

## **Couture v. Bonfils Memorial Blood Center.**

On September 15, 2005, the Tenth Circuit Court of Appeals heard oral arguments in what could be the most important disability rights case of the year, *Couture v. Bonfils Memorial Blood Center*.

Bonfils hired John Couture as a phlebotomist to take blood donations from community volunteers in August of 2001. In the course of training to be a phlebotomist, Couture revealed his HIV status when he learned that other trainees were going to have to draw his blood. Bonfils responded by terminating Couture from the phlebotomy position solely due to his HIV-status.

Throughout the case, Couture has been represented by attorneys for The Legal Center for People with Disabilities and Older People. Senior Attorneys Eric Maxfield and Andrea Faley sought partial summary judgment on behalf of their client, John Couture, on claims that Bonfils had violated the Americans with

Disabilities Act (ADA) and the Colorado Anti-Discrimination Act (CADA) when it removed Couture from a phlebotomy job solely because he is HIV-positive. Unfortunately, the district court denied Couture's motion, instead granting summary judgment for Bonfils.

On appeal to the Tenth Circuit Court of Appeals, The Legal Center's attorneys argued that the district court erred in dismissing the case. They presented evidence that Couture had suffered an "adverse employment action" under the law because he was removed from the phlebotomy job and offered a significantly different job for less pay upon revealing his HIV status. The Legal Center's attorneys reasoned that allowing an employer to remove or reassign an employee to a different job solely due to a characteristic related to disability subverts the very purpose of the ADA, the CADA, and other civil rights laws that are designed to protect employees from discrimination based race, ethnicity, gender, age, and religion.

Couture's attorneys from The Legal Center also appealed on grounds that Bonfils had regarded Couture as disabled even though he could safely perform phlebotomy. The Americans with Disabilities Act (ADA) expressly prohibits discrimination that is based upon unfounded fears, myths, and stereotypes regarding disability. Nevertheless, Bonfils' CEO and medical director, William Dickey, MD, testified that the primary reason he terminated Couture was "public perception—donor perception." Dickey stated, "people still freak out" about the

AIDS virus. “The public still, despite our . . . attempt to dispel the myth as much as we can, they still feel that they can get AIDS from giving blood,” Dickey testified.

While the ADA does allow an employer to terminate an employee who poses a direct threat to the safety of others, Bonfils presented no evidence that Couture posed a significant risk of harm to blood donors. In fact, a public health expert, in accordance with direction from the Centers for Disease Control, and Couture’s own HIV physician have agreed that he could safely work as a phlebotomist, which he has done, in a different job--not with Bonfils--since 2002.

Couture had the support of eighteen health and disability rights organizations in the case. These organizations together filed three *Amici Curiae* (friend of the court) briefs on Couture’s behalf in the appeal.

On September 15, 2005, The Legal Center’s Eric Maxfield presented oral argument on Couture’s behalf before the Tenth Circuit Court of Appeals. The Court’s decision on the case is not expected for many months. Nevertheless, the case has drawn much attention from the media. On the day of oral arguments, the case was covered extensively on Fox 31’s morning show, which interviewed The Legal Center’s attorney, Andrea Faley, and John Couture himself, who appeared live from the courthouse steps. Couture fielded questions from both Fox 31 and its viewers. Couture let viewers know that he hopes the case results in greater protections for HIV-positive health care workers. The Denver Post also reported on the case the day after oral arguments.