains "doubly despised," argues legal scholar Mary Ann Case, because he has seemingly voluntarily repudiated the masculine privilege that is his birthright. This state of affairs reinforces the assumption that workers who behave in a masculine way, whether male or female, are rewarded and expected to advance. Effeminacy, whether embodied by men or women, is constructed as inherently supportive and incapable of leadership. Case, "Disaggregating Gender from Sex and Sexual Orientation."

explicit or implicit pressure to closet or downplay their sexual identities. A 2008 survey revealed that whereas 90% of sexual minorities were out to friends and family, only 25% were out to all of their coworkers.[169] Economists identify workers' persistent biases against gay coworkers and the consistent financial penalties facing gay and lesbian workers, regardless of their race, education, age or occupation.[170] Gay rights advocates must frame and position test cases carefully, weighing judges' personal opinions on homosexuality, even in campaigns to equalize their civil rights with others'.[171] Despite its mixed outcomes, the grassroots movement for gay workplace rights in the 1970s represented a profound challenge to the regime of gender conformity and masculine privilege that still structures the typical American workplace.

169. Gary J. Gates, "Sexual Minorities In the 2008 General Social Survey: Coming Out and Demographic Characteristics," i, October 2010, Williams Institute, UCLA School of Law, http://wiwp.law.ucla.edu/wp-content/uploads/Gates-Sexual-Minorities-2008-GSS-Oct-2010.pdf (November 2011).

170. M.V. Lee Badgett, *Money, Myths and Change: The Economic Lives of Lesbians and Gay Men* (Chicago: University of Chicago Press, 2001), esp. 34–38.

171. The history and debates over gay activists' pursuit of marriage equality in California illustrates this. See Richard Salas, "*In Re Marriage* Cases: The Fundamental Right to Marry and Equal Protection Under the California Constitution and the Effects of Proposition 8," *Hastings Constitutional Law Quarterly* 36 (2009): 545–62; Washington Post Editorial Board, "Proposition 8 Ruling Was Just But Wobbly," *Washington Post Online,* February 8 2012, http://www.washingtonpost.com/opinions/proposition-8-decision-was-just-but-wobbly/2012/02/08/gIQApOh1zQ_story.html (March 2, 2012); David Cole, "Gambling with Gay Marriage," *NYR Blog,* February 9 2012, http://www.nybooks.com/blogs/nyrblog/2012/feb/09/gambling-gay-marriage/, March 2, 2012; and William N. Eskridge Jr., "The Ninth Circuit's Perry Decision and the Constitutional Politics of Marriage Equality," *Stanford Law Review Online* 93 (February 22, 2012), http://www.stanfordlawreview.org/online/perry-marriage-equality (March 2, 2012).