

The BigLaw Firms Fighting For Transgender Rights

By **Dani Kass**

Law360, New York (July 11, 2016, 5:39 PM ET) -- The fight over transgender rights has grabbed public attention in the past few months, with North Carolina's law dictating the use of bathrooms that match the gender on one's birth certificate and the military's allowing transgender service members to serve openly.

BigLaw has been regularly recognized as a leader in creating LGBT-friendly workplaces, with the Human Rights Campaign Foundation in November giving 95 major law firms perfect scores in a report looking into nondiscrimination policies, public commitment and accountability to LGBT equality and employment benefits.

Jenner & Block LLP, Debevoise & Plimpton LLP and Covington & Burling LLP are among the firms standing out as leaders for one of the community's next battles: ending discrimination against transgender men and women. The firms are helping advocates target discriminatory state, national and military laws.

Here, Law360 looks at three BigLaw firms teaming up with advocacy groups to support the LGBT community on this issue.

Jenner & Block

Both the U.S. government and individuals represented by the American Civil Liberties Union and Lambda Legal Defense and Education Fund have brought suit against North Carolina's HB2, which requires transgender people to use the bathroom that matches their birth certificate in public facilities.

For this fight, the ACLU and Lambda have tapped Jenner & Block for help. The groups have a standing relationship with the firm that has included work on marriage equality in Virginia, partner Paul Smith said.

Smith, a member of Lambda Legal's National Leadership Council, also argued *Lawrence v. Texas* in 2003, in which the U.S. Supreme Court declared that sodomy bans were illegal.

"The firm culture is very very pro bono-oriented, civil rights and civil liberties-oriented, but any kind of pro bono," Smith said. "This is just one piece of that. It became a big part of our pro bono practice after *Lawrence*. There were just a lot of people who wanted to work on these issues. One thing leads to another and once you've got a connection with the organization, you know them and they trust you, you

get more and more opportunities to do interesting things.”

In the March 2016 case, *Carcaño et al v. McCrory et al*, two transgender men and a lesbian law professor suing the state over law. The heads of the North Carolina legislature have jumped in as intervenors arguing that the law is constitutional. The plaintiffs are pushing for an injunction to block the law.

“We just want to have relief from the law,” Smith said. “We think that it was basically a kind of gratuitous effort to find something that they could do to express outrage at the progress of LGBT rights, even though there has never really been a problem with transgender people using the bathroom of choice. It’s rather unfortunate that the people who oppose LGBT equality have focused on this particular thing.”

Debevoise & Plimpton

Debevoise works with the Transgender Legal Defense & Education Fund to track legislation that targets the transgender community and provide research. Right now, the firm is keeping an eye on about 60 bills, said associate Ryan Kusmin.

One such piece of legislation — now a Mississippi law — banned discrimination claims against those whose religious beliefs dictate that marriage is only between a man and woman, that sex before marriage is improper and that gender is determined by biological sex as the time of birth.

Lawmakers called it a move to preserve religious freedom in the face of legalized same-sex marriage, but U.S. District Judge Carlton W. Reeves granted a preliminary injunction against enforcing the law on June 30, finding that it favors some religious beliefs over others with no protections for those being discriminated against.

While not a part of that suit, Debevoise and Lambda, with which the firm also works, spent weeks filing records requests against several state agencies about the law, aiming to have it blocked.

In 2015, Debevoise and the transgender fund scored a major victory for transgender individuals in West Virginia, by threatening to sue over a state law prohibiting individuals from misrepresenting their gender in their driver’s license photographs. The state changed its policy after the firm’s threat.

Since at least the early 2000s, Debevoise has also worked with transgender clients on bias suits and through the process of legally changing their name, said Jennifer Cowan, the firm’s pro bono counsel.

“I think that we have throughout our history represented people who were the victims of discrimination and in particular people who faced widespread discrimination and therefore especially needed the assistance of legal counsel to defeat it,” Cowan said.

Covington & Burling

The ACLU had engaged the assistance of Covington in another battle: the military ban on transgender people serving openly. On June 30, the U.S. Department of Defense announced it would end that policy for both in civilian and military positions.

“What we were able to do was bring a lot of the Covington resources to bear to help the ACLU, not only to think strategically about how to achieve the objective of open service by transgender service

members but also to work through the legal research that would be involved and to try to pass forward on what was going to be the most effective engagement strategy,” said associate Jeff Bozman, a veteran who works largely on national security matters.

Partner Alan A. Pemberton, chair of the public service committee, said they considered litigation, but it never progressed to that level. Instead, the firm told the military both why and how the ban should be lifted.

As its peak, Covington’s team, led by senior counsel Carolyn Corwin, had five associates and several summer associates — a large team for a pro bono project, according to Bozman. Those numbers were justified by the amount of legal research needed and the speed at which the issue progressed, having gone from the implementation of “don’t ask, don’t tell” policy on gays serving in the military in 1994 to the lifting of the transgender ban last month.

Bozman, a former U.S. Marine Corps administrative officer who described himself as a “victim of ‘don’t ask, don’t tell,’ ” said even if Covington isn’t directly responsible for the change, it’s “tremendously satisfying, from a personal perspective, to be able to give back in some small way to pay forward the work people did on my behalf.”

--Additional reporting by Andrew Strickler and Daniel Wilson. Editing by Patricia K. Cole and Sarah Golin.

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