
COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

REQUEST FOR ADVISORY OPINION (A-107)

ON INVITATION FROM THE JUSTICES
OF THE SUPREME JUDICIAL COURT

BRIEF OF AMICI CURIAE

HUMAN RIGHTS CAMPAIGN; NATIONAL GAY AND LESBIAN TASK
FORCE; MASSACHUSETTS LESBIAN AND GAY BAR ASSOCIATION;
MASSACHUSETTS GAY AND LESBIAN POLITICAL CAUCUS;
LESBIAN, GAY, BISEXUAL AND TRANSGENDER POLITICAL
ALLIANCE OF WESTERN MASSACHUSETTS; MASSACHUSETTS
TEACHERS ASSOCIATION; HEALTH LAW ADVOCATES; LESBIAN,
GAY, BISEXUAL AND TRANSGENDER AGING PROJECT OF
MASSACHUSETTS; NATIONAL STONEWALL DEMOCRATS; FREEDOM TO
MARRY COALITION OF MASSACHUSETTS; FREEDOM TO MARRY;
FREEDOM TO MARRY FOUNDATION; RELIGIOUS COALITION FOR
THE FREEDOM TO MARRY; VERMONT FREEDOM TO MARRY TASK
FORCE; VERMONTERS FOR CIVIL UNIONS LEGISLATIVE DEFENSE
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I. INTEREST OF AMICI CURIAE

Human Rights Campaign

Human Rights Campaign ("HRC"), the largest national lesbian and gay political organization, envisions an America where lesbian, gay, bisexual and transgender people are ensured of their basic equal rights, and can be open, honest and safe at home, at work and in the community. HRC has more than 450,000 members, both gay and non-gay, all committed to making this vision of equality a reality. Founded in 1980, HRC effectively lobbies Congress, provides campaign support to candidates for federal office, and works to educate the public on a wide array of topics affecting gay, lesbian, bisexual and transgender Americans, including workplace, family and discrimination issues.

National Gay and Lesbian Task Force

The National Gay and Lesbian Task Force ("NGLTF") is a national organization working for the civil rights of gay, lesbian, bisexual and transgender people. It aims to build a powerful political movement through critical policy analysis, strategic development, public education, coalition building, and grassroots organization and training. NGLTF leads national efforts to coordinate legislative activities and grassroots organizing nationwide on the issue of marriage because,

while committed same-sex relationships experience many of the same triumphs and make many of the same sacrifices as committed heterosexual relationships, they are denied the public sanction of legal marriage and its legal and economic benefits.

Massachusetts Lesbian and Gay Bar Association

The Massachusetts Lesbian and Gay Bar Association ("MLGBA") is a state-wide professional association of lawyers that promotes the administration of justice for all persons, educates the bar about issues affecting the lives of lesbians, gay men, bisexuals, and transgendered people and advocates for the enforcement of laws promoting equal rights for all. A key aspect of MLGBA's mission is to ensure that issues pertaining to sexual orientation are handled fairly and respectfully in the Commonwealth's courts.

Massachusetts Gay and Lesbian Political Caucus

Founded in 1973, the Massachusetts Gay & Lesbian Political Caucus seeks to advance the civil rights of lesbians and gay men. Its mission includes fighting discrimination in employment, housing, public accommodations, foster care and adoption, as well as seeking health insurance for domestic partners, opposing anti-gay marriage laws, and working to repeal or invalidate anti-gay sodomy laws in Massachusetts.

***Lesbian, Gay, Bisexual and Transgender Political Alliance
of Western Massachusetts***

The Lesbian, Gay, Bisexual and Transgender Political Alliance of Western Massachusetts is a non-partisan organization founded to promote and secure full civil rights for lesbians, gay men, bisexuals and transgender people throughout western Massachusetts. Its goals are to increase awareness about gay, lesbian, bisexual and transgender issues among the general public, elected officials, and the media, and to encourage participation in the political process.

Massachusetts Teachers Association

The Massachusetts Teachers Association ("MTA") is a statewide association composed of more than 400 local labor organizations representing employees in public education at the elementary and secondary levels and at the community colleges, the state colleges and the University of Massachusetts. MTA locals negotiate collective bargaining issues for faculty, teachers and other education employees, including provisions involving health insurance for employees and their families. The MTA also assists its members with pension issues. In both of these areas, the inability of gay and lesbian members of the MTA to marry has been severely detrimental. In addition, MTA members have substantial concerns relating to their responsibilities as teachers

of the nearly one million students in the Massachusetts public schools and the more than 265,000 students enrolled in the Massachusetts public higher education system. The MTA is troubled by the adverse impact of current law on the lives, economic rights and well-being of many MTA members, Massachusetts students whose families are denied access to the institution of civil marriage, and on gay and lesbian students whose self-esteem and confidence may suffer from the inequity of being members of a group denied access to the institution of civil marriage.

Health Law Advocates

Health Law Advocates ("HLA") is a Boston-based public interest law firm that provides legal assistance to Massachusetts residents facing obstacles to health care access. HLA is part of Health Care For All, a Massachusetts-wide organization that fights for universal access to health care. HLA supports expansions to health insurance eligibility and coverage that remove any arbitrary or discriminatory distinctions between eligible individuals and households. HLA's intimate knowledge of the provisions of both state and federal insurance laws has led to the conclusion that Massachusetts' residents' rights and access to health care will be better promoted and protected by full inclusion in marriage for same-sex

couples, rather than civil unions.

Lesbian, Gay, Bisexual and Transgender Aging Project of Massachusetts

The Lesbian, Gay, Bisexual and Transgender Aging Project of Massachusetts was founded in 2001. It is a broad coalition of more than thirty elder service organizations and individual providers. Its mission is to change laws, policies and attitudes that systematically disadvantage gay senior citizens. The coalition has a particular interest in ending marriage discrimination. Though this discrimination hurts same-sex couples of all ages, it saves some of its greatest cruelties for retirement, old age, and widowhood - and ties the hands of fair-minded aging service providers who want to treat all elders equally.

National Stonewall Democrats

National Stonewall Democrats ("NSD"), with more than seventy local chapters, is America's only grassroots Democratic lesbian, gay, bisexual and transgender ("LGBT") organization. NSD focuses on creating change by: educating the LGBT community about the differences between the political parties; mobilizing the LGBT community to get out to vote on Election Day for fair-minded Democrats; leading the Democratic party to continue improving its record on issues important to the

LGBT community; and standing up for LGBT families and LGBT civil rights.

Freedom to Marry Coalition of Massachusetts

The Freedom to Marry Coalition of Massachusetts works to achieve civil marriage rights for same-sex couples through grassroots education, advocacy, and lobbying. It believes that marriage rights are a central issue in the struggle for gay, lesbian, bisexual, and transgender equality.

Freedom to Marry

Freedom to Marry is a gay and non-gay partnership working to win marriage equality nationwide. Founded in 2003, Freedom to Marry is a non-profit organization committed to securing an end to sex discrimination in marriage, just as our nation ended race discrimination in civil marriage a generation ago. Freedom to Marry and its partners engage in advocacy, education and organizing on behalf of same-sex couples who seek civil marriage licenses and the full and equal rights, responsibilities, and commitment of marriage.

Freedom to Marry Foundation

The Freedom to Marry Foundation promotes recognition of, and social respect for, same-sex couples and their families through public education about the lives of same-sex couples and their families. The Foundation

seeks to empower members of the gay, lesbian, bisexual and transgender community and allied individuals by developing their educational, advocacy and organizing skills in support of same-sex marriage rights.

Religious Coalition for the Freedom to Marry

The Religious Coalition for the Freedom to Marry ("RCFM") supports civil marriage rights for same gender couples and seeks to promote dialogue within faith communities about religious marriage for gay and lesbian couples. RCFM is a group of clergy and lay leaders representing a broad spectrum of denominations and faith traditions, who believe that they have a sacred mandate to struggle for the freedom to marry for all Americans. They believe that the religious voice advocating this fundamental civil right must be heard in the face of the often virulent bigotry espoused in the name of faith.

Vermont Freedom to Marry Task Force

The Vermont Freedom to Marry Task Force ("VFMTF") represents a coalition of individuals and organizations in Vermont who support the freedom for same-sex couples to legally marry. VFMTF has consistently advocated full inclusion in marriage for same-sex couples, and supported the passage of Vermont's civil union law as a first step toward that goal. VFMTF continues to educate Vermonters about the need for full inclusion in marriage for same-

sex couples. VFMTF is well-positioned to offer insight into the ways in which Vermont's civil union law, while a step forward for same-sex couples in Vermont, falls short of the constitutional requirement of full equality and inclusion.

Vermonters For Civil Unions Legislative Defense Fund

Vermonters for Civil Unions Legislative Defense Fund ("VCULDF") is a lobbying organization that works to protect Vermont's civil union law against repeal or erosion, and which supports the freedom to marry for same-sex couples. VUCLDF was formerly named "Vermont Freedom to Marry Action Committee," ("VFMAC") and, along with VFMTF, above, lobbied the Vermont Legislature during the 2000 legislative session, urging that body to pass legislation to include same-sex couples in marriage. Faced with assaults on the compromise civil union law that passed during that session, the Vermont Freedom to Marry Action Committee changed its name to Vermonters for Civil Unions Legislative Defense Fund and has focused during the last three legislative sessions on preserving the advances for same-sex couples embodied in the civil union law. VUCLDF remains committed, however, to full equality for same-sex couples through inclusion in marriage. VUCLDF was integrally involved in the legislative process that led to the enactment of the

civil union law, and observed firsthand the political compromises underlying the legislation.

PridePlanners™

PridePlanners™ Association is a national organization of financial professionals focusing on the economic concerns of their gay and lesbian clients. Membership in this organization is close to one hundred financial advisors and growing, and comes from a wide variety of disciplines including financial planning, law, insurance and taxation. The expertise of the members lies in the ability to create financial protection strategies and techniques for same-sex couples and their families. PridePlanners™ Association is keenly aware of the social and legal disadvantages imposed on same-sex couples relative to their married counterparts. Without the right to marry, our clients must undergo long and often expensive processes to even begin to obtain some of the same protection of married couples. PridePlanners™ Association believes that the well-being of our clients is best served by allowing them to become legally married.

Gallan/Pride at Work/AFL/CIO

Gallan/Pride at Work/AFL/CIO is a queer labor group that works to bridge the gap between labor and the gay community. Since its establishment in 1986, it has been

fighting to get Lesbian, Gay, Bisexual and Transgender ("LGBT") language in labor contracts as well as making labor aware of LGBT issues and the LGBT community aware of labor's issues. For many years, lesbian, gay and bisexual members of our unions have been discriminated against because their relationships have never been recognized.

II. STATEMENT OF THE CASE

Amici incorporate herein the Statement of the Case contained in the brief of Amicus Curiae Gay & Lesbian Advocates & Defenders.

III. SUMMARY OF ARGUMENT

In the spring of 2000, the Vermont Legislature passed a law creating a separate legal institution and marital status for same-sex couples designated "civil union." 1999 Vt. Acts & Resolves 91 (the "Vermont civil union law"). Like Mass. Sen. Bill 2175 (2003 Session) ("Senate Bill 2175"), the Vermont civil union law provides that "parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, policy, common law or any other source of civil law, as are granted to spouses in a marriage." Vt.STAT.ANN. tit. 15, § 1204(a) (2003); Senate Bill 2175, Section 5, subsection 4. Like Senate Bill 2175, the

Vermont civil union law limits access to civil marriage to heterosexual couples. VT.STAT.ANN. tit. 15, § 1201(4) (2003); Senate Bill 2175, Section 5, subsection 3.

The Vermont civil union law greatly expands the legal protections and responsibilities available to same-sex couples, and in many ways the new law represents a significant step toward true equality. However, the Vermont civil union law, like the proposed Massachusetts law, fails to satisfy the very constitutional requirements that inspired the law in the first place.

The Vermont Supreme Court has not resolved the question of whether Vermont's civil union law satisfies constitutional requirements; the court expressly left open that question in its opinion in Baker v. State, 744 A.2d 864 (1999), the case that led to the passage of Vermont's civil union law. Amici submit that it does not. The civil union law was created as a political compromise designed to provide legal benefits and responsibilities to same-sex couples who, prior to the enactment of that law, had virtually no legal protection as families; it also was designed to accommodate the objections of those opposed to recognition or protections for such families. The civil union law reflects a compromise between true equality and no rights at all: in other words, it represents "partial equality."

The Vermont civil union law falls far short of the constitutional requirement of actual and full inclusion for same-sex couples. By preventing same-sex couples from marrying, the law places beyond the reach of those couples and their families the significant social content and benefits that accompany the legal status of "marriage," relegating those couples to a second-class status that resonates with the now discredited Jim Crow laws of the segregated South.

Moreover, because the State of Vermont has withheld from same-sex couples the widely recognized and understood label of "married," those couples face significant practical obstacles as they travel or move outside of Vermont, as well as in connection with federal benefits and protections. Finally, many private parties outside of Vermont, including sponsors of health insurance plans, rely on the legal status of "marriage," to determine who is and is not eligible for their own privately conferred benefits. As the sovereign entity that can confer or deny the legal status of marriage, the State of Vermont is the keeper of the "gateway" to these various other state, federal, and privately conferred benefits. Access to that gateway is every bit as important as the various state law marital benefits that have been conferred on same-sex couples by virtue of

Vermont's civil union law, and the denial of access to that gateway is a constitutionally fatal flaw in Vermont's civil union law.

Senate Bill 2175 fails to meet the requirements of the Massachusetts Constitution, articulated most recently and directly in this Court's decision in Goodridge v. Department of Health, 440 Mass. 309 (2003), for all of these same reasons.

IV. ARGUMENT

A. THE VERMONT SUPREME COURT DECLINED TO CONSIDER WHETHER A LAW SUCH AS VERMONT'S CIVIL UNION LAW SATISFIES THE REQUIREMENTS OF THE VERMONT CONSTITUTION.

In Baker v. State, the case leading up to the Vermont Legislature's passage of the civil union law, the Vermont Supreme Court concluded that "none of the interests asserted by the State provides a reasonable and just basis for the continued exclusion of same-sex couples from the benefits incident to a civil marriage license under Vermont law." 744 A.2d 864, 886 (1999). Accordingly, that court recognized a "constitutional obligation to extend to plaintiffs the common benefit, protection, and security that Vermont law provides opposite-sex married couples." Id.

Having recognized the constitutional offense in Vermont's discriminatory marriage laws, the Vermont Supreme Court stopped short of fully remedying the

violation by requiring that the plaintiffs be issued marriage licenses. Id. at 887. Instead, that court concluded that the primary focus of the plaintiffs' claims and arguments was "the consequences of official exclusion from the statutory benefits, protections, and security incident to marriage under Vermont law," and deferred an actual remedy for an unspecified period of time, offering the Vermont Legislature the first opportunity to craft a law potentially satisfying the constitutional obligation. Id. at 886-87.

The court offered the Legislature mixed signals with respect to the essential elements of a constitutional law. On the one hand, the court noted a number of "potentially constitutional" statutory schemes from other jurisdictions which deliver benefits to same-sex couples through "an alternative legal status to marriage." Id. at 886. On the other hand, the court declined to endorse any one or all of the "potentially constitutional" schemes, id. at 887, and made it very clear that same-sex couples were entitled "to obtain the *same* benefits and protections afforded by Vermont law to married opposite-sex couples." Id. at 886 (emphasis supplied). The Vermont court apparently reconciled these contradictory sentiments by distinguishing between the status of being married and the legal, tangible *benefits*

of being married--a dichotomy never suggested or evaluated in the nineteen briefs filed with the court in that case, and a distinction that cannot be drawn in the real world, as discussed in Sections III and IV, below.

The Vermont Supreme Court never addressed the validity of its distinction, expressly declining to address the question presented in Goodridge and again to this Court today:

While some future case may attempt to establish that--notwithstanding equal benefits and protections under Vermont law--the denial of a marriage license operates per se to deny constitutionally-protected rights, that is not the claim we address today.

Baker, 744 A.2d at 886.

In short, the Baker opinion deliberately avoids answering the question now facing this Court: whether a separate legal status for same-sex couples can actually be equal, and whether a legal scheme like that reflected in Senate Bill 2175 satisfies the requirements of the Massachusetts Constitution. The Vermont Supreme Court reserved that question for "some future case." Baker, 744 A.2d at 886. For the reasons already articulated in the Goodridge decision itself: the uniqueness of marriage as a social and legal institution from which both tangible and intangible benefits flow, and the fundamental importance of being able to choose to marry--and for the reasons explained below, the answer must be

"no" under the Massachusetts Constitution. Goodridge, 440 Mass. at 320-323.

B. THE VERMONT CIVIL UNION LAW RESULTED FROM A POLITICAL COMPROMISE BETWEEN TOTAL EXCLUSION OF SAME-SEX COUPLES AND TRUE EQUALITY FOR GAY AND LESBIAN CITIZENS.

Following the Baker v. State decision, the House Judiciary Committee of the Vermont Legislature conducted an intensive study of the issues raised by the Baker case, considering testimony from academics, lawyers, clergy, activists, and families across the political spectrum, and hosting two public hearings on the subject.

Virtually every witness fell into one of two camps. One set of advocates argued that Baker was wrongly decided, and that the Legislature ought not pass any law to extend benefits to same-sex couples. The other argued that Baker was rightly decided, and that the reasoning of Baker compelled the Legislature to include same-sex couples in the institution of civil marriage; any attempt to create a separate status for same-sex couples would fly in the face of the constitutional imperative of inclusion acknowledged by the court in Baker. See, for example, Jack Hoffman, *Second Round of Hearings Held*, Rutland Daily Herald, Feb.2, 2000, at 1 (Appendix ("App.") 1) (Observing, "[O]nce again, the testimony presented to the House and Senate Judiciary committees was sharply divided between support and opposition to the

idea of same-sex marriage. There was virtually no discussion of a compromise that would provide legal benefits to same-sex couples without actually allowing them to marry"); Adam Lisberg, *Middle Ground Empty at Statehouse Hearing*, The Burlington Free Press, Feb. 2, 2000, at 6A (App. 3); Carey Goldberg, *Same-Sex Marriage Polarizes Vermont*, The New York Times on the web, Feb. 3, 2000, at <http://www.nytimes.com/yr/mo/day/news/vt-gay-marriage> (App. 4). ("[A]s people in Vermont speak out, almost no one can be heard promoting domestic partnerships. Those who support traditional marriage say domestic partnerships would undermine it. Those who support gay marriage say the state should settle for nothing less."); David Chambers, *The Baker Case, Civil Unions, and the Recognition of Our Common Humanity: An Introduction and A Speculation*, 25 Vt. L. Rev. 5, 7 (2000) ("Virtually every witness at the hearings advocated one of two polar positions.").

Advocates for same-sex couples consistently insisted that any attempt to carve off same-sex couples from legal marriage, even if coupled with extensive benefits, would be unacceptable and unconstitutional. Indeed, counsel to the Plaintiffs in Baker testified from the very first day in the House Judiciary Committee that anything short of marriage simply would not be

equivalent, explaining that the legal status of being "married" was a "symbol of being included--of not being a second-class citizen," and noting, "nobody writes songs about registered partnerships." Adam Lisberg, *Panel Quietly Begins its Work*, The Burlington Free Press, Jan. 12, 2000, at 1A (App. 8).

Even those witnesses invited by the House Judiciary Committee as "neutral" persons (the few people who did not fall into one of the above-described camps) consistently acknowledged the constitutional problems with the "alternative status" approach. Foreshadowing the political calculation that would ultimately carry the day, William Griffin, Vermont's chief assistant attorney general, testified that it might not be easy to defend in court the idea that domestic partnership provides the same rights and benefits as marriage, but acknowledged that domestic partnership might be an easier concept for lawmakers and Vermonters to swallow than full-fledged marriage for gays and lesbians. Id. He explained, "Gay marriage would probably be easier to defend. . . . In a way, the partnership arrangement would be transitional. It would be easy for the Legislature to set up a partnership, and then in the next year or the next decade go to marriage." Id.

Likewise, Vermont Law School Professor Peter

Teachout, who opined that the Vermont Supreme Court had left the door open to a separate status, acknowledged that domestic partnerships would not provide all the same benefits of marriage, including portability and intangible benefits. Professor Teachout explained that a domestic partnership option could remove *much* of the discrimination against same-sex couples. What the Vermont Supreme Court would have to decide in the future, if domestic partnerships were approved, is whether there were adequate reasons to justify the benefits that would *still* be denied to same-sex couples. See Jack Hoffman, *Panel Tackles Marriage Issue*, Rutland Daily Herald, Jan. 12, 2000, at 1 (App. 10).

Notwithstanding the lack of significant, identifiable public support for an alternative status for same-sex couples, and notwithstanding the constitutional "red flags" waved in the House Judiciary Committee, that committee opted to draft a bill creating a separate legal status for same-sex couples. The political calculation that underlay that decision was no secret: a majority of the committee members concluded that a bill that provided benefits to same-sex couples, but did not allow same-sex couples to marry, would be more likely to pass the Legislature, and less upsetting to the many Vermonters who had expressed opposition to legal protections for

same-sex couples.

Committee chair Tom Little explained in the February 9, 2000 hearing, when the committee charted its course, "What is achievable in this General Assembly and this body politic this year is a broad civil rights bill and, speaking for myself, that does not cross the threshold of marriage." Jack Hoffman, *Panel Backs Domestic Partnership*, Rutland Daily Herald, Feb. 10, 2000, at 1 (App. 12). Proponents of full equality for same-sex couples within the committee chided the chair for neglecting core constitutional rights in the name of perceived political expedience. *Id.* at 5 ("[W]here some of Vermont citizens' civil rights are hanging in the breeze, I think it is inappropriate to temper how you craft legislation to political realities that may exist outside this room," [Rep. Bill] Mackinnon said.")

The political calculation was not only being considered in the House Judiciary Committee room. Indeed, the House Judiciary Committee's course followed the path that had been charted by the political leaders in the state from the moment the Baker decision was announced. Then-Governor Howard Dean had stated the day the Baker case was decided that he supported a domestic partnership bill that would extend the rights enjoyed by married couples to same-sex partners, but that he would

not look kindly on including same-sex couples in the marriage laws. Frederick Bever, *Lawmakers Face 'Thornier Issue,'* The Times Argus, Dec. 21, 1999, at A1 (App. 14).

Governor Dean strongly advocated for an approach he described as "different but equal," apparently seeking to distinguish his position from the "separate but equal" rationale that supported the Jim Crow segregation laws in the American South. Diane Derby, *Governor Defends 'Different but Equal,'* Rutland Daily Herald, Dec. 23, 1999, at A1 (App. 16). He applauded the committee's decision to pass a domestic partnership bill expressly prohibiting same-sex marriage, opining that it balances "the concerns for equal rights for all with the concerns of the majority around traditional marriage." Jack Hoffman, *Panel Backs Domestic Partnership,* Rutland Daily Herald, Feb. 10, 2000, at 1 (App. 12). Pointing to the exclusion of same-sex couples from marriage in the civil union bill, Governor Dean pledged, "I will use the powers of this office to persuade Vermonters that the Legislature now understands that same-sex marriage is not going to happen, it's not going to pass." Id.

House Speaker Michael Obuchowski, who himself supported full equality for same-sex couples, similarly acknowledged that a majority of the House and a majority of the public were not prepared to go so far as to

include same-sex couples in marriage. Id. The Senate President Pro Tem, Peter Shumlin, had likewise lined up behind a domestic partnership option from the "get-go", opining with respect to the marriage option that "Vermonters are[n't] ready for it yet." Jeffrey Good, *Vt. Not Ready for Gay Marriages, Politicians Say*, The Boston Globe, Dec. 22, 1999, at B1 (App. 18). Even the lobbyist for Take it To The People, the main organization opposing rights for same-sex couples in the Vermont Legislature, publicly acknowledged that, while his group opposed the compromise domestic partnership bill, passage of a domestic partnership bill might help avoid the more undesirable outcome, from his group's perspective, of marriage for same-sex couples. Hoffman, *Panel Backs Domestic Partnership*, Rutland Daily Herald, Feb. 10, 2000 at 1 (App. 12).

The House Judiciary Committee did not craft "the civil union bill" and the Vermont Legislature did not ultimately support that bill because it fully and fairly rectified the constitutional offense against same-sex couples identified by the Vermont Supreme Court in Baker v. State. Rather, the Committee drafted and the Legislature passed the bill in order to make as much progress in the direction of equality as they deemed politically possible, while also placating those who

would deny inclusion and equality to same-sex couples in the name of "traditional marriage." See Michael Mello, *For Today, I'm Gay: The Unfinished Battle for Same-Sex Marriage in Vermont*, 25 Vt. L. Rev. 149, 235-240 (2000) (describing political considerations driving the vote for the civil union bill); *id.* at 252-53 ("As the members of the House Judiciary Committee made clear, the only reason they opted for the cumbersome partnership option, rather than choosing the more straightforward option of same-sex marriage, was 'political reality.' That 'political reality' is the homophobia that swept the state in the wake of the *Baker* decision.")

In short, the civil union law, which was designed as much to deny same-sex couples access to civil marriage as it was to provide same-sex couples with tangible benefits, reflects a compromise--a compromise between true equality and inclusion, on the one hand, and no rights at all for same-sex couples. It is certainly better than the latter. But, as a compromise, it falls short of the former.

The freedom-to-marry advocacy community in Vermont ultimately supported the civil union bill-- not because it ended the unconstitutional exclusion of same-sex couples, but because it represented a significant step toward the goal of true equality. Acknowledging her

organization's eventual support for the civil union bill, the Vermont Freedom to Marry Action Committee chair explained, "[W]e believed that civil unions would not be the end of the line. Once we got on the bus, and people got the chance to chat with one another as the bus rolled down the road to justice, everyone would realize the absurdity of the artificial line down the middle of the bus and we'd all choose our own seats after awhile."

Beth Robinson, *Road to Inclusion for Same-Sex Couples*, 11 Seton Hall Const. L. J. 237, 253 (2001); Ross Sneyd, *Support Grows For Domestic Partner Plan*, Valley News, February 18, 2000, at 1 (App. 20).

Such political calculations, while not unexpected in the legislative context, cannot support a judicial constitutional analysis; courts are bound to recognize and uphold the constitutional rights of all citizens, and cannot diminish or ignore those rights in order to accommodate the perceived comfort or moral views of a vocal minority, or majority, within the body politic. Goodridge, 440 Mass. at 312 ("Our obligation is to define the liberty of all, not to mandate our own moral code.") (quoting Lawrence v. Texas, 123 S.Ct. 2472, 2480 (2003); id. at 339 ("[I]t is the traditional and settled role of courts to decide constitutional issues.")).

C. THE STATUS OF BEING MARRIED IS ONE OF THE BENEFITS OF MARRIAGE.

The fallacy in the suggestion that a civil union law could satisfy constitutional requirements is the failure to recognize that the benefits of civil marriage extend far beyond the laundry list of specific tangible benefits the state confers on married couples; the legal status of being "married" is itself one of the benefits of marriage. Most heterosexual married couples would not willingly exchange the title "married" for the title "joined in civil union" even if they could, *arguendo*, retain the tangible legal benefits of marriage. That which they would not want to give up is exactly what a civil union law denies to same-sex couples.

The word "marriage" is both a tangible and intangible protection because the term "marriage" evokes a common vocabulary understood across cultures and generations. People understand that a couple who is married shares a loving, committed, and hopefully enduring relationship. That simply is not the case with "civil union," or any other attempted marriage-facsimile that a state might create. As one commentator has noted, civil union sounds like "two people who barely get along." *Lee Lynch, Civil Rights, Not Equal Rights,* Out in the Mountains, July, 2002, at 23 (App. 21). There is not even a commonly understood verb construction that is parallel to "marrying" someone, nor an adjective that

corresponds to "married." The lack of comfortable language associated with civil union has invited humorous satire. See id. But the impact of the exclusion is no laughing matter. This Court has recognized that marriage is "one of our community's most rewarding and cherished institutions," Goodridge, 440 Mass. at 313, and has noted that "tangible as well as intangible benefits flow from marriage." Id. at 322. This Court has eloquently described the intangible benefits of marriage:

Marriage also bestows enormous private and social advantages on those who choose to marry. Civil marriage is at once a deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family. 'It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Griswold v. Connecticut, 381 U.S. 479, 486 (1965). Because it fulfills yearnings for security, safe haven, and connection that express our common humanity, civil marriage is an esteemed institution, and the decision whether and whom to marry is among life's momentous acts of self-definition.

Goodridge, 440 Mass. at 322.

The recognition that marriage connotes more than a mere bundle of benefits is not new. In Griswold v. Connecticut, the United States Supreme Court described marriage as "a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred." Griswold, 381 U.S. at 486. Upholding the right of convicted prisoners to marry, the United States

Supreme Court again recognized that civil marriage has substantial important dimensions beyond the receipt of government benefits. Turner v. Safley, 482 U.S. 78 (1987). In the Turner case, the Court identified the "expression of emotional support and public commitment" as "an important and significant aspect of the marital relationship." Id. at 95-96. The Court also recognized that, although marriage is a civil institution, "[M]any religions recognize marriage as having spiritual significance," and that for some people "the commitment of marriage may be an exercise of religious faith as well as an expression of personal dedication." Id. at 96.

These things simply cannot be said for "civil union," or any other novel status invented by the Legislature of a single state in the twenty-first century. No other term besides "marriage" conveys the true character of a couple's relationship to the outside world. No other term carries with it the same weighty historical connotation of commitment, through thick and thin, that can impact not only the perception of the outside world, but also the experience of a couple within a committed relationship. No other term provides the same opportunity for the strongest possible public expression of a couple's commitment to one another and their family.

No other term says to a couple's children: "our relationship, and our family, is built on the most solemn promise of mutual dedication and self-sacrifice." No other term provides parents who want to impart to their children a profound respect for the institution of marriage the same opportunity to be role models. No other term provides a couple the opportunity to communicate the same important message about who they are, and their values and beliefs. No other term satisfies the spiritual needs and beliefs of many couples who wish to marry as an expression, at least in part, of their spiritual beliefs.

Moreover, no other term fully ties same-sex couples into the fabric of our community of families--a community in which we are surrounded by images on television, on the radio, and in the movies of "married" couples and their families; where greeting card shops have entire sections devoted to celebrating "marriages" and the anniversaries thereof; where people are often identified as "married" or "single," and the length of their marriages are often included as significant facts in their personal and even professional biographies; and where the newspapers universally announce marriages as important items of community news.

Senate Bill 2175 would deny individuals in same-sex

relationships access to the undeniably significant social content attendant to "marriage," including the ability to make the profound and broadly understood public commitment of marriage, to participate as an equal in day-to-day conversation about one's marriage, to convey to the world and their children values and beliefs about the importance of marriage, to fulfill one's spiritual faith in the essential importance of marriage, and to participate fully and as an equal in a community that recognizes, respects, and, in many cases, privileges the status of marriage. In so doing, the proposed measure would place same-sex committed couples on dramatically unequal footing relative to their heterosexual counterparts, without justification.

The flip side of depriving same-sex couples of these vitally important attributes of marriage is the significant harm to gay and lesbian people and our families more broadly from a system that relegates same-sex couples to a separate, second-class status. As one commentator has concluded, after exploring the historical parallels between Jim Crow laws, the segregation of men and women in education, and the Vermont civil union law,

The heterosexism inherent in restricting same-sex couples to civil unions is reminiscent of the racism that relegated African-Americans to separate railroad cars and separate schools and of the sexism that relegated women to separate schools. Our society's experiences with 'separate but equal'

have repeatedly shown that separation can never result in equality because the separation is based on a belief of distance necessary to be maintained between those in the privileged position and those placed in the inferior position.

Barbara J. Cox, *But Why Not Marriage; An Essay on Vermont's Civil Unions Law, Same-Sex Marriage, and Separate But (Un)Equal*, 25 Vt. L. Rev. 113, 134 (2000); Mello, *For Today I'm Gay*, 25 Vt. L. Rev. at 241 ("The [civil union] statute, for all its comprehensiveness, still creates a separate and unequal system of matrimonial apartheid. . . . Vermont's new legal system of Jim Crow marriage for same-sex couples marks those couples with an unmistakable badge of inferiority and is inherently unequal."); *id.* at 250 ("Notwithstanding the fact that the Blacks-only part of the bus was really equal to the whites-only part of the bus, the segregation itself was constitutionally and morally wrong. It was wrong because the segregation itself marked the segregated people with a badge of inferiority. And because it was the law that mandated the segregation.") (emphasis in original).

D. COUPLES JOINED IN CIVIL UNION DO NOT ENJOY THE SAME TANGIBLE BENEFITS AS HETEROSEXUAL, MARRIED COUPLES.

The denial of access to the legal status of "marriage," with all of the social significance that connotes, and the message of exclusion implicit in the

separate legal status crafted for same-sex couples are themselves sufficiently constitutionally repugnant to invalidate the "separate but equal" approach reflected in the Vermont civil union law and Senate Bill 2175. In addition, these civil union alternatives fail to actually deliver the equal tangible benefits they purport to provide to same-sex couples.

In particular, same-sex couples joined in civil union in Vermont face substantially greater obstacles to the recognition of their unions, and the incidents thereof, beyond Vermont's borders than they would if they could legally marry. Over one thousand significant federal protections, supports and obligations are out of reach to couples joined in civil union in Vermont, in large part because they lack the legal status of being "married"-- the gateway to which is controlled exclusively by the legislative authority of the State.

Furthermore, many private entities rely on and incorporate state definitions of marriage in the benefits and protections they provide, further accentuating the inequalities flowing from excluding same-sex couples from that status.

1. Civil Unions Face Greater Obstacles To Portability.

We live in a mobile society. Families do not always spend their entire lives in the same town, or even

the same state. Even while maintaining a constant residence, families frequently travel outside the borders of their own state. In most cases, this mobility has little significant impact on the legal rights of individuals and families as they travel from state to state. The United States Supreme Court has recognized the fundamental constitutional right to travel from state to state without discrimination, Saenz v. Roe, 526 U.S. 489 (1999). Indeed, the laws governing marriage and family formation are, in most cases, similar around the country. In those cases where state marriage laws vary, deeply-rooted common law principles require that a marriage that is valid where celebrated be recognized everywhere, barring a strong public policy against the marriage in the state which has the most significant relationship to the spouses and the marriage at the time of the marriage. *Restatement (Second) of Conflict of Laws* § 283(2). See also, Cox, *But Why Not Marriage*, 25 Vt. L. Rev. at 138 ("The general rule preferring validation of marriages, which exists with an 'overwhelming tendency' in this country, leads courts to find opposite-sex marriages to be valid if there is any reasonable basis for doing so."). As a consequence, without any particular consideration to the matter, most heterosexual married couples take for granted the

continuing validity of their marriage as they travel from state to state, and beyond. As Professor Cox has noted, "It would be absurd to subject any couple to having its 'marriage visa' stamped with 'valid' and 'invalid' as they traveled across the country." Id. at 138 (quoting Evan Wolfson, *Crossing the Threshold: Equal Marriage Rights for Lesbians and Gay Men and the Intra-Community Critique*, 21 N.Y.U. Rev. L. & Soc. Change 567, 612 (1994-95)).

Whether gay or straight, the reliability and certainty of a couple's marital status as that couple travels or migrates from state to state is critical. It can affect a spouse's rights to make medical decisions for the other if the other cannot speak for himself or herself; to inherit through the laws of intestacy if the other dies; to pursue legal recourse if the other dies at the negligent hands of a tortfeasor; and to take time off from work to care for a sick spouse under various state laws. It can affect a couple's ability to secure orderly judicial resolution of financial and other disputes in the event that their relationship ends. And it can ensure the legal recognition of a parent-child relationship when a child conceived through reproductive technologies is not biologically related to both parents.

To be sure, had Vermont extended full marriage

rights to same-sex couples--including the right to marry--some couples would have faced obstacles to recognition of their legal status as they traveled beyond Vermont's borders. Many states have enacted laws expressly purporting to deny legal respect to same-sex marriages. Although these laws are unconstitutional for the same reasons that this Court recognized Massachusetts' exclusion of same-sex couples from marriage to be unconstitutional, their existence, nonetheless, may have engendered a sense of insecurity or uncertainty as a legally married same-sex couple traveled or relocated from state to state.

But the Vermont Legislature's decision to create, out of whole cloth, a separate status--a new legal category that has no instantly cognizable meaning under the laws of any other state in this country--elevated the level of uncertainty faced by same-sex couples joined in civil union to a much higher level. Some states do not have statutes barring the recognition of same-sex marriages. Moreover, the discrimination statutes in other states should not survive the test of time, either because they are repealed or modified by legislative bodies, or because they fail constitutional scrutiny. The troubling question now is what is a "civil union" for the purposes of those states' laws, and what would it

mean to recognize one?

Moreover, even the legal framework for analyzing the validity and applicability of other states' laws concerning recognition of same-sex unions is significantly more uncertain when "civil unions" as opposed to "marriages" are at issue. "[W]ith the right to marry, same-sex couples would have had hundreds of cases in which courts recognized marriages from another state available for use as precedent. While this case law should remain available for use by same-sex couples when arguing that their civil unions are substantially equivalent to marriages, its precedential value is less certain because those cases apply to marriages, not civil unions." Cox, *But Why Not Marriage*, 25 Vt. L. Rev. at 140. As Professor Cox has explained,

If we expected courts to hesitate before recognizing same-sex couples' marriages, we must expect greater hesitancy when they are asked to recognize out-of-state civil unions--a status previously unknown in the law. Judges may decide that Vermont's statutorily-created status of 'civil union' does not extend beyond the state's border, unlike the clearly portable status of 'marriage.' This unknown portability of civil unions puts these same-sex couples at great risk: they no longer know whether the law considers them to be single or 'married' and whether their status in countless contexts, such as property ownership, intestacy, and responsibility for their partner's debts, changes after they leave Vermont.

Id.

The State of Vermont presently confers on same-sex

couples, at most, the legal status of "joined in civil union," and on heterosexual couples the legal status of "married." Notwithstanding the Legislature's attempt to confer the full complement of tangible benefits on couples joined in civil union, by withholding from same-sex couples the legal status of "married" the Vermont Legislature has significantly increased the obstacles such couples face when they cross Vermont's borders. "By creating a separate institution without the historical significance and clearly established rules relating to marriage, the Vermont Legislature has made it more difficult for Vermont same-sex couples to know whether they will be abandoning their rights as a couple once they leave the state." Id. at 143.

So far, the limited case law involving civil unions outside of Vermont bears out Professor Cox's prediction that couples joined in civil union will face substantial uncertainty outside of Vermont. In several cases, courts of other states have refused to recognize the existence or validity of a civil union for the purpose of benefits or protections under the laws of those states, in some cases noting that a civil union is not a marriage even under Vermont law. See, Burns v. Burns, 253 Ga. App. 600 (2002) (no child visitation allowed while mother's civil union spouse is in home where the divorce order only

allowed child visitation in the presence of adult overnight guests to whom the mother was married or related within the second degree); Hall v. Beauchamp, No. 1D02-807 (Fl. Ct. App. Oct. 10, 2002) (no child visitation allowed while the father had overnight guests to whom he was not married, including his civil union spouse); Rosengarten v. Downes, 802 A.2d 170 (Conn. App. Ct.), *certification for appeal granted*, 806 A.2d 1066 (Conn. 2002), *appeal dismissed as moot*, (Dec. 31, 2002) (Connecticut courts lack jurisdiction to dissolve a civil union because doing so, as contrasted with dissolving a marriage, does not fall within any of the statutorily prescribed areas that the court is empowered to decide); In the Matter of the Marriage of R.S. & J.A., No. F-185.063, Agreed Final Decree of Divorce (Tex. Dist. Ct. 279th Judicial Dist., Mar. 3, 2003), *vacated* (Mar. 28, 2003) (vacating an initial decree dissolving a civil union in light of, among other things, questions concerning the court's jurisdiction to dissolve a civil union). But see, Langan v. St. Vincent's Hospital of N.Y., 765 N.Y.S.2d 411 (N.Y. Sup. Ct. Apr. 10, 2003), *on appeal* (recognizing the plaintiff's standing to sue for the wrongful death of his civil union spouse); In re the Marriage of Misty Gorman and Sherry Gump, No. 02-D-292 (W.V. Fam. Ct. of Marion County Jan. 3, 2003) (dissolving

a civil union); In the Matter of Kimberly Brown and Jennifer Perez (Iowa Dist. Ct. Woodbury County, Nov. 14, 2003), *as amended* (dissolving civil union).

By increasing the uncertainty faced by same-sex couples relative to their heterosexual counterparts when they leave the state of Vermont, the Vermont Legislature has failed to confer on same-sex couples "the *same* benefits and protections afforded by Vermont law to married opposite-sex couples." Baker, 744 A.2d at 886. For this reason, the Vermont civil union law fails to satisfy the essential requirements of the Vermont Constitution. For precisely the same reason, the exclusion of same-sex couples from marriage contained in Senate Bill 2175 is "incompatible with the constitutional principles of respect for individual autonomy and equality under law." Goodridge, 440 Mass. at 313.

2. Couples Joined In Civil Union Are Severely Disadvantaged With Respect To Federal Benefits.

Sandy Reeks, a British citizen, and Pam Kinninburgh, an American citizen, joined in civil union in Vermont in 2000. The two have been in a committed relationship since the mid-1990s, when Reeks traveled to the United States, first as a tourist, then as a student, and later on a one-year visa extension that allowed her to work. Although the two are joined in civil union, the

federal government does not recognize their family relationship for immigration purposes. As a consequence, Reeks has had difficulty extending her visa, and the two have moved to Toronto, at least temporarily, leaving behind Kinninburgh's children and grandchildren, their turn-of-the-century farmhouse, one of their jobs, and many of their friends. Anne Wallace Allen, *Law Seen as Unfair for Same-Sex Couples*, Addison Independent, Oct. 23, 2003, at 6A (App. 22).

Tax season is especially complicated for Vermont same-sex couples joined in civil union. State law recognizes that many couples, heterosexual and same-sex, are economically interdependent, and thus provides a mechanism for calculating and paying taxes jointly, as a married or civil union couple. Because Vermont's state income tax calculation "piggybacks" on the federal calculation, Vermonters in civil unions must complete two separate federal tax returns: the federal tax returns they file as individuals with the federal government, and hypothetical federal returns, assuming a married filing status, upon which the state tax is calculated. Vermont Department of Taxes web site, Questions, Civil Unions, at <http://www.state.vt.us/tax/faq.htm#CIVIL> (App.).

Moreover, one of the inequities that two of the Baker plaintiffs, Nina Beck and Stacy Jolles, cited in

explaining their decision to sue for the freedom to marry involved federal capital gains taxes. They wanted to buy their house together, but that would have required tens of thousands of dollars in capital gains taxes that the couple could not afford--penalties that would not apply to a legally married couple. Heather Stephenson, *Redefining Marriage*, Vermont Sunday Magazine, Mar. 8, 1998, at 13 (App. 23).

Holly Puterbaugh and Lois Farnham, who had been together as a couple for twenty-five years in 1997 when they joined the Baker lawsuit seeking the freedom to marry, cited the social security survivor benefits and pension protections as important factors in their decision to seek the freedom to marry. Chris Tebbetts, *Courtside Seats: Lois Farnham and Holly Puterbaugh A Conversation With Vermont's Most Famous Plaintiffs*, Out in the Mountains, Oct. 1997, at 14 (App. 28). Today, having joined in civil union, the fifty-something couple is no more apt to benefit from the protections of the social security laws than they were before filing suit.

In some cases, denial of federal recognition and benefits can be especially tragic: Christina Walsh and her partner Judith Kay joined in civil union in Killington, Vermont on July 22, 2001. Together they decided to have and raise a child. Christina Walsh bore

the child, Trevor, who was born on November 25, 2002. Judith Kay was the primary breadwinner for the family; Christina Walsh stayed home and cared for Trevor. On July 1, 2003, Judith Kay was killed in a tragic car accident. The Walsh-Kay family lived in Bradford, Vermont, at the time of Judith Kay's death. Pursuant to Vermont law, Trevor was presumed to be the legal child of Judith Kay without need for further legal validation of that fact. VT. STAT. ANN. tit. 15, § 1204(f) (2003) ("The rights of parties to a civil union, with respect to a child of whom either becomes the natural parent during the term of the civil union, shall be the same as those of a married couple, with respect to a child of whom either spouse becomes the natural parent during the marriage."); VT. STAT. ANN. tit. 15, § 308 (2003) ("A person alleged to be a parent shall be rebuttably presumed to be the natural parent of a child if . . . (4) the child is born while the husband and wife are legally married to each other."). Accordingly, Christina Walsh filed for social security survivor's benefits for Trevor. Although social security regulations, and the applicable case law, clearly require the Social Security Administration to defer to state law in determining whether a given minor child is the next-of-kin of a decedent, and Vermont law is unambiguous on the subject,

the Social Security Administration has now twice (wrongly) denied benefits to the minor child. Letter from Anne Jacobosky, Asst. Reg. Commissioner, *Social Security Administration Retirement, Survivors and Disability Insurance*, to Christina Walsh for Trevor Walsh (December 21, 2003) (App. 31).

The federal government, by its own assessment, assigns 1,049 benefits, protections, and obligations to married couples. United States General Accounting Office, *Defense of Marriage Act*, Rep. No. GAO1, OGC-97-16, January 31, 1997, <http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.21&filename=og97016.pdf&directory=/diskb/wais/data/gao>. The federal government. The federal government does not define marriage, but relies on the states to do so. State law, not federal law, serves as the gateway to this vast array of significant federal legal protections. By enacting a civil union law rather than opening the "marriage" gateway to same-sex couples, the State of Vermont has reduced the likelihood that same-sex couples joined in civil union and their children can avail themselves of any of the federal-law protections of marriage. In that respect, couples joined in civil union are dramatically disadvantaged relative to married couples. To be sure, the constitutionally dubious federal "Defense of Marriage

Act" ("DOMA"), codified at 1 U.S.C. § 7 (2003) and 28 U.S.C. § 1738C (2003) could pose an obstacle to federal benefits for same-sex couples even if Vermont simply allowed those couples to marry. However, by passing a civil union law, the Vermont Legislature essentially has preempted opportunities for reexamination by the Congress of the policies this law fosters, as well as meaningful judicial review of the constitutionality of withholding from same-sex couples the legal status--marriage--necessary to seek federal benefits in the first place.

See Cox, *But Why Not Marriage*, 25 Vt. L. Rev. at 145 ("[T]he combination of DOMA and the Vermont Legislature's unwillingness to accord marital status to its same-sex couples has made it somewhat more unlikely that those couples will be recognized as married for federal purposes.") By erecting an additional obstacle to the attainment of important federal law protections by same-sex couples, the Vermont civil union law falls short of its stated goal and of the constitutional imperative of full inclusion for same-sex couples.

3. Many Private Parties Attach Their Own Benefits To Marriage As Defined By Statute.

Other states and the federal government are not alone in adopting the legal status of marriage as a gateway to a vast array of protections and benefits. Many private parties do so as well. Although private

parties within Vermont are precluded from treating persons joined in civil union any differently than married persons, Vermont's anti-discrimination laws do not likely reach beyond Vermont's borders. That means that private parties in other states, such as museums that offer discounted memberships to married couples, or employers that contractually provide for paid leave for an employee to care for a spouse, may not be legally bound to treat the couple joined in civil union as if the couple were legally married. As a practical matter, if same-sex couples in Vermont were allowed to "marry", they would automatically qualify for an array of private benefits conferred by their employers and other public accommodations. On the other hand, because the term "civil union" is generally unfamiliar to private actors, and unlikely to be included in their benefit plans and policies, civil union status may not open the door to those same entitlements and protections.

Perhaps the most significant such benefit is health insurance. The nature of health insurance coverage in America--provided primarily through the workplace--favors partners who are legally married. In Vermont, 64% of residents under the age of sixty-five receive their health insurance through an employer-provided plan. (Vermont Division of Health Care Administration,

"Employment-Based Health Insurance in Vermont: Summing It Up,"

http://www.bishca.state.vt.us/HcaDiv/Data_Reports/SurveyVTFamilyHealth2000/EmployInsur012202.pdf, p. i). A similar percentage of Massachusetts residents under the age of sixty-five, 62%, receive their health insurance from such plans. (Kaiser Family Foundation, "Massachusetts: Population Distribution by Insurance Status, state data 2000-2001, U.S. 2001," statehealthfacts.kff.org/cgi-bin/healthfacts.cgi?action=compare&category=Health+Coverage+..., accessed January 5, 2004). Many of these plans provide coverage to the spouses and children of employees. Therefore, it is not surprising that married adults in Massachusetts are more than two times more likely to have health insurance than unmarried adults who live together. (Massachusetts Division of Health Care Finance and Policy, "Health Insurance Status of Mass. Residents, 3rd. Ed., January 2003," Appendix p.21, www.state.ma.us/dhcfp/pages/pdf/hism1200.pdf, accessed January 5, 2004). Civil unions are unlikely to remedy that disparity.

Employer-provided health insurance, with very few

exceptions,^{1/} is governed by the Employee Retirement Income Security Act of 1974, ("ERISA"), 29 U.S.C. §§ 1001 - 1461 (2003). Under ERISA, self-insured plans (plans in which the employer itself bears the financial risk for medical claims) are essentially exempt from state regulation. *Metropolitan Life Insurance v. Massachusetts*, 471 U.S. 724, 747 (1985) (construing ERISA section 514(b)(2)(b), at 29 U.S.C. § 1144(b)(2)(b)) (2003). In Vermont, in 2002, 24.6% of residents were insured through a self-insured plan. (Vermont Division of Health Care Administration, "Health Insurance Coverage Estimates Vermont Residents, 1999- 2002," www.bishca.state.vt.us/HcaDiv/Data_Reports/CoverageEstimate02.pdf, accessed January 6, 2004). Even more Massachusetts residents, 30%, receive their insurance through self-insured plans. (Massachusetts Division of Health Care Finance and Policy, "Self-Funded and Fully-Insured Health Insurance Plans: How Do They Differ?" p.1, <http://www.state.ma.us/hrsa/pages/pdf/selffund.pdf>, accessed January 5, 2004).

As a result of ERISA's broad preemptive effect, it is unlikely that Senate Bill 2175 can by its own force require self-insured plans to provide spousal coverage to couples in a civil union. Ironically, however, the

¹ The two exceptions are plans for government employees and

definition of marriage in an ERISA-governed plan depends, in the absence of plan language to the contrary, on state law. *Allen v. Western Conference of Teamsters*, 788 F.2d 648, 650 (9th Cir. 1986) (assuming in the absence of plan language to the contrary that an ERISA-governed plan relies upon state law to determine if a party is married); *Valentino v. Teamsters Local 469 Pension Fund*, 2000 WL 1879544, 3 (D.N.J. 2000) (in construing an ERISA-governed pension plan, concept of marriage is based on state law). Thus, if ERISA-governed plans are written to cover married couples, spouses or families, as almost all plans are, it is likely that these plans will be construed to cover same-sex couples that are "married" as a matter of Massachusetts law.^{2/}

However, because ERISA-governed health plans generally do not use the term "civil union," unless an employer simply treats a civil union as a marriage, it is unlikely that existing plan language will be construed to cover civil unions. Rather, employers would have to make the affirmative decision, as they have the discretion to do under ERISA, to amend their plan terms to include civil unions in their coverage categories, in order for

church-related employee plans. 29. U.S.C. § 1003(b)(1)-(2) (2003).

² Even if DOMA is ruled constitutional, it is not clear that its so-called federal definition of marriage would govern the private benefit plans sponsored by employers, given the traditional

a non-employee partner in a civil union to gain "spousal" coverage under his or her employee partner's self-insured plan.

Employers are unlikely to opt, in large numbers, for inclusion of partners joined by civil unions, not because of prejudice but because of legal uncertainty. For example, employers sponsoring interstate plans may wonder whether a civil union grants any legal status outside of Vermont or Massachusetts. They also may wonder if an individual in a civil union would be eligible for marriage in another state, leaving the plan potentially liable for the coverage of two adult partners of the employee.

In contrast, marriage is a term that is well understood by employers. An employer sponsoring an ERISA plan that covers all spouses or married couples does not have to worry about a lack of legal guidance on what it means for its employees to be married or divorced. Indeed, even if another state can refuse to recognize a same-sex marriage under its own constitution, for purposes of conferring private benefits, employers often will draw a clear line: their employees are either married or unmarried. Employees who are married are not considered to be joined in a statutory union that lacks

deference in ERISA jurisprudence to state law definitions of

any ascertainable legal status under the law of most states. This clarity is hardly a trivial concern to employer sponsors of most health care plans. In this era of steeply rising insurance costs, employers are unlikely to voluntarily provide costly family health insurance to unmarried couples, if the law does not clearly require them to do so.

In short, by denying same-sex couples the title "married," the Vermont Legislature has significantly decreased the likelihood that same-sex couples joined in civil union and their families will enjoy the private benefits that many organizations automatically confer on married couples.


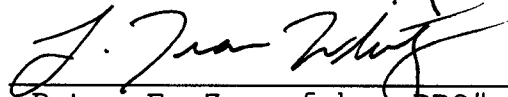
V. CONCLUSION

This Court has recognized the "marriage ban does not meet the rational basis test for either due process or equal protection." Goodridge, 440 Mass. at 331. A civil union law which denies same-sex couples *many* of the critical benefits of marriage is every bit as lacking in rational basis, and is every bit as unconstitutional, as a law which denies same-sex couples *all* of the tangible and intangible benefits of marriage.

marriage for purposes of construing benefit plans.

Respectfully Submitted,
HUMAN RIGHTS CAMPAIGN; NATIONAL
GAY AND LESBIAN TASK FORCE;
MASSACHUSETTS LESBIAN AND GAY
BAR ASSOCIATION; MASSACHUSETTS
GAY AND LESBIAN POLITICAL
CAUCUS; LESBIAN, GAY, BISEXUAL
AND TRANSGENDER POLITICAL
ALLIANCE OF WESTERN
MASSACHUSETTS; MASSACHUSETTS
TEACHERS ASSOCIATION; HEALTH
LAW ADVOCATES; LESBIAN, GAY,
BISEXUAL AND TRANSGENDER AGING
PROJECT OF MASSACHUSETTS;
NATIONAL STONEWALL DEMOCRATS;
FREEDOM TO MARRY COALITION OF
MASSACHUSETTS; FREEDOM TO
MARRY; FREEDOM TO MARRY
FOUNDATION; RELIGIOUS COALITION
FOR THE FREEDOM TO MARRY;
VERMONT FREEDOM TO MARRY TASK
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Rutland Herald 2/2/00

Second round of hearings held

By JACK HOFFMAN
Vermont Press Bureau

MONTPELIER — The buses were running and the rally against same-sex marriage drew a large crowd out front, but inside the Vermont State House Tuesday night the scene looked much as it did last week.

The House chamber was overflowing, with an estimated 750 people in a room that's supposed to hold about

(See Page 7: Marriage)

Marriage

Continued from Page One

500. Additional hearing rooms also were full, and the hallways were jammed again as well.

And once again, the testimony presented to the House and Senate Judiciary committees was sharply divided between support and opposition to the idea of same-sex marriage. There was virtually no discussion of a compromise that would provide legal benefits to same-sex couples without actually allowing them to marry.

Many opponents of same-sex marriage cited moral and religious reasons for their positions. And several sharply criticized the Vermont Supreme Court for ruling in late December that same-sex couples had a constitutional right to the legal benefits and protections available to traditionally married couples.

In its ruling, the court said the Legislature it could extend benefits to same-sex couples by changing existing marriage laws or it could create a "parallel alternative," such as domestic partnerships, that would have the same protections but would not be called "marriage."

"Marriage is between only one man and one woman, and let's impeach the Supreme Court justices," said Robert Worthington of Montgomery Center.

Worthington was the first person in the witness chair on the floor of the House chamber. He used his two minutes of allotted time to tell lawmakers that people in his community were so upset about the decision they were considering leaving the state. He also warned the six members of the Senate committee and 11 members of the House committee that there would be a political price to pay if they approved marriage for gays and lesbians.

"These customers of mine, their families, have even talked ... of how upset they are with their elected officials and how they will put them out of office if they vote yes," he said. "These people may not come to a meeting like this or even call or write to legislators, but nonetheless they are out there and they will vote."

About 100 people got to address the committee during the four-hour hearing, which was roughly the same number who testified last week.

However, the committees changed their routine this week. Witnesses were chosen at random, as they were last week. But this time people could sign up to speak for or against the idea of providing benefits to same-sex couples, and the testimony alternated between opponents and supporters.

Worthington, who warned law-

makers they could be voted out of office, was followed by Brad Blanchette of Burlington, who urged them to not to think only about of their political careers.

"A coincidence of events has thrust you into the center of controversy ...," he said. "While this watershed of liberty had to happen eventually, eventually is now."

"The decision before you is one that will reverberate throughout history as one that could forever define our resolve to advance human freedom. I ask that you put political and personal considerations aside as other champions of freedom before you have done and find the courage, somehow, to vote your conviction."

Several of the speakers denounced homosexuality as immoral, and they cited passages from Leviticus to bolster their arguments homosexuality violated the laws of God.

Leslie Crane of Williston read a letter from his 18-year-old son, who was unable to attend the hearing.

"I am shocked that we as a state and a nation are entertaining the idea of a homosexual union," Crane said, reading from the letter. "I believe that if Vermont legalizes this unnatural behavior, I believe there will be a migration like none have ever seen."

"Such an influx of homosexuals will be detrimental to the moral and family values that surround us in Vermont."

As they did last week, advocates of same-sex marriage drew parallels between the current opposition to same-sex marriage and past opposition to interracial marriage.

Molly Goldberg, a 16-year-old student at Montpelier High School, said objections to same-sex marriage were based on "fear of the unknown, fear of the different."

"This is similar to the objections to interracial marriages a few decades ago," she said. "In a parallel struggle for civil rights, the lawmakers had to move one step ahead of the people and pave the way for more tolerance."

SAME-SEX MARRIAGE DEBATE

Middle ground empty at Statehouse hearing

By Adam Lisberg
Free Press Staff Writer

MONTPELIER — The dozens of people who spoke during an all-day, four-hour public hearing Tuesday offered starkly different views on same-sex marriage, with little middle ground.

Some said gay and lesbian marriage would be a matter of simple fairness, and urged legislators to break new ground by allowing it.

"Traditions are important," said Kenneth Worthington of Burlington. "But in the fullness of time, we can look back and see that not all traditions were right — slavery, segregation, denying women the right to vote."

Others, though, said same-sex marriage would be an abomination against God and common sense. They called for a constitutional amendment to prohibit gay and lesbian marriages.

"The Supreme Court has overstepped its power and violated the Constitution," said Robert Worthington of Montgomery Center. "Marriage is only between one man and one woman. To do otherwise would simply destabilize society."



Molly Goldberg, a student at Montpelier High School, testifies in favor of same-sex marriage before a joint Judiciary Committee of the Legislature on Tuesday. About 1,800 people crowded into the Statehouse for the second hearing on the issue.

The state Supreme Court ruled in December that gay and lesbian couples deserved the rights and benefits of marriage, but left it up to the Legislature how to guarantee those rights. Some opposed to gay marriage called for the court's five justices to be im-

peached.

Few people spoke up for domestic partnership, which would grant same-sex couples the rights and benefits of marriage without granting them marriage licenses. Though some legislators had initially viewed domestic partnership as a compromise on the issue, that option came under attack Tuesday from both sides.

"Domestic partnership would not carry the same social status that marriage carries," said Paul Wadley-Bailey of Bradford, who supports same-sex marriage. "Marriage is different from domestic benefits."

Opponents of gay marriage, meanwhile, said that lawmakers shouldn't do anything to encourage homosexual conduct, including recognizing gay relationships.

"It's OK to be intolerant of wrong. This behavior is clearly wrong," said Duane Judge of Colchester. "Are we becoming a society that tolerates anything?"

Rep. George Schiavone, R-Sheburne, an outspoken opponent of same-sex marriage, said he has found few legislators who think domestic partnership is the answer. The two sides don't seem to be finding any grounds for compromise, he said.

"They're not getting closer," Schiavone said. "I thought it would look more positive at this stage in the game."

The crowd that jammed the Statehouse was well-behaved, although police said people seemed edgier than at the first public hearing a week ago. Hundreds of people who could not fit into the ornate House chamber filled listening to testimony over loudspeakers and portable radios. Police confiscated alcohol from some people drinking in a first-floor hallway, but otherwise reported no trouble.

"I have never seen two sides that are so far apart that are so courteous to each other," Statehouse Sergeant at Arms Kermit Spaulding said.

Vermonters aren't the only ones interested in the issue, anti-abortion activist Randall Terry, founder of Operation Rescue, said he has rented a Montpelier storefront to advocate against same-sex marriage and broadcast a nationally syndicated radio show.

"I'm coming here for activism, not for radio," Terry said.

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Same-Sex Marriage Polarizes Vermont

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By CAREY GOLDBERG

MONTPELIER, Vt., Feb. 2 -- In her piping soprano, 10-year-old Courtney Dozetos told hundreds of Vermonters crammed into the state House here late Tuesday night: "It would make me feel special and good if my moms could get married. I don't and probably never will understand why they can't."

Linda Pastelnick, representing the opposite side, quoted a verse from Leviticus calling sex between men "an abomination" and argued, "God made Adam and Eve, he didn't make Adam and Steve."

Henry Ilesley probably summed up the situation best, saying, "It seems we're a state divided."

Six weeks after the Vermont Supreme Court ruled that gay couples deserved the same rights and benefits as heterosexual spouses and must be granted them, Vermont is indeed a state divided, even polarized, as it takes its new position at the epicenter of the country's long-running debate over gay marriage.

It is grappling hard with the court ruling in its media, in its lunch-counter talk and in its legislature, where committee members are hoping to come up with at least the beginnings of a bill on same-sex couples this month. And as it grapples, it is finding that what had seemed at first obvious middle ground -- a domestic partnership system that would offer all the benefits of marriage,



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from health insurance to inheritance rights, without the title -- has few backers at this point.

In its Dec. 20 ruling, the court left it up to the legislature to find a remedy for discrimination against gay couples. It set no deadline for the new law, but retained the right to revisit the issue if the unconstitutional discrimination did not end.

Immediately after the ruling, Gov. Howard Dean and others expressed their support for domestic partnership as a compromise. California and Hawaii already have statewide domestic partnership laws, though not nearly as extensive as the Vermont court's ruling would require.

But as people in Vermont speak out, almost no one can be heard promoting domestic partnerships. Those who support traditional marriage say domestic partnerships would undermine it. Those who support gay marriage say the state should settle for nothing less.

Dr. Dean attributes the sense of polarization to the current central forum of the state's debate: two mass public hearings at the state House, one last week and one Tuesday night, that have drawn well over 1,000 people each. (In a state of just 600,000 people, it could be that almost one-half of 1 percent of them have taken to the Capitol lately. The New York equivalent would be Albany hearings drawing 90,000 people.)

"It is self-selecting, of course," Dr. Dean said. "Look out your window. When it's snowing like this, you're not going to get up out of your cozy armchair in the middle of the Vermont winter to take the moderate path."

But a statewide poll -- conducted Jan. 18-21 and sponsored by The Rutland Herald, The Barre-Montpelier Times Argus and WCAX Channel 3 News -- bore out the depth of the state's split. It found that 38 percent agreed with the Supreme Court's ruling, and 52 percent disagreed, while 10 percent remained unsure. Asked if they favored overturning the court's ruling with a constitutional amendment, 49 percent said they did, while 44 percent opposed the idea.

Leaders of the Roman Catholic Church in the state, who have mobilized to oppose same-sex marriage, oppose domestic partnerships as well. They sponsored a rally outside the state House on Tuesday night that drew nearly 1,000 people.

Leaders of many other denominations, including Episcopal and United Methodist bishops and several rabbis, have come out strongly in favor of gay marriage as a way to strengthen the institution and defend civil rights. They, for their part, back full-fledged marriage, not partnership.

At the House hearings, virtually everyone wears either a pink sticker supporting gay marriage or a white sticker saying "God's plan -- one woman one man" or "Don't mock marriage." There are no domestic partnership stickers.

Thus far, the debate has been impeccably civil and both sides well behaved, prompting expressions of state pride from Dr. Dean and others. But many, like Representative Thomas A. Little, the Republican who heads the House committee holding hearings on same-sex marriage, fear that peace will not last.

"I would suggest that while we're in stasis, or a holding pattern, where we're not deciding anything yet, that it's possible to sustain," Mr. Little said of the political calm. "And when we start to move forward with drafting and marking up a particular bill, that may change."

"There's no middle ground so far that's emerged," he continued. "And it probably was naïve to think it might. The gay and lesbian community advocates are saying the only thing that will work is same-sex marriage, and the people who are vocally against any of that sort of thing say the only thing that will satisfy them is nothing."

The 11-member House Judiciary Committee will try to begin drafting a bill this week, Mr. Little said, but it will be a slow process. Committee members say there have been no preliminary votes or other indications as to which way the committee is leaning, and no one is making any predictions.

Other bills are pending, one to "clarify" that marriage is only between a man and a woman, one to do the opposite and make the state's marriage laws "gender neutral," and one to begin amending the state constitution to specify that marriage is heterosexual. The legislative session is expected to last through April.

As the legislature wrestles, thousands of Vermont voters will also have a chance to weigh in on the same-sex marriage issue. Many towns are planning to put the question to a nonbinding vote on their Town Meeting day in March.

The House Judiciary Committee has emphasized that it wants to discuss how to carry out the court's decision, not the merits of the decision itself, which came after three gay couples sued when their town clerks denied them marriage licenses. It has thus far allowed only Vermonters to testify at public hearings, emphasizing that it wants the debate to be an internal Vermont matter.

But the committee may be fighting a losing battle on those fronts.

In testimony, speakers have repeatedly denounced the court's decision and urged the legislature to back a constitutional amendment to overturn it. Some also called for impeaching the court's justices.

As for outsiders, Randall Terry, the militant abortion foe known for creating disturbances at abortion clinics around the country with his group Operation Rescue, has set up shop here and told The Rutland Herald that he plans to stay "for the duration" of the fight.

More outsiders can be expected, said Daniel Foley, a Honolulu lawyer who has been at the forefront of the gay marriage push in Hawaii.

"It is in the legislature's interest to deal with this quickly," Mr. Foley said, or else, judging by his Hawaii experience, outside opponents of gay marriage will finance the fight against politicians who back it in the November elections.

Here in Vermont, the outsiders may lobby, but there is a sense that no one is listening much. Sue Allen, spokeswoman for Governor Dean, a Democrat, said that the office had received about 13,000 calls, faxes and letters, an unheard-of number, but that the vast majority came from out-of-staters, and so had no influence. Vermonters' opinions are forwarded to the governor, Ms. Allen said.

A similar attitude prevails at The Burlington Free Press, which has carried several two-page spreads of letters on same-sex marriage. A Kansas minister who came to town to preach against gays upset many Vermonters, said Stephen Kiernan, the newspaper's editorial page editor, adding, "That has created an atmosphere within Vermont that this is our issue and we will resolve it."

"And outsiders," Mr. Kiernan continued, "thank you very much, but why don't you go skiing?"

Lawmakers take up gay marriage



GLENN RUSSELL, Free Press

Attorneys Beth Robinson (right) and Susan Murray (rear) brief the House Judiciary Committee on Tuesday morning about the recent Vermont Supreme Court decision requiring the Legislature to confer the benefits of marriage to same-sex couples. Lawmakers must decide whether to expand the definition of marriage or come up with a form of domestic partnership.

Panel quietly begins its work

By Adam Lisberg
Free Press Staff Writer

MONTPELIER — Vermont took its first step into an uncertain future Tuesday as lawmakers began the court-ordered task of giving gay and lesbian couples the rights and benefits of marriage.

The House Judiciary Committee started the process shortly after 9 a.m. in a Statehouse meeting room the size of a one-car garage. There was no fanfare or ceremony — several committee members even wandered in late — but the 30 spectators who crammed into the room gave some idea of the intense interest in what Vermont lawmakers are considering.

"It's clearly momentous,"



**THE SUPREME
COURT DECISION:
SAME-SEX MARRIAGE**

said Beth Robinson, one of the attorneys who challenged Vermont's prohibition on same-sex marriages in 1997. "None of these people asked to be here, yet they found themselves in the spotlight of a historical moment."

Robinson and law partner Susan Murray started the

Same-sex mandate

■ **WHAT:** The Vermont Supreme Court on Dec. 20 ordered lawmakers to give same-sex couples the rights and benefits of marriage. Lawmakers are trying to respond to the ruling. This is what the court required:

■ **TEXT:** "We hold that the State is constitutionally required to extend to same-sex couples the common benefits and protections that flow from marriage under Vermont law. Whether this ultimately takes the form of inclusion within the marriage laws themselves or a parallel 'domestic partnership' system or some equivalent statutory alternative, rests with the Legislature. Whatever system is chosen, however, must conform with the constitutional imperative to afford all Vermonters the common benefit, protection, and security of the law."

day by outlining their legal case, in which three same-sex couples sued for the right to marry, as well as the state Supreme Court's Dec.

20 ruling in their favor. That ruling made Vermont an international flashpoint for

See **MARRIAGE**, 5A

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MARRIAGE: Lawmakers take up issue

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gay rights, attracting attention from people and groups on all sides of the issue.

The court left up to the Legislature how to remedy the constitutional wrong Robinson and Murray identified. The justices said lawmakers could simply allow same-sex couples to marry, or could try to create a parallel system of domestic partnership with the same rights and benefits of marriage.

Whichever path the Legislature takes will make history: No state supreme court has ever ordered such sweeping rights be granted to gay and lesbian couples. Choosing between them, however, will force lawmakers to navigate an uncharted path between long-held traditions and newly guaranteed civil rights.

"We are being asked to embark on a cultural experiment," said Vermont Law School professor Peter Teachout. "It is a departure from the way things have been done almost from the very beginning."

By the end of the day — after the committee moved into a much larger meeting room downstairs — Chairman Thomas Little, R-Shelburne, said he was pleased with how the process began. He hopes the 11-member committee can agree on an approach and write a bill by Feb. 23, staying focused on the law and not on questions of religion

or morality.

"Today was a pretty decent start," Little said. "I purposely didn't make any comments about how momentous it all is. We just want to roll up our sleeves and get to work, and not trumpet the importance and significance of what we're doing."

Little said he wanted to spend the next two weeks discussing the legal landscape of same-sex marriage before the committee started thinking about whether to choose marriage or domestic partnership for same-sex couples.

"We're going to try not to cut to the chase," Little said. "That's the part of the movie where it goes too fast and gets pretty hectic."

Yet every lawyer who testified before Little's committee Tuesday couldn't help but discuss the relative merits of the two approaches. Robinson and Murray argued that anything short of marriage simply isn't equivalent: Even the word "marriage," they said, carries a form of social approbation that "domestic partnership" can't match.

"It's a symbol of being included — of not being a second-class citizen," Murray said. Added Robinson: "Nobody writes songs about registered partnerships."

William Griffin, Vermont's chief assistant attorney general, testified that it might not be easy to defend in court the idea that

domestic partnership provides the same rights and benefits as marriage. However, he said, domestic partnership might be an easier concept for lawmakers and Vermonters to swallow than full-fledged marriage for gays and lesbians.

"Gay marriage would probably be easier to defend," Griffin said. "In a way, the partnership arrangement would be transitional. It would be easy for the Legislature to set up a partnership, and then in the next year or the next decade go to marriage."

Robinson and Murray, however, said the question before lawmakers is one of rights, not comfort.

"Just because we have a strong tradition of discriminating against gay and lesbian couples doesn't mean that we should continue it," Murray said. "Every single day that this Legislature does not act is a denial of the ... rights and benefits that my clients are entitled to, and that all gay and lesbian couples in this state are entitled to."

Panel tackles marriage issue

By JACK HOFFMAN

Vermont Press Bureau

MONTPELIER — The House Judiciary Committee began Tuesday what was supposed to be a steady but orderly process of reviewing last month's Vermont Supreme Court decision that guaranteed same-sex couples the same legal rights of married couples.



The committee heard the background on the case, some of the legal arguments that were presented and interpretations

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Times Argus Photo by Sandy Macys

Gay rights lawyers Susan Murray (left) and Beth Robinson consult before testifying before the House Judiciary Committee Tuesday.

Marriage

Rutland Herald, Wed, Jan 12, 2000

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of the court's far-reaching opinion.

But several times during the day the discussion jumped ahead to the central question now facing the Legislature: Should same-sex couples have the right to marry or should the benefits be provided, as the court described it, through a "parallel alternative" such as domestic partnerships?

The two lead lawyers on the case, Susan Murray and Beth Robinson, who both practice in Middlebury, told the committee that gay and lesbian couples still would be denied some important, tangible benefits if the Legislature stopped short of allowing them to marry and instead created domestic partnerships.

For example, they said a business that offered health benefits to employee spouses would not be obligated to provide the same benefits for a "domestic partner." The only way those benefits would be guaranteed to a same-sex couple would be through marriage, they said.

Domestic partnerships would not be recognized in other states, Robinson said. But marriage, while it would not be recognized everywhere, would be valid in some states outside Vermont.

And Robinson predicted that laws in states denying recognition of same-sex marriage would be overturned. But before those laws can be challenged, she said, some state has to allow a gay or lesbian couple to marry.

Robinson and Murray both spoke passionately when they described some of the tangible benefits that are denied gays and lesbians. But they were most forceful in talking about the intangible benefit that same-sex couples would not get if the Legislature followed the domestic partnership option.

Being denied the right to marry, Murray said, gives gays and lesbians the feeling they are inferior.

"There's a message they get that they're second class citizens," she said. Beyond the loss of tangible benefits, she said, "there's an erosion of spirit."

Later, when the discussion turned again to the pros and cons of same-sex marriage and domestic partnerships, Murray asked the committee to imagine the public reaction if people who were now married were given the status of domestic partners.

"There would be an uproar," she said. "Those husbands and wives would feel

they'd lost something."

"The word (marriage) itself is something," Robinson added. "Everybody knows what it means. It is a powerful term."

At one point in the discussion, Robinson compared the current opposition to same-sex marriage to earlier prohibitions against interracial marriages. Before the courts ruled that the bans were unconstitutional, Robinson said, 30 states had laws and six states had constitutional provisions prohibiting blacks and whites from marrying.

"The reaction against interracial marriage was as visceral as the reaction against a man marrying a man or a woman marrying a woman is today," Robinson said.

Robinson also told the committee that when states finally recognized that they were discriminating against mixed race couples, no one suggested that an alternative relationship be created for them that would provide equal benefits but still not allow them to marry.

Three same-sex couples appealed their case to the Vermont Supreme Court after they were denied marriage licenses. They argued first that they were entitled to marry under the state's existing marriage laws. If they were not covered by the existing laws, they said, then those laws should be struck down as unconstitutional.

The court ruled last month that existing marriage laws only apply to unions between one man and one woman. Nevertheless, the court agreed with the couples that they were being wrongly denied the legal rights and privileges extended to married couples.

Having ruled that same-sex couples were being denied their constitutional rights, the court then left the Legislature to come up with a remedy. The court said the Legislature could amend the existing marriage laws to include same-sex couples, but the court also made it clear it was not ordering that gays and lesbians be allowed to marry.

The court said the Legislature could try to craft a parallel system, such as domestic partnerships, that would provide all the same rights and privileges of marriage without actually allowing same-sex couples to marry.

One of the questions raised since the ruling is whether the court believed an alternative system would, in fact, achieve the goal of providing equal rights and

benefits to same-sex couples.

A couple of witnesses said the court left open the question of whether same-sex couples could be adequately protected through domestic partnerships or whether marriage would have to be the ultimate solution. The witnesses pointed out that the court said it was leaving that question to another day. In part, the answer to that question will depend on what alternative the Legislature devises if it chooses not to approve same-sex marriage per se.

Peter Teachout, a professor at Vermont Law School who specializes in constitutional law, said he believed the court had clearly left open the possibility that an alternative system could meet the test.

Teachout pointed out that there had been a sharp disagreement on the court over that very issue. Associate Justice Denise Johnson argued strongly in a dissenting opinion that the court should have ruled that the three couples should be granted marriage licenses. However, the four other justices joined with the majority decision that said the Legislature could amend existing law or create an alternative system, such as domestic partnerships.

There was an argument among the justices over domestic partnerships, Teachout said, so it was clearly considered by the court.

Teachout agreed with Robinson and Murray that domestic partnerships would not provide all the same benefits of marriage. One thing same-sex couples wouldn't get, he said, "was that gateway to other states."

Teachout also talked about the intangible benefits.

"The other thing you don't get is that bestowal of legitimacy," he said.

Teachout then explained that the legal question for the state and the Legislature, if it followed the domestic partnership option, was whether it could justify treating same-sex couples somewhat differently than heterosexual couples.

By providing the legal benefits and protections, Teachout said, the state could remove much of the discrimination against same-sex couples. What the Supreme Court would have to decide in the future, if domestic partnerships were approved, is whether there were adequate reasons to justify the benefits that would still be denied to same-sex couples.

Panel backs domestic partnership

Vt. marriage law expansion rejected

By JACK HOFFMAN
Vermont Press Bureau

MONTPELIER — After four weeks of testimony and weighing political reality, the House Judiciary Committee voted Wednesday to write a law that would extend legal benefits and protection to same-sex couples but would stop short of allowing them to marry.

"Leadership requires a keen sense of what ought to be done in the context of what can be done, what is achievable,"

said Rep. Thomas A. Little, R-Shelburne, the chairman of the committee.

"Leadership untempered by careful assessment of the world we live in

is not sound leadership. What is achievable in this General Assembly and this body politic this year is a broad civil rights bill and, speaking for myself, that does not cross the threshold of marriage."

Little said he believed a civil rights bill or a legal benefits bill was the right thing for Vermont to do now. And he warned that trying to deal with the "clearly unresolved" debate on same-sex marriage this session could jeopardize the cause of civil rights.

The majority of the committee agreed with Little. Eight of the committee's 11 members voted to move forward with a bill that would not broaden the existing marriage laws to include same-sex couples.

However, Rep. Steve Hingtgen, P-Burlington, said gays and lesbians in Vermont were entitled to the same benefits as heterosexual couples, including marriage.

"Full inclusion of gay and lesbian Vermonters in our state marriage statutes is the courageous, moral and timely thing to do," he said.

Hingtgen acknowledged that creating a category of "domestic partnerships" could provide many legal benefits for homosexual Vermonters. But he warned that stopping short of marriage would mean bowing to the pressure from opponents.

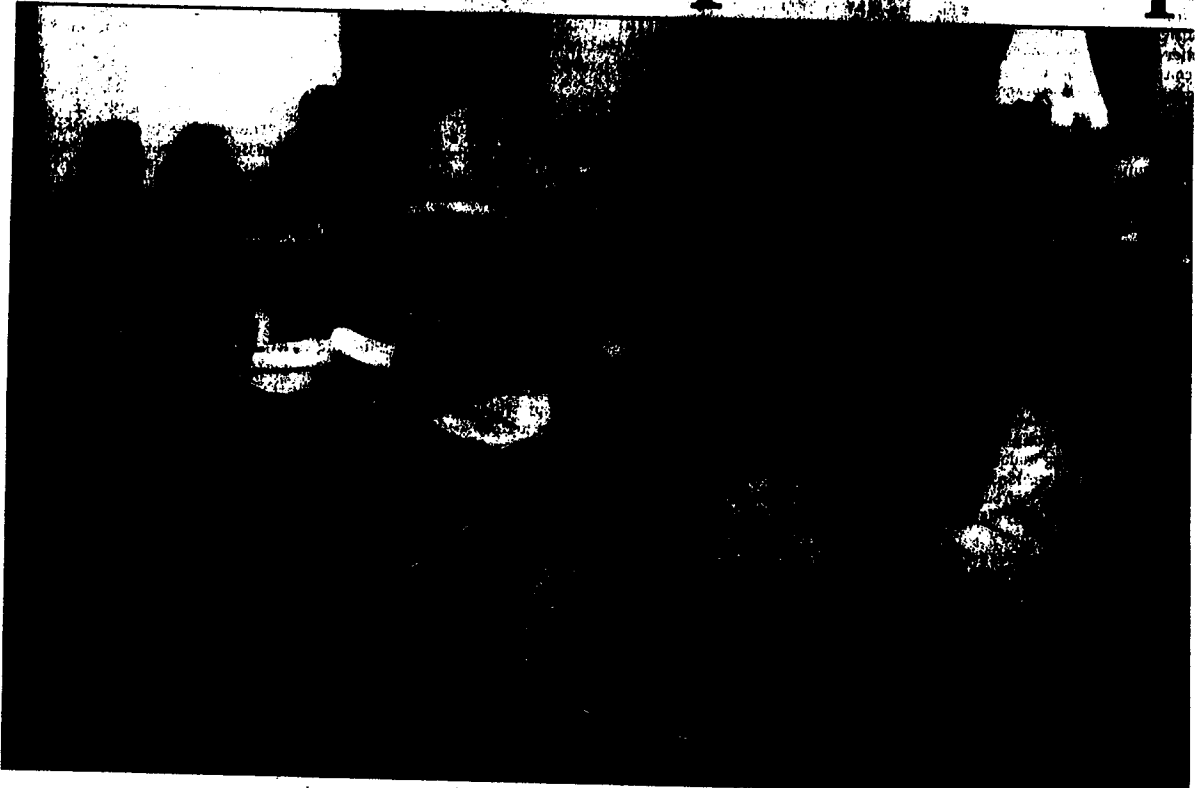
"For all those who have come before

(See Page 5: Marriage)

Rep. Bill Lippert

"The community of gay and lesbian people deserve the same rights, privileges and responsibilities as all other couples in the state of Vermont and, in my view, deserve not only the rights, privileges and responsibilities but also the opportunity for the status of marriage."

Rep. Bill Lippert



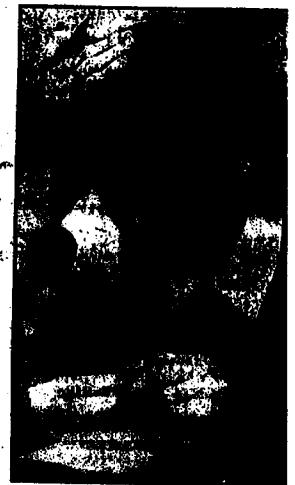
Vermont House Judiciary Committee members raise their hands to vote to write a broad civil rights bill instead of amending marriage statutes to include gays and lesbians in Montpelier on Wednesday.

AP Photo by Toby Talbot



"I very much want to be sure that Vermonters have the same benefits to which they are entitled. I envision a bill that is more inclusive rather than exclusive and serves all Vermonters. If I had my choice, I would include gays, lesbians, heterosexuals and blood relatives."

Rep. Alice Nitka



Rutland Herald
2-10-00

Rutland Daily Herald ♦ Thursday, February 10, 2000

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Marriage

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this committee preaching hate in all its poor disguises, whether with a Bible, a law degree or Ph.D. in hand, those who have filled our ears with hate, they will not be sent a message of rebuke by this committee by us choosing domestic partnership," Hingegen said.

"The hateful will have been strengthened by our decision. Pursuing the domestic partnership path validates the hate," he said. "It does more than validate it. It institutionalizes the bigotry and affirmatively creates an apartheid system of family recognition in Vermont."

Hingegen also said the issue before the committee was not simply a matter of legal rights and benefits.

"It's about the inclusion of gays and lesbians in the mainstream of our communities. It's about accepting gays and lesbians as full members, not partial members, of our towns and schools," he said.

Rep. Bill Lippert, D-Hinesburg, vice chairman of the committee, also argued for allowing gays and lesbians the right to marry.

"The diversity that gay and lesbian people bring to the state of Vermont strengthens the state of Vermont in my view," Lippert said. "Indeed, as Justice Amesbury said, our common humanity calls for our being fully welcomed into the community of Vermont."

"I trust that whatever next step we take collectively that we take it in the direction of continuing to dismantle the institutionalized discrimination and prejudice against gay people and gay families," he said. "I hope and I ask that we do that by amending the marriage statute."

Lippert, who is gay, was referring to

Amesbury, who wrote the majority opinion in *Baker vs. State of Vermont*, "declaring that same-sex couples in this state had a constitutional right to the legal benefits and protections extended to married couples."

Rep. Bill Macdonald, D-Sharon, was the third member of the committee calling for inclusion of same-sex couples in the existing marriage law.

"In an incident like this, where some of Vermont citizens' civil rights are hanging in the breeze, I think it is inappropriate to temper how you craft legislation to political realities that may exist outside this room," Macdonald said.

"It would be my suggestion to this committee that an inclusive marriage statute is what all of the evidence that we have taken points to. It is the constitutionally correct thing to do. To temper that with what the political realities are outside the insular world of the House Judiciary Committee, I think, is an incorrect move when a civil right is hanging in the air," he said.

All members of the committee said they supported the idea of providing legal benefits to gay and lesbian couples in Vermont. However, they stopped short of same-sex marriage.

Rep. Alton Nitz, D-Ludlow, said she wanted to see a bill that provided legal protections to a broad range of Vermonters.

"I envision a bill that is more inclusive rather than exclusive and serves all Vermonters who can benefit from inclusivity," she said. "If I had my choice, I would include gays, lesbians, heterosexuals and blood relatives."

the past month had been "the most intense educational experience of my life." She predicted the time would come when the religious aspects of marriage would be clearly separated from the state's function of providing legal protections through civil marriage.

She said she could foresee a time when all committed couples were covered by a civil marriage contract and religious would be free to continue to perform the "ceremonies of life" that they chose to perform.

Gov. Howard B. Dean, who endorsed the idea of domestic partnerships right after the court issued its decision in late December, applauded the committee for taking the path it did.

"I am going to encourage the people of this state to support a broad civil rights bill," Dean said during his regularly weekly news conference Wednesday afternoon. "I am going to encourage the Legislature to pass a broad civil rights bill, and I am going to ask them to pass it this year."

Dean also said he thought the committee's action had removed the question of same-sex marriage from the debate.

"I will use the powers of this office to persuade Vermonters that the Legislature now understands that same-sex marriage is not going to happen. It's not going to pass," Dean said.

He acknowledged that the vote was disappointing for the gay and lesbian community. But he said he believed the course the committee chose was a proper compromise. "I think it does balance the concerns for equal rights for all with the concerns of the

Rep. Walter Freed, R-Danese, said the decision not to pursue same-sex marriage was a recognition that it didn't have enough support in the House. However, he warned that a civil rights bill could run into trouble, too.

"I don't think it is a civil rights bill, and if you call it a civil rights bill, that's going to raise a whole new set of hot button issues and put the whole state in an uproar again," he said.

House Speaker Michael J. O'Rourke, D-Rockingham, supports same-sex marriage. Nevertheless, he said the public and the majority of the House was not prepared to go that far, and he said the committee made the right decision.

"Given the temperament of the General Assembly, I think it's the proper course of action," O'Rourke said.

Vermonters for Traditional Marriage Committee issued a statement Wednesday saying it was pleased by the committee's vote but did not like the legislation the committee began writing Wednesday afternoon.

The proposed bill would create a parallel system of domestic partnerships with all the benefits and responsibilities of marriage but without being called marriage.

"If it looks like marriage, acts like marriage and talks like marriage, it's marriage," Michael Cummings said in a prepared statement. Cummings is president of Take It To the People, the umbrella organization for the Vermonters for Traditional Marriage Committee.

William Shouldice, a lobbyist for the group, said recently that he had advised his clients

impose same-sex marriage. He said he had told the group that it could not simply oppose every bill that seeks to extend benefits to same-sex couples.

Shouldice said Wednesday that Vermonters for Traditional Marriage Committee was not prepared to take his advice and support domestic partnership. He said the group wanted to go forward with an amendment to the Vermont Constitution that would protect traditional marriage.

Stere Kimbell, a lobbyist for the Freedom to Marry Task Force, said his clients were pleased with the statements made by members of the House Judiciary Committee but disappointed with the vote.

"Their reaction is that the statements made by the committee, including the chairman, weren't consistent with their votes," he said. "Everyone made a statement suggesting that marriage was the right thing to do."

Kimbell added: "We think that strong leadership on this issue will bring most Vermonters around to understanding marriage is the right thing to do."

He said he did not know at this point whether the Freedom to Marry Task Force would oppose a domestic partnership bill.

The eight members of the committee who voted to draft a domestic partnership bill were: Little; Rep. John Edwards, R-Swanton; Rep. Michael Vinton, D-Colchester; Rep. Michael Kainen, R-Hartford; Nitz; Livingston; Rep. Cathy Voyer, R-Morrisville; and Rep. Diane Carnoll, D-Rutland. Three members of the committee voted to expand marriage statutes to allow gay and

Times-Argus
December 21, 1999
A1

Lawmakers face 'thornier issue'

By FREDERICK BEVER
Vermont Press Bureau

MONTPELIER — Consensus was already forming among legislators from both parties Monday that gay and lesbian couples should be given the same rights as married men and women.

But whether same-sex couples should be able to get a marriage license promised to be a thornier issue. Legislative leaders appeared reluctant to push marriage law to the top of their agenda, while some gay rights activists and lawmakers said they might not be able to avoid it.

Gov. Howard B. Dean said that before the next Legislature adjourns, he wanted a "domestic partnership" bill that would extend the rights enjoyed by married couples to same-sex partners. But he also suggested he would not look kindly on a rewrite of state marriage law to include same-sex couples.

"It's in the best interest of all Vermonters, gay and straight, to go forward with the domestic partnership act and not the gay marriage act. And that's what I intend



Gov. Howard Dean backs the domestic partnership act.

(See Lawmakers, Page 8)

Lawmakers

(Continued from Page 1)

do," Dean said.

Legislative leaders and outside observers said they believed the Legislature would pass a law that would attempt to meet the Supreme Court's directive to "extend to same-sex couples the common benefits and protections that flow from marriage under Vermont law."

They were also quick to point out, however, that the court appeared to give the Legislature leeway over how that goal could be achieved: "Whether this ultimately takes the form of inclusion within the marriage laws themselves or a parallel 'domestic partnership' system ... rests with the Legislature," the decision said.

Some lawmakers seized on that language to show that they could satisfy the court without having to vote on

the politically charged issue of recognizing the right of same-sex partners to marry.

"Realistically, I think a partnership bill is something we can pass," said Senate President Pro Tem Peter Shumlin, D-Windham. "Obviously, marriage would be more difficult. ... I think an awful lot of Vermonters are confused about that — I'm confused about it."

Shumlin and several other leaders said they were anxious to avoid the type of contentiousness that accompanied the passage of Act 60, the school financing reform law, three years ago.

"It's not the kind of thing I want to see the state torn apart over," said Sen. Richard Sears, D-Bennington, who as chairman of the Senate Judiciary Committee, will play a key role in the issue.

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Richard Harold 12-23-94 A-1

Governor defends 'different but equal'

By DIANE DERBY

Vermont Press Bureau

MONTPELIER — Amid growing criticism that a domestic partnership law would create a "separate but equal" status for same-sex couples who want to marry, Gov. Howard B. Dean disagreed with critics and defended his legislative approach Wednesday.

Dean said the "separate but equal" claim, with its inherent reference to the black civil rights movement, suggests that gay and lesbian couples would somehow be segregated or offered a different standard of benefits.

"That is not the case," Dean said, adding that in order to meet the court mandate, the domestic partnership bill would have to extend the same package of benefits to same-sex couples as are offered to married partners.

"I think it's not 'separate but equal.' It's different but equal," Dean told reporters, illustrating how important the semantics of the case have become. "There are many, many instances (in) statutes everywhere, including in Vermont, where things are different for different groups

of people as a way to protect their civil rights."

"This is a civil rights issue as far as I'm concerned. I think many Vermonters see it as a civil rights issue," he said, adding that he saw no contradiction in the "different but equal" approach.

"People are different," he said. "Sometimes you have to do different things to guarantee people's civil rights in a different way, and I don't have a problem with that."

Dean and legislative leaders are looking to craft a "domestic partnership" bill in the coming session that would extend all of the legal benefits of marriage to same-sex couples. The move comes in response to a Vermont Supreme Court decision issued Monday that said the state was constitutionally required to do so.

"Whether this takes the form of inclusion within the marriage laws themselves or a parallel domestic partnership system or some equivalent statutory alternative, rests with the Legislature," the court said.

(See Page 4: Dean)

Dean

Continued from Page One

It appears there is little political will to pass a law approving gay marriage, but lawmakers are already working on the domestic partnership approach, which many view as a more moderate and more publicly acceptable approach.

While gay rights advocates hailed the court's decision on Monday, many have since made it clear that their ultimate goal is to win recognition for gay marriage.

Some are already vowing to challenge a domestic partnership approach.

"I'm having a really hard time letting go of not getting an entire 'yes,'" said Barbara Doreston, editor of "Out in the Mountains," a monthly newspaper that covers the gay and lesbian community. "There's a lot of good about it (the court's decision), but my bottom line is sep-

arate but equal' is not 'equal.'"
"It's time for us to put on our armor, because it's going to be a fight," she said earlier this week, echoing a sentiment that appears to be growing since the decision was

issued.
Dean would not answer the question of whether or not he would veto a gay marriage bill if one came to his desk.
"It's not going to come to my desk. It's a 'what-if' question and I think

the chances of a gay marriage bill passing the Legislature are very close to zero, so there's no need to get into that," said Dean, who has repeatedly declined to spell out his thoughts on gay marriage.
"I think it (a gay marriage bill) is

inadvisable for a variety of reasons, which I'm not going to go into," he said.
Asked why he wouldn't elaborate, he added, "Because it's my personal business and I don't feel like I need to share it with anybody."

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Weather B12

THE BOSTON GLOBE • WEDNESDAY, DECEMBER 22, 1999

Vt. not ready for gay marriages, politicians say

By Jeffrey Good
GLOBE CORRESPONDENT

MONTPELIER - Halfway down the aisle isn't good enough, said the lawyer for the gay and lesbian couples whose lawsuit prompted this week's first-in-the-nation ruling on equal rights for same-sex partners.

Vermont political leaders said yesterday they stand ready to guarantee gay and lesbian couples the same legal protections and financial benefits as married hetero-

But backers say partners law not enough
sexual couples. They do not, however, think the state is ready for same-sex marriages.

But many gay-rights advocates said that the ability to marry is essential and that they would oppose any legislative effort falling short of that goal.

"The court has required that the Legislature provide gay couples with the equal protections and benefits of marriage," said

Susan M. Murray, the lawyer for the plaintiffs in the case. "Really, the only way to do that is to allow gay couples to marry."

A day after the Vermont Supreme Court declared that same-sex couples deserve the same constitutional protections as heterosexual ones - but left it to the Legislature to figure out how such protections would be crafted - political leaders were staking out the middle ground.

"I have no doubt that same-gender marriage is going to happen in the 21st century," said acting Senate President Peter Shumlin, a Democrat. "I don't think Vermonters are ready for it yet."

Shumlin and other leaders said they will create legal protections for unmarried couples when the Legislature returns to work next month.

However, they hope to avoid a long and emotional debate by setting sexual relationships domestic partnerships instead of GAY MARRIAGE, Page B11

Politicians say Vt. not ready for gay marriages

■ GAY MARRIAGE

Continued from Page B1

marriages.

But without being able to marry under the law, said Murray, gay and lesbian couples might continue to lose benefits normally afforded to spouses, such as health insurance, Social Security payments, even family health club memberships. In addition, she said, a "domestic partnership" law in Vermont would not guarantee a couple the right to take their union to another state.

The state Supreme Court ruling gave lawmakers two choices on how to guarantee equal benefits to gay and lesbian couples: They could either include the couples under the state's marriage law — a choice sure to create a storm of protest from religious and other groups — or create a parallel domestic partnership system of protections.

Governor Howard Dean supports creating the domestic partnership system, saying same-sex couples don't need a marriage certificate. Appearing on CNN yesterday, Dean said, "I actually think that domestic partnership protection is better than gay marriage."

Although Vermont politicians are heading into an election year, the issue is not yet dividing leaders along party lines. The system supported by the Democratic governor was actually proposed in a bill last week by a Republican — Senator Vince Illuzzi. Their support for broadening protections was typical of early reactions from leaders in both parties.

Under Illuzzi's proposal, couples in a committed relationship could apply for a legal certificate entitling them to the same benefits as married couples. It would also require them to go to court to seek a dissolution.

Democratic Representative William J. Lippert Jr. has a unique perspective on the issue. He is vice chairman of the House Judiciary Committee, which will play a key role in shaping legislation. He's also a gay man in a long-term relationship.

"This is an incredibly historic and exciting Supreme Court decision," Lippert said. "It's an affirmation of what we as gay men and lesbians have known forever, which is that our relationships are of equal value and should be treated as such by the state."

As a practical matter, Lippert said, a law protecting domestic partnerships would be a significant advance. But he hopes lawmakers will leave themselves

'It's an affirmation of what we as gay men and lesbians have known forever, which is that our relationships are of equal value.'

WILLIAM LIPPERT JR.

Democratic representative, who is gay, on court decision

open to extending the full benefits of marriage.

"A domestic partnership act ... would be historic. It would be a terrific step forward," said Lippert. "It would not go the full distance. Gay and lesbian couples deserve the right to choose that."

On the other side of the debate, there is already a move afoot to introduce a clause in Vermont's marriage law specifically excluding same-sex couples. And some might also push to amend the state constitution in an effort to gut the Supreme Court decision.

Senator Susan Bartlett does not give such opposition much chance for success, but she said it could be dangerous to push too hard for the right to gay and lesbian marriage. "I think you lose the battle and the war if they decide that's what they have to have."

Settling for a domestic partnerships law would not only avoid political firestorms, but would also open the door to protections for unmarried heterosexual couples, Bartlett said. "There are an awful lot of folks of the opposite sex who are domestic partners, have been for years. They've got to be dealing with a lot of the same issues, but we just don't hear as much about them."

Dean said he would like to see legislation endorsing domestic partnerships before the Legislature's adjournment, now scheduled for April 15. Lawmakers, while optimistic, were not sure they could finish the job by then.

"I don't think that we have time to do it justice within the next 16 weeks," said House Republican Leader Walter Freed. He said the issue will have to compete with such priorities as health care changes and public school funding.

"We're going to try our best" to finish next year, said Shumlin, the Senate leader. However, "We have to do this right. I want to make sure that whatever we do works and doesn't result in another court challenge."

Boston Globe P. B11
12/22/99

Support Grows For Domestic Partner Plan

*Some Gay Marriage Adherents
See It as Best Chance This Year*

By ROSS SNEYD
Associated Press Writer

MONTPELIER — After a week when the House Judiciary Committee appeared to be on its own in advocating domestic partnerships for gay and lesbian couples, support began to emerge yesterday for a bill that would be the most sweeping gay benefits plan in the nation.

Many groups, led primarily by the Catholic church, have been working against granting the benefits of marriage to gay and lesbian couples through domestic partnerships or outright marriage.

Members of the clergy staged another rally in front of the Statehouse yesterday to display their commitment.

But up to now, almost no one except the committee has said domestic partnerships were a good idea, because those in the gay community who have spoken have demanded full marriage rights.

Legislators said that if a bill advancing gay rights is to advance this year, people need to begin speaking out.

"We need to have the support of individuals and allies who have spoken so eloquently and forcefully about marriage," Rep. William Lippert, D-Hinesburg, said. "What we have in front of us in our draft is a very, very significant piece of legislation that would establish comprehensive rights for gay and lesbian couples, that merits active, positive support."

Leaders of the Vermont Freedom to Marry Task Force, while still holding out the hope for the right to marry in the near future, said they agreed domestic partnerships were the best they could achieve this year. But they seconded Lippert's assessment that it was a significant stride forward.

"Ultimately, obviously, the goal is and always has been genuine equity, which is inclusion in the marriage statutes," said Beth Robinson, the lawyer who argued the Baker case before the Supreme Court case that led to the current debate. "But we've seen the political reality. Certainly, if

the right domestic partnership bill comes out of that committee and it's a positive step toward marriage, then of course we'd support it."

As the Judiciary Committee gets closer to advancing its bill, it's becoming increasingly clear just how far the panel is prepared to go in granting benefits to gay and lesbian couples.

The bill the committee has been debating basically parallels marriage statutes and would grant gay couples everything from the right to inherit estates from partners to the recognition of certain hunting

and fishing benefits that also accompany marriage under Vermont law.

"If you put aside for a moment the issue of Baker versus the state of Vermont and simply look at equality under the law, the benefits that gays and lesbians

would get, it would put Vermont head and shoulders ahead of any other state and many countries, (and put Vermont) close to France and Canada," said Judiciary Committee Chairman Thomas Little, R-Shelburne.

That broad sweep is part of the reason that advocates of traditional marriage continue to lobby against the committee's bill. They say it gets too close to marriage and might provide the platform for opening that institution up to gays and lesbians in the near future.

Robinson said the Judiciary Committee's decision last week to pursue domestic partnerships instead of full marriage was a bitter disappointment for her and the task force she helps to lead.

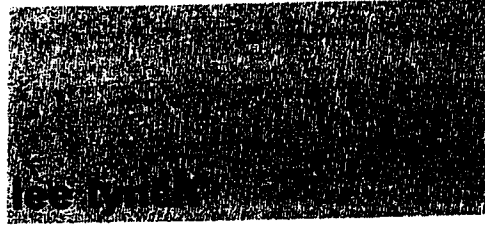
But after a week's reflection members of the task force have come to believe that they stand the chance to achieve something significant.

"It would clearly be a giant step forward," she said. "It would certainly provide a lot of legal protections for same-sex couples that they don't currently have. Even though it would create a separate legal status, it would create a legal status, a legal status that acknowledges that this is a form of family."

**"It would clearly
be a giant step
forward."**

Beth Robinson
Lawyer in the case that led
to the Vermont Supreme
Court ruling for same-sex
marital benefits

The Amazon Trail: Civil Rights, Not Equal Rights



On March 2, 2002, the Boston Globe proclaimed, "Vt. Panel OK's 'civil unions' for gays/Equal marriage rights not part of measure" (by Lois R. Shea).

Staff writer Shea went on to explain that, "A key Vermont committee overwhelmingly passed a bill yesterday calling for the creation of 'civil unions' for gay and lesbian couples. ... The bill stops short of giving gays and lesbians the right to marry legally ... Civil unions would require a license from town clerks and a 'certification' ceremony similar to a marriage ceremony. Breakups would be handled in Family Court, just as traditional divorces now are."

This was wonderful news. I never would have dreamed we could become this respectable. What troubles me

born of a Labor Union? If so, the single gay parent would certainly have a child out of Unionlock.

But back to the marriage - I mean Union Ceremony (would the Shop Steward be best Civil Servant?). The brides and grooms would of course wear Union Suits.

Should some spoilsport wish to challenge a legal coupling, would the courts, which seemed to intend an equal status, find the relationship separate but Civil or Civil but Equal?

Would a Vermont couple that moved to the mellow West Coast have a Union Pacific? Or, leaving Vermont, would their Union Dissolve? Perhaps we'd call it Seceding. Or would that be the term for our kind of divorce - Seceding from the Union? Eventually, I hope, we'd be Civilly treated in every state of

civil: trill, thrill, frill, quadrille? Makes for great love poetry, doesn't it? "The lark gave a trill and you gave me a thrill as we danced the quadrille at our Union Civil."

Is it coincidence or a right wing conspiracy that one of our staunchest defenders, The American Civil Liberties Union, has such a similar title?

Why in the world do we give non-gays license to name our bonds? Any gay person could come up with something more clever than Civil Union. If Planet Out held a contest there would be hundreds of good choices, including "marriage." You'd think breeder-legislators would be afraid that some alternative Wedding Party called a Union Party would get ideas about running a presidential candidate to find a more Civil Remedy.

Could we do better? Perhaps we'd have a Wizard who would Oz us, a Star Fleet Captain who would Merge us, a Faerie to Faerie Dust us, a Witch who would Spell-Bind us or a Community that would Enfold us.

Unlike many non-gays we already have these rituals and others, formal or not. It's not the non-gay culture we want to

What troubles me are the semantic problems suggested by the term "civil union" . . .

are the semantic problems entailed by the term "civil union."

For example, if the expression 'Domestic Partner' sounds like hired household help, what does a Civil Union sound like - two people who barely get along? If so, is being Barely Civil a matter of being polite during unclothed intimacies?

It gets worse. Would a breakup be called a Civil War? For that matter, could gays in the military have Civil Unions too, or would they have to endure Militant Unions? Do we need new Rules of Engagement?

If we chose to get hitched in a church, would we undergo a Civil Religious ceremony? These affairs are normally pretty civil anyway. We'd have to call it a Holy Unionization and pay Union Dues.

When we pronounce our equivalent of Marriage Vows, we'd refer to them as Union Vows, like a shop steward's oath of office. Should a Unioned lesbian have a child, would it be

the Union.

If we strayed would our adulteries be called Civil Affairs or Treason against the Union? Before succumbing to a breakup, would we consult a Civil Engineer?

What in the world would be the gay equivalent of Marital Bliss - Civil Bliss just doesn't do it for me. Nor does the Civil Union Bed sound anywhere as appealing as the Marriage Bed. What would we be inspired to do on a Civil Union Night, take Civil Liberties with each other?

We'd celebrate anniversaries by giving State of the Union addresses to which the Supreme Court Justices could decline invitations, as they declined the President's that year.

If Shakespeare was gay, he would have had a heck of a time scanning his lines. "Let me not to the Civil Union of true minds/ Admit impediments" falls flat on the ears. How does a poet find a romantic rhyme for Union: shun, run, outdone, nun? And

share, it's our culture we want to protect - from the governing bodies that are benevolently bestowing a tame title on our love. The scared little baby butch inside me is grateful as hell, but this grownup is having a little trouble with a semantic compromise that defies the very foundations of democracy by replacing the principle of equal with the placating concept of a Civil Union. ▽

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Lee Lynch is the author of eleven books including The Swashbuckler and the Morton River Valley Trilogy. She lives on the Oregon Coast, and comes from a New England family.

Law seen as unfair for same-sex couples

Change sought to immigration rules

by ANNE WALLACE ALLEN

WOODBURY (AP) — If Sandy Reeks and Pam Kinniburgh could just get married, they wouldn't be doing what they're doing now: saving their new house, quitting one job, saying goodbye to friends and relatives, and moving to Toronto.

Reeks and Kinniburgh were joined in a Vermont civil union three years ago. While that gives them most of the rights and responsibilities of marriage in Vermont, there's one critical piece missing: the right to stay together in the United States even though one half of the couple is a foreign citizen.

Kinniburgh is a U.S. citizen; Reeks is British.

"Even though the state of Vermont recognizes us as a couple, the federal government doesn't, so we're struggling to keep her in the country through a work visa," said Kinniburgh. "Quite frankly, it's asinine."

U.S. immigration law is designed to keep families together. Foreign spouses of U.S. citizens can usually obtain residence visas. The law does recognize some same-sex couples for the purposes of allowing temporary visits, but not for allowing permanent residence.

"You can have a U.S. couple who has known each other for as little as six or seven months get married and the non-American is able to obtain immigration benefits, provided it is a valid marriage and they are in a valid relationship," said Leslie Holman, a Burlington lawyer who specializes in immigration and has several same-sex couples as clients. "You can have same-sex couples who have been together for 15 years and if one of them does not have a means of immigrating to this country independent of the relationship, then we can't keep

them together."

A measure sponsored by U.S. Sen. Patrick Leahy, D-Vt., could make things easier for couples like Kinniburgh and Reeks. Called the Permanent Partners Immigration Act, the bill would treat same-sex domestic partners the same as heterosexual spouses for purposes of immigration rights and benefits.

Leahy, the ranking member of the committee that oversees immigration law, considers it a matter of fairness, said his spokesman, David Carle. Many other countries, especially in Europe, have already passed similar laws, Carle said.

"It's been an anomaly in U.S. law and policy for some time, but has been increasingly noticed because of the more and more committed couples in the United States have run into this problem," he said.

The bill was introduced in July and has eight co-sponsors, including Vermont independent Sen. James Jeffords. A similar measure, sponsored by Rep. Jerrold Nadler, D-N.Y., has 116 co-sponsors and is pending in the House.

Kinniburgh and Reeks met in the mid 1990s, after Reeks traveled to the United States on a tourist visa, stayed to study computers at Champlain College, and extended the visa to work for a year, as allowed.

Reeks' current employer, a Stowe computer software company, helped Reeks extend her stay, and has agreed to employ her at its office in Toronto.

Both women will be able to work in Canada under that country's domestic partner immigration laws.

Reeks and Kinniburgh consider themselves relatively lucky that their situation will only require them to stay in Toronto for a year; after that, they should be able to move back to Vermont for good, thanks to help from Reeks' employer.

"I think we're resigned to it," Reeks said. "It means leaving the

The bill would treat same-sex domestic partners the same as heterosexual spouses for purposes of immigration rights and benefits.

country for a year, but that's a heck of a lot better than leaving the country for good."

Still, though, it means renting out their comfortable, secluded turn-of-the-century farmhouse, which they bought last year, and leaving Kinniburgh's children and grandchildren. Friends are often surprised to hear that the couple has to move away despite the fact they got a civil union, Kinniburgh said.

"People think you have a legally binding commitment ceremony, so you're all set," she said.

Kinniburgh, a New Hampshire native, said the two briefly considered living in the United Kingdom, which recognizes same-sex partners for immigration purposes, but she couldn't stand the rainy weather. She's never lived anywhere outside of Vermont or New Hampshire.

"When we met, we knew this was an issue — we're the same sex. It's not that we're saying we didn't know," said Kinniburgh. "The thing that is the hardest for us is that this injustice is unfounded. As far as I'm concerned, it's based on a Christian thing. What God would say that love is not right?"

emma

Journal of the Vermont Gay, Lesbian, and Bisexual Community

Redefining Marriage

Gay Couples Sue
for State Recognition

By Howard Mayhew



The Sunday Rutland Herald and the Sunday Times Argus/March 8, 1998

A-23

ON THE COVER: Stacy Jolles and Nina Beck at their home in South Burlington, with a framed photograph of their son, Noah. Photo by Jeb Wallace-Rendeur

REDEFINING MARRIAGE
by Heather Stephenson.
Three same-sex couples have sued the state of Vermont, seeking the right to marry the partner of their choice. The case puts the Green Mountain state at the forefront of a national debate on gay rights.

Redefining Marriage



The birth was going horribly wrong. Nina Beck had been in labor for four days; she was so exhausted that she was falling asleep between contractions, though they were only a few minutes apart.

"We were trying to have a home birth," explains Beck's partner, Stacy Jolles, who had paced at Beck's side for more than 100 hours. "But we had done as much medical intervention as we could at home, and we weren't getting far."

Beck was in danger. So was the child struggling to be born.

In the middle of the night, Jolles and the midwife drove Beck to the hospital closest to their home in North Carolina. At the entrance to the emergency room, hospital officials asked Jolles who she was.

GAY COUPLES SUE FOR STATE RECOGNITION



Stan Baker, left, and Peter Harrigan, together for 4 1/2 years, prepare dinner at their home in Shelburne.



Nina Beck, left, and Stacy Jolles

Whoever thinks strong women don't get the blues should meet Nina Beck and Stacy Jolles. These two women with black belts and professional careers are forces to be reckoned with. But they've had more than their share of hard knocks.

They met when Beck signed up for a kung fu class Jolles was teaching in Berkeley, Calif., in 1990.

Beck, a 42-year-old physical therapist, already had years of training in martial arts and her belt.

It was an advantage, she says, because she was a strong woman. She was a professional and a strong woman.

Beck and Jolles, who are both physical therapists, have been together for 4 1/2 years. They are both strong women.

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Beck and Jolles, who are both physical therapists, have been together for 4 1/2 years. They are both strong women.

PHOTOS BY JEB WALLACE-BRODEUR

MARRIAGE

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"If I hadn't been prepared, it would have been an absolute nightmare," she says. "Poor Nina, who hadn't slept in four days, would have been left alone."

Instead, Jolles was soon dressed in a surgical smock, a mask over her face, watching as doctors delivered the couple's son, Noah, by C-section.

"That was a planned emergency, a pregnancy," Jolles says. But what if something happened next week?

Beck, who has been sitting on the couch in their South Burlington home, letting Jolles tell the story, says: "I don't carry durable power of attorney in my back pocket."

Jolles laughs, imagining the scene: "Excuse me, I have to run home and get my files."

Then she turns more serious. "They wouldn't have even let me in."

Seeking the protection that the ceremony with the rabbi didn't give, Beck and Jolles are suing the state of Vermont for the right to a legally recognized marriage. They and two other gay couples are taking their case to the Supreme Court.

Beck and Jolles, Stan Baker and Peter Harrigan of Shelburne, and Lois Farnham and Holly Puterbaugh of Milton were all denied marriage licenses in their towns last summer. They filed suit in Chittenden Superior Court in July.

Attorney General William Sorrell defended the status quo for the state, arguing that marriage should be limited to the union of a man and a woman. His reasons ranged from the state's interest in promoting child-rearing in a setting with male and female role models to its stake in minimizing the use of sperm donors, which might

increase child custody disputes.

Sorrell also suggested that the decision on whether to allow same-sex marriages would be best left to the Legislature. He wrote, "That body is uniquely suited to assess the appropriateness of social change through legislative hearings and debate."

In December, Chittenden Superior Court Judge Linda Levitt dismissed the couples' case. In her decision, she said there was no fundamental right to gay marriage, and gays and lesbians were not being discriminated against because they were forbidden to marry.

But she rejected six of Sorrell's seven arguments for denying same-sex couples the right to marry. The one justification she supported was the state's interest in "furthering the link between procreation and child-rearing" by creating legally recognized families who would bear and raise children.

That made many of the plaintiffs laugh. "We're being held to a standard that even heterosexuals are not held to," says Peter Harrigan. "When you go to apply for a marriage license as a male-and-female couple, there's no piece of paper that you have to sign saying that you're planning to continue the race."

Harrigan points to the example of his grandmother, who remarried later in life. She certainly wasn't going to have more children, but no one questioned the value of her second marriage.

For Beck and Jolles and the other two women in the case, all of whom have had experience as parents, the irony is even greater. Under the current interpretation of Vermont law, the state will allow a woman to adopt her female partner's child, but the two women have no legally recognized relationship.

"A lot of gay and lesbian families are raising children," says Beth Robinson, one of the Middlebury lawyers representing the couples for free. "We can't possibly understand how the state's interpretation of the law can help those children."

The three couples have appealed to the Supreme Court, and were to file another round of legal documents just last week.

"People ask, 'Why do you want to get married?'" Jolles says, with a touch of exasperation in her voice. "Because we love each other! Is that confusing?"

It's true that these couples want to marry for the usual mix of reasons that sends millions to the altar (or the country garden) every year: They want to declare their love and commitment publicly, gain community support, throw a big party and make spiritual vows.

But as the case of Jolles and Beck demonstrates, there's a lot more to legal marriage than bridesmaids and ring bearers. There's hospital visitation, health insurance, pensions, inheritance, bereavement leave. And, of course, the none-too-popular

"marriage penalty" that leads many couples to pay higher taxes than they would if they were single.

Indeed, there are more than 300 protections, supports and obligations for married couples under Vermont law, and 1,049 under federal law, according to the couples' lawyers.

Allowing same-sex couples marry clearly would have economic implications, some benefiting the state, some costing it. state and the private sector but helping the couples. The current debate has not focused on the economic issues, but Sorrell did raise them in his motion to dismiss the case. At one point, he argued that allowing people of

Continued on Page 12

"A lot of gay and lesbian families are raising children. We can't possibly understand how the state's interpretation of the law can help those children."

— Beth Robinson, Lawyer for plaintiffs

MARRIAGE

Continued from Page 6

the same sex to marry might turn marriage into "a tax status, a means to obtain economic benefits," such as Social Security.

Still, the couples involved in the lawsuit argue that their committed relationships deserve those state protections and responsibilities.

"People don't understand," Jolles says. "You run up against it every single day."

But the next question that begs to be asked is: What makes a marriage?

That issue is being debated in courts and legislative chambers, church basements and living rooms across the country. Who should be allowed to marry? Why? What is the larger community's interest in giving special status to some couples, but not others?

Opponents of same-sex marriage argue that marriage has always been defined as a union involving a man and a woman, and should continue to be so.

"That's been the traditional definition of marriage for centuries in our country," says Rep. Nancy Sheltra, R-Derby. "I don't think it needs to be changed."

Sheltra, whose opinion is rooted in her evangelical Christian beliefs, clearly sees the issue as a moral one. For her, the same-sex marriage debate raises the specter of a national "homosexual agenda" that she says would repeal laws against prostitution and the age of sexual consent. If the state allowed gay marriage, she says, children in the public schools would be taught at a "vulnerable" age that "the homosexual lifestyle is permissible."

Sheltra has proposed a bill that would define marriage in Vermont as the union of one man and one woman. That bill, introduced in January 1997, also would prohibit Vermont from recognizing same-sex marriages performed in other states—a pre-emptive move in case other states honor such marriages. There has been no action on the bill, which is in the House Judiciary Committee, for more than a year.

More recently, an organization called Take It To The People has formed in Vermont to oppose same-sex marriages. In a flier inserted in newspapers around the state two weeks ago, the group suggested that the state constitution should be amended if necessary to prevent the recognition of such marriages through a court decision.

Some lesbians and gay men also question the push for state-sanctioned marriage, suggesting

that it is an example of gays trying to assimilate into the mainstream culture. Rather than seek to enter an institution that is outmoded and dysfunctional, they argue, gays should campaign for better legal rights and protections for all people, regardless of their marital status.

But most gay rights advocates argue that marriage is an evolving institution that has changed with society's expanding notions of justice. They point out that blacks in this country were not allowed to marry at all during the era of slavery, and that interracial marriage was illegal in 16 states until 1967, when the U.S. Supreme Court found the prohibition unconstitutional.

That court decision defied public opinion, according to Robinson, the lawyer for the Vermont couples. "The vitriol which the notion of a black person marrying a white person inspired (then) was every bit as venomous as that we hear now for a man marrying a man."

But it's the courts' place to protect such fundamental rights,

Robinson argues. "Constitutionally protected rights are not subject to opinion polls or the whims of politics," she says. "The court has a responsibility to step up to the plate."

And when some people suggest that gay couples should seek protection comparable to marriage but call it something else, like "domestic partnership," the couples bristle. Not only is that impractical, because domestic partner benefits are limited in scope even when available; it is also insulting and discriminatory, the couples say.

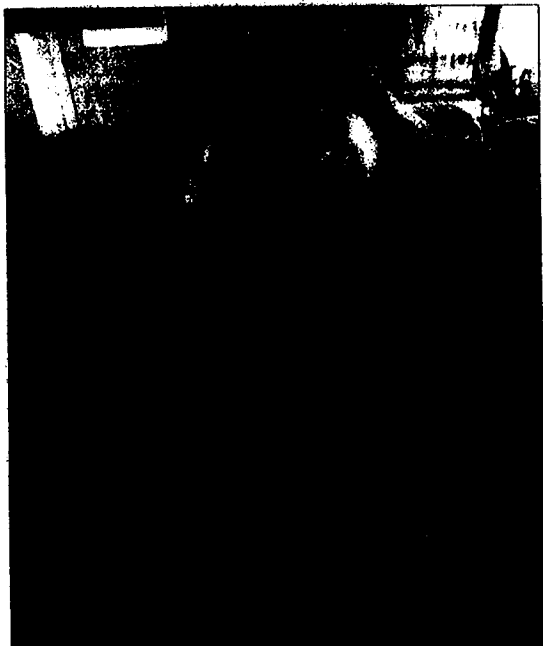
"If you peel the onion not very far, what you're really hearing (when people say, 'Don't call it marriage') is 'You guys are offensive, and being gay is an abomination,'" Baker says.

He wants the same term to apply to the committed, loving relationship he shares with Harrigan as to a similar relationship between a man and a woman. Recalling the civil rights fight against segregated schools, he says, "Separate but equal is never equal."

Vermont isn't alone in facing the question of whether gay couples should be able to marry, but it's in the forefront of the debate.

No state currently recognizes marriages between people of the same sex.

New York and Alaska both face lawsuits similar to the one in Vermont, but the first, most visible lawsuit by gay couples who wanted to marry was filed in Hawaii in 1991. The case is currently



Stacy Jolles, left, and Nina Beck of South Burlington met at a kung fu class.



Meet Stan Baker And Peter Harrigan

Stan Baker knows what it's like to be married. And he wants that feeling again.

Baker, a 51-year-old outpatient director at a county mental health agency, was married to a woman for 21 years. Though he decided to leave that relationship and come out as a gay man, he never rejected the institution of marriage. He rather enjoyed it.

The experience of being married and feeling the support and benefits that our society gives to marriage... has convinced me that marriage is important," Baker says, sitting in the living room of the house he shares with Peter Harrigan. "Far from questioning the institution of marriage, I think this suit does nothing but reaffirms what we've always said."

After the death of his 16-year-old theater major son, Baker moved to his new home in South Burlington, where he started a new life with Harrigan. "I wanted to live with a man," Baker says, "and I found one in Peter."

Baker and Harrigan moved into a new home in South Burlington, where they have a large garden and a swimming pool. Baker says he has never felt more at home than he does now. "I've been married for 21 years, and I've never felt more at home than I do now," he says. "I've never felt more at home than I do now."

Baker and Harrigan have a large garden and a swimming pool. Baker says he has never felt more at home than he does now. "I've been married for 21 years, and I've never felt more at home than I do now," he says. "I've never felt more at home than I do now."

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Courtside Seats:

Lois Farnham and Holly Puterbaugh
a conversation with Vermont's most
famous plaintiffs

BY CHRIS TEBBETTS

On July 22, Stan Baker and Peter Harrigan, Nina Beck and Stacy Jolles, and Lois Farnham and Holly Puterbaugh, filed suit against the state of Vermont and their respective townships after being refused marriage licenses. This is the second of three *Out in the Mountains* interviews, profiling the couples involved.

Discussing their current lawsuit against the town of Milton and the state of Vermont for civil marriage rights, Holly Puterbaugh and Lois Farnham are at turns polished and spontaneous. They show the practiced response of plaintiffs who have been well briefed by their attorneys; and they also complete each other's sentences, laugh together and use each other's memory to search for answers to certain questions.

In the lawsuit, Farnham and Puterbaugh are the faces of long-term Vermonters, and the longevity of their relationship shows in the way they interact. They are also the oldest of the plaintiffs and at twenty five years, have been together the longest. They share a home in Milton, where they run their Red Shovel Christmas tree farm in addition their individual careers. Holly, protective of her family's privacy, says she is from "some-

continued from front page

where in the Midwest." She teaches in the Math Department at UVM as an openly lesbian professor and has lived in Vermont since 1971. Lois, born and raised on a Vermont farm, works as a nurse. She divides her time between a school setting and as a care giver at the Arbors, an Alzheimers facility. They have both spent many years working actively in their community, and more recently, becoming involved with GLBT issues.

Meet the Plaintiffs: The OITM Interview with Lois Farnham and Holly Puterbaugh



Lois Farnham and Holly Puterbaugh

OITM: Have you had any history of support or trouble living in Vermont as a couple?

Holly: Support I think has always been there. People have pretty much been "Lois and Holly, Holly and Lois." You know, just like another couple; it might be "Tom and Judy." People have pretty much accepted that we're a pair, we come together. We've been active in the community. Lois has been involved in school things, I've been on the library board. Lois: Between the two of us, we've been on recreation commission, library board, friends of the library, Girl Scouts, softball, school building committee, parent teacher groups, clean up day, and involved in the church. We're typical. We've been in Milton for twenty years and I think people have just accepted us as members of the community.

OITM: Have you seen any kind of progression in terms of it being easier to be out as a couple?

Lois: Well, it's interesting; a lot of people knew who we were. We didn't advertise it. Obviously once this marriage suit came out, everybody knew. If it was any kind of a secret before it certainly isn't anymore. And since the issue has come out, we've gotten nothing but support. The day after the press conference [announcing the lawsuit], somebody came up to us in the Milton Grand Union and said "didn't I see you on the news last night? Good for you. More people ought to stick up for what's right." And people with small businesses in Milton have asked us what they could do, if we needed them to write any letters or anything. So we've gotten nothing but endorsements since that time. Which is not to say that there aren't those who are against us. I think they may find it more comfortable to say nothing than to come out and say they don't believe in it.

OITM: Have you been involved in the GLBT community in the past?

Lois: Actually not as much as we should have. I got involved

when we attended the first (VCLGR) Town Meeting.... So we got involved there; we got involved with the Freedom to Marry Task Force, Outright Vermont. We've been foster parents. One of our foster placements we hooked up with Outright.

OITM: How did you get involved in this case, and why did you get involved?

Lois: Well, getting married after almost twenty five years was almost a non-issue, until we realized the many different legal protections that were available if you're legally married — and there's hundreds. So we decided it was time to pursue it; that at this time in our lives, maybe we ought to give something back to the people that had been the activists to get all these benefits.... Since we were now recipients of some of those benefits we thought maybe it was time we became a little bit more involved.... I think people need to realize that there's a lot more of us out there than they think, that there are a lot of [GLBT] native Vermonters, that these people are not coming in from down country or San Francisco or wherever, just to inundate Vermont with homosexuals.

OITM: Was it a difficult decision to take this on?

Holly: Difficult is not the word. It's something we thought about long and hard, because you don't know what's going to happen down the road. So we thought about it.

Lois: We had been warned by the attorneys involved.... There is the possibility that someone could [for example] burn your house down. We finally decided to take that chance. If you acted in fear of taking a stand, nothing would have ever been accomplished in this world. Somebody's got to do that.

OITM: Had you discussed marriage or a commitment ceremony in the past?

Holly: Twenty five years ago nobody talked about it. At the time of our twentieth anniver-

sary, we talked about it some; and even then they were not real common. I don't think we knew of more than one or two people who had done it. We talked about it, but not real seriously. It's been in the last five years that it's evolved, and a lot of it has been not because of a need to express our commitment....

OITM: You can get married anytime you want to, spiritually.

Holly: Yeah. Right now, we're legal strangers. In the eyes of the law, Lois and I don't know each other and that means that things like my social security, if I were to die — no survivor benefits; pensions. My pension goes directly to a spouse [but] she loses that.

Lois: I do get hospital benefits now through Holly cause she teaches at UVM. However, she's taxed on that benefit. If we were married, she would not be.

OITM: Why do you think this is all happening now?

Lois: I think that whole Hawaii issue brought it to the forefront as far as becoming an issue at all. If there's ever a good time to bring up an issue like this, Vermont is as good a place as any to bring it up.... Vermont's got a lot of firsts, and Vermonters are pretty independent. There's a lot of live and let live [here]. A lot of people just go about their business without a lot of judgment of them.

OITM: How did you two meet?

Holly: Summer session I walked into class and there was this very attractive, gray haired — and remember, it was twenty five years ago — gray haired lady. So after the end of summer session, we started to...

Lois: Socialize.

Holly: Thank you

Lois: After the class was all over.

Holly: Yeah.

OITM: Did one ask the other out?

Lois: I think it was a mutual

thing that we were going to go play tennis or go out for a bite or something.

Holly: Yeah, in all honesty you've got to make sure that you keep that priority up there. Lois: I don't think it makes any difference whether you're gay or straight, you still have to work at a relationship.

Holly: Yep. And it's worth it.

OITM: So was this just a new friend as far as you could tell?

Holly: Yes. One that there was a very strong attraction to. One that I wanted to be with. But I didn't understand what the attraction was right away.

OITM: How have you marked your anniversary so far?

Lois: In October it will be twenty-five years... October 20th. That was the day I realized that this was a special relationship and we wanted to spend the rest of our lives together.

OITM: What makes your relationship work for such a long time?

Holly: Um...

Lois: You've got to work at it.

Holly: Yeah, I was going to say there's got to be an effort at it. You've got to want to make it work. Communication. [pause]

Lois: Best friends.

Holly: A lot of it is wanting to make it work and making the effort, and not letting

things get to you that come up. It's got to be the most important thing in your life, and you've got to make sure that you keep that priority up there.

Lois: I don't think it makes any difference whether you're gay or straight, you still have to work at a relationship.

Holly: Yep. And it's worth it.

OITM: You're being asked to speak for yourself, but also for lesbians everywhere in a sense. How do you feel about that?

Lois: Actually it's sort of flattering. We've gotten a lot of endorsements and a lot of people have said "I couldn't think of a better couple to have representing us," because that is what we're doing, is representing the gay community. A lot of people have said thanks for sticking your neck out for us, those sorts of things.

OITM: What are your plans pending a victory?

Lois: The plan is for the three of us — the three couples involved in the lawsuit — we would all like to possibly go get our marriage licenses [at the same time]. As soon as it became legal, the first thing we would do is go get married. We haven't even thought about a celebration or party or anything, but... we're going to have one.

Holly: Somebody reminded us that there should be a honeymoon involved, and both of us were like, "oh yeah."

Lois: Maybe it will be payback

time for all these weddings we've been invited to. We've always taken gifts.

OITM: How do you respond to some of the criticisms within the community — that we shouldn't be taking this on, that marriage is a patriarchal institution?

Lois: I guess what I have to say is that marriage is ever-evolving. We're not asking anybody to get married. I don't think marriage is any more patriarchal [a part of] society than anything else. Men are still predominantly in government, in politics. It hasn't changed.

Holly: One of the things I think people need to remember is that in this lawsuit, we're not saying that couples need to be married. We're saying that the choice of whether or not to marry should be available. If a couple says they don't want to have anything to do with marriage, then they've got that choice. But if a couple says they would like to get married, that choice should also exist for them. And you can say marriage is patriarchal, but I think a lot of it depends on how the couple interacts with each other.

OITM: Do you think an appearance of "normalcy" is important to winning the case?

Lois: I don't know that it's the importance of normalcy. I think the picture that needs to be created — and I hate to say the words — is the fact that

homosexuals, gays or lesbians, can hold long term jobs, can be stable members of their society; they're not all [stereotypical].... I don't think a lot of people see that this is normal.... We are normal, as normal a part of the population as heterosexual. And if you want to call that normalcy, the only non-traditional thing about our life, our family, what we do in the community, the only difference is that both adults in the household are the same sex.

Holly: Part of the problem many gays and lesbians have had over the years is that a lot of people don't realize how many gays and lesbians there are in this world. And part of that is that most of us don't look very different. The ones that do they see and are [disdainful]. I have nothing against the ones who look very different, the ones who fit the stereotypes. But people don't recognize that there are all these other people out there and so they don't know how many of us we are. If we could get people to start realizing, "well gee, there must be others like them..."

OITM: Knowing that this is for OITM, is there anything you'd like to say to the GLBT community in Vermont?

Lois: I do think we need to make ourselves more visible. Those of us who are in safer situations should make ourselves more visible, because

that will make it easier for those who can't.

Holly: Every person has to seek the level at which they're comfortable. Those of us who can be more out perhaps will make it more comfortable for others in the future.

OITM: Is that part of the issue for you?

Holly: I think it's part of why we're willing to be more out, to try to make things better for the others. I don't want to sound like a hero or anything, 'cause I don't think I am one...

Lois: Well one of the reasons we're doing it is because people did it for us....

Holly: Yes. They stuck their necks out and got the benefits. We benefit from that. So it's time for us to stick our necks out.

INTERIM WANTED:

Out in the Mountains is looking for Interns. Interns will work with the editor, write articles, cover events, and also work on outreach, distribution, research, fundraising, grant writing, and various other aspects of production. Some travel might be required. Contact Chris Moes at (802) 865-9294 or oitm@together.net

Social Security Administration
Retirement, Survivors, and Disability Insurance
Important Information

55/PW-62/NPP M1

Northeastern Program
Service Center
1 Jamaica Center Plaza
Jamaica, New York 11432-3898
Date: December 21, 2003
Claim Number: 011-56-5573 C1

CHRISTINA WALSH FOR
TREVOR WALSH
170 POWELL BROOK RD
BRADFORD, VT 08033-8977

You asked us to take another look at your claim for Social Security child benefits. Someone who did not make the first decision reviewed your case, including any new facts you gave us. After this review, we found that our first decision was correct.

You are not entitled to benefits because Trevor Walsh does not meet the requirements as the surviving child of Judith Kay.

On the enclosed form, we discuss the reasons for our decision in more detail.

Do You Disagree With The Decision?

If you disagree with the decision, you have the right to request a hearing. At the hearing, a person who has not seen your case before will look at it. That person is an Administrative Law Judge. The judge will review your case again and consider any new facts you have.

- You have 60 days to ask for a hearing.
- The 60 days start the day you receive this letter. We assume you got this letter 5 days after the date on it, unless you show us that you did not get it within the 5-day period.
- You must have a good reason if you wait more than 60 days to ask for a hearing.
- You have to ask for a hearing in writing. We will ask you to fill out a Form SSA-501, called "Request for Hearing." If you want to make a request, please contact one of our offices. We can help you fill out the form.

Please read the enclosed pamphlet, "Your Right to an Administrative Law Judge Hearing and Appeals Council Review of Your Social Security Case." It contains more information about the hearing.

SEE NEXT PAGE

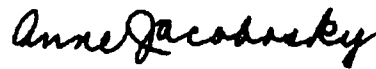
We are sending a copy of this notice to Beth Robinson, ESQ.

New Application

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with this decision and you file a new application instead of appealing:

- you might lose some benefits, or not qualify for any benefits, and
- we could deny the new application using this decision, if the facts and issues are the same.

So, if you disagree with this decision, you should file an appeal within 60 days.

If You Have Any Questions

Anne Jacobosky
Assistant Regional Commissioner,
Processing Center Operations

Enclosure(s):

Form SSA-662
SSA Pub No 70-10281

SEE NEXT PAGE

RECONSIDERATION DETERMINATION (Form SSA-662)

PROGRAM SERVICE CENTER Processing Center Operations Northeastern Program Service Center	DISTRICT OFFICE OR BRANCH OFFICE Montpelier, VT
NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON Judith Kay	SOCIAL SECURITY CLAIM NO. 011-56-5573 C1
NAME OF CLAIMANT Trevor Walsh	TYPE OF CLAIM Child

DETERMINATION:

On July 31, 2003, you applied for child's insurance benefits from Social Security for your son, Trevor, on the record of Judith Kay, who died on July 01, 2003. On about August 11, 2003, you were told that your claim for Trevor had been disallowed because he is not the child of Ms. Kay under the provisions of the Social Security Act. On September 23, 2003, you asked for reconsideration because you believe that Trevor is entitled to child's insurance benefits on Ms. Kay's record.

The issue is whether or not Trevor is entitled to child's insurance benefits on Ms. Kay record. Upon reconsideration, we have determined that Trevor is not entitled to child's insurance benefits because there is insufficient evidence to show whether or not he is the child of Ms. Kay under the provisions of the Social Security Act.

A Vermont civil union does not give a same-sex couples any of the benefits, protections and responsibilities that are granted by the federal government to married spouses.

Trevor cannot be considered the stepchild of Ms Kay since the civil union between Ms Kay and Ms Walsh is not recognize under the Social Security Act.

SEE NEXT PAGE

We must therefore affirm that Trevor is not entitled to child's insurance benefits on Ms. Kay Social Security record because he is not the child of Ms. Kay under the provisions of the Social Security Act.

Anne Jacobosky

Anne Jacobosky
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