

# replay

Join us in celebrating our 15<sup>th</sup> anniversary as we revisit past issues of the paper throughout 2001.

December 1991

## The Right to Wed

Moirá

Her hand rests on my brow, fingers entwined and slipping through my hair. I feel soothed like a girl on a trusted lap. It is an old memory she stirs in me as we lie close. Her chest rises and falls next to me, the life beating warmth. I love her. We talk of the gold bands we wear.

Every morning my littlest son walks to the one store in town and returns with the paper for us. As I pour the tea we notice Victorian wedding bands advertised. They remind me of our wedding. We can't make it legal she tells me, but I don't understand why. It is a remarkable fact to me, that in this day, on the crest of the space age and glasnost, puritan thinking persists to such a degree that two people of the same sex cannot make their bond legal. This smaller issue encompasses a much larger one, one of discrimination at the very core, that of acknowledging lesbians and gays and allowing them basic rights.

I do not agree that the gender of the person I love is more important than who that person is, even though the law books state it. I have read about relationships between women that have spanned their adult lives, that have been productive and loving, yet the romantic nature had to be hidden. I question why it is okay for people of the opposite sex to marry and divorce as frequently as they please, somehow their unions are considered "blessed," even in a Las Vegas chapel. These dichotomies strike me the wrong way. I know that making something legal doesn't make it stronger, and it doesn't make it last.

But it is in the denial of my rights that I am angered. I am angry that marriage is not an option for us. What is it in our limited thinking that lets this persist? I would like to see more people who value their long-term relationships question the state's denial of their legal right to marry.

I know they are there, out there, some speaking, some quietly living their lives. For some, such as myself, it hasn't needed to be an issue till now, till the commitment of relationship and family became real. Maybe the time has come for these basic rights, the right to love, to marry, and be recognized by our community.

Lesbians and gays are no less committed to their relationships, their families, their communities, than anyone else. However, because of the impossibility of the legal bond, many people view their relationships as not quite real. Again it comes back to self-acceptance: we need to believe in ourselves, that our marriages are valid, and project that image out.

It is difficult because, like so many of the coming out issues, being married in a same sex relationship is generally not accepted. There are many people who would laugh at such a marriage, and others who would react in a violent way. Certainly the preparations and sharing that goes on in families or the workplace are different. We did not have the hat passed around at work for us because of the negative consequences that our openness would cause. Nor did we have our whole families with us because of a similar response.

For my partner and me, it was a personal decision who we told about our wedding, who we asked to join us in our celebration. It was painful planning something that filled us with such joy and at the same time made us startlingly aware of its unrespectability. However, in her eyes I found all the love reflected that one could need. I found the words filled with the divine that blesses. I found the validity in our union. I do believe that a day will come when she and I are legally joined, but it will take working for it, demanding the respect we all deserve, and showing that we value our commitment. It will take exposing the bias that still rules our courts.

In designing my own wedding, I decided to view the unconventionality as a freedom. We can decide how we want our weddings and where, without the traditional constraints imposed on us. A marriage is an intimate union between two people, it need not have a legal process to validate it, it need not be sanctified by a church that wears blinders to the times we live in. But it can be, as it was for my partner and me, a moment when the rain clouds cleared and the sun fully gave its blessing. As we stood in that chapel by the sea and exchanged vows, the marriage became for us all that it needed to be. ▼

— OUT IN THE MOUNTAINS — APRIL 1998

## LEGAL BRIEFS

### Marriage Update!

BY BETH ROBINSON AND SUSAN MURRAY

The legal and political landscape concerning equal marriage rights under the law for same gender couples has evolved somewhat since we last wrote about the topic in this column, so we thought it would be helpful to bring folks up to date.

#### The Vermont Lawsuit

As you probably know, last July we filed suit on behalf of three same gender couples in Chittenden County who had been denied marriage licenses. In December, the trial court dismissed their case, concluding that the marriage laws are limited to different sex couples in order to 'promote the link between procreation and child-rearing.' Although the trial court ruled for the State, it did reject the other six reasons the state offered in support of its discriminatory marriage laws as 'invalid,' 'difficult . . . to grasp,' 'premised on improper presumptions about the roles of men and women,' and 'without any common sense or logical basis.'

The plaintiffs have appealed to the Vermont Supreme Court, arguing that it makes no sense that convicted felons and deadbeat dads have a constitutional right to marry (they do), but law-abiding and responsible members of the community like these gay couples do not. We have also argued that the State's discrimination can only hurt kids since many same sex couples have children, and we've challenged the State's assumption that marriage is a 'zero sum game,' such that allowing same sex couples to marry would somehow take something away from different sex couples. (If you're interested, a local attorney has posted the trial court decision and trial court briefing on his web site at [www.fitzhugh.com/new.htm](http://www.fitzhugh.com/new.htm).)

Numerous organizations have filed 'friend of the Court' briefs on our behalf, including a coalition of local and national women's rights groups, a statewide collection of communities of faith supported by 95 individual Vermont ministers and rabbis, the local and national ACLU, local and national gay rights advocacy organizations (including the Vermont Freedom to Marry Task Force and the Vermont Coalition for Lesbian and Gay Rights), a group of legal scholars, the Vermont Human Rights Commission, and a collection of mental health professionals and academics.

The State is expected to respond with a brief of its own

in mid-April, and the plaintiffs will file a final response within a couple of weeks after that. Once the briefing is completed (by early May), the Vermont Supreme Court will set the case for oral argument. The Court could rule in favor of the couples or the State, or could

that Alaska's marriage laws were discriminatory and deprived same sex couples in Alaska of a fundamental right. The court ordered the state to prove at a trial that its discrimination is narrowly tailored to serve a compelling public interest—a very difficult test for

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send the case back to the trial court for further proceedings.

#### Vermont's Political Landscape

In the meantime, the Vermont Freedom to Marry Task Force is continuing to network with clergy and other organizations around the state, provide speakers on the marriage issue, distribute its video to public access television stations, and organize around the state. An opposition group calling itself 'Take it to the People' has recently formed, and has pledged to introduce a constitutional amendment to prohibit same sex marriage in Vermont. This group appears to be quite well funded, and those who believe that gay and lesbian Vermonters should be entitled to the same constitutional rights as their heterosexual counterparts will have to work hard in the coming months and years to counter the opposition's divisive message. (The Vermont Freedom to Marry Task Force needs all the help it can get; please e-mail the Task Force at [info@vtfreedomtomarry.org](mailto:info@vtfreedomtomarry.org).)

#### Other States

The marriage debate is alive and well in Hawaii, where the Supreme Court found Hawaii's laws discriminatory; and the trial court found no legal justification for the discrimination. The Hawaii marriage case is back up on appeal to the Hawaii Supreme Court, which is expected any time now to affirm the trial court's decision and order Hawaii to begin recognizing marriages between partners of the same gender. In the meantime, our counterparts in Hawaii are working hard to fend off a proposed constitutional amendment in Hawaii like the one our opposition has pledged to support in Vermont.

In the meantime, a trial court in Alaska recently ruled

any law to pass. In the meantime, legislators in Alaska are considering a constitutional amendment to override any court decision.

### The Process of Appeal

The first stage is the Notice of Appeal, a one page document, which basically announces that you're going to appeal. The attorneys for the three same-gender couples did this in January.

Next, the Supreme Court sends out a schedule telling the parties the deadlines for filing their briefs. In this case, the deadline was March 13; a 73-page brief was filed for the plaintiffs. The State will now have a chance to file their brief; it will be due in mid April.

After that, the Court will set the case for oral argument, possibly as early as June, but more likely as late as September.

*Susan Murray and Beth Robinson are attorneys at Langrock Sperry & Wool in Middlebury, Vermont whose practices include employment issues, family matters, estate planning, personal injury and workers compensation cases, and general commercial and civil litigation. This column features timely information about legal issues of interest to our community. We hope to provide information about important laws and court cases that may affect our rights, as well as practical nuts and bolts advice for protecting ourselves and our families. If you'd like to see us cover a particular topic, please feel free to write OITM or call us at 388-6356.*