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The purpose of Out In The Mountains [OITM] is to serve as a voice for lesbians, gay men, bisexuals, transgender people, and our supporters in Vermont. We wish the newspaper to be a source of information, insight, and affirmation. We also see OITM as a vehicle for the celebration of the culture and diversity of the lesbian, gay, bisexual, and transgender communities here in Vermont and elsewhere.

#### Editorial Policy

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## editorial

# Toward Equality, One State Court at a Time

Just as OITM was going to production, the announcement came that the Massachusetts Supreme Judicial Court would – nearly four months after its own self-imposed deadline had elapsed – issue its ruling on whether the state could deny marriage licenses to same-gender couples in the Bay State.

The court's language was clear and unambiguous:

"The question before us is whether, consistent with the Massachusetts Constitution, the Commonwealth may deny the protections, benefits, and obligations conferred by civil marriage to two individuals of the same sex who wish to marry. We conclude that it may not. The Massachusetts Constitution affirms the dignity and equality of all individuals. It forbids the creation of second-class citizens."

The decision quoted *Baker v. State* (1999) and the U.S. Supreme Court's *Lawrence v. Texas* decision (2003). It also referred to the decision of the Ontario Court of Appeal on marriage (2003). Perhaps the tide of a thousand years of legal discrimination and oppression, propped up by religious bigotry, is receding.

"Simply put, the government creates civil marriage. In Massachusetts, civil marriage is, and since pre-Colonial days has been, precisely what its name implies: a wholly secular institution. ... No religious ceremony has ever been required to validate a Massachusetts marriage."

The news was, of course, greeted with laughter and tears of joy and amazement by many gay men and lesbians and pro-gay-marriage activists. One lesbian I spoke to said she felt a new sense of "physical freedom to stretch my arms a little bit," because now there will be another state to consider living in where her same-sex relationship would be protected and honored equally with sex-discordant marriages.

"Civil marriage anchors an ordered society by encouraging stable relationships over transient ones. ... 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."

Anybody who was at all active during the civil unions struggle following the *Baker v. State* ruling also groaned a little bit. Instead of ordering that civil marriage licenses be granted to same-sex applicants immediately, the court delayed implementation of its order for 180 days to allow the Massachusetts legislature – not particularly friendly to queers – to "take appropriate action."

That action might include – as it did in Hawaii and Alaska – amending the state's constitution to define marriage as exclusively between a man and a woman. At the very least, we know that the anti-gay right wing will be pouring money and energy into the Bay State to influence the legislative outcome. And the pro-gay-marriage forces of Massachusetts are laboring under at least two handicaps: a House speaker and a governor who are unalterably opposed. Any constitutional amendment, if passed in two separate legislatures and then by popular vote, would not take effect until 2006.

"The benefits accessible only by way of a marriage license are enormous, touching nearly every aspect of life and death. ... Recognizing the right of an individual to marry a person of the same sex will not diminish the validity or dignity of opposite-sex marriage ..."

There are fascinating political implications: Will Howard Dean's presidential campaign get a bounce from this ruling? It might suggest that Dean, rather than being out in "left field," is actually just the leading edge of a new wave of civil rights, a courageous leader rather than a radical pandering to a vocal constituency.

Will John Kerry's campaign get some traction in the gay and lesbian community, even though he had nothing to do with the decision?

What will Massachusetts state Senator Cheryl Jacques do? The recently out lesbian has just taken on the job of leading the Human Rights Campaign, leaving the Senate at a time when she could be instrumental in convincing her colleagues either to legislate to comply fully with the ruling or to not act and allow the court to order the issuance of licenses next May.

Will the repercussions of any pro-gay-marriage action in the Massachusetts legislature include the wholesale unseating of many LGBT allies, as it did in Vermont?

And has the Catholic Church's authority been so discredited in the sexual abuse scandal that its influence on this issue will be minimal? Or will this be the issue on which it decides to rebuild?

The ruling is simple: "We construe civil marriage to mean the voluntary union of two persons as spouses, to the exclusion of all others."

It's the fallout that's hard.

Activists from Hawaii and California offered their time, experience, and organizing expertise generously to Vermonters working for what became civil unions, and, said one Vermonter, "didn't charge us a dime." We need to offer our experience to our Massachusetts kin, in time, expertise, and yes, money, to help them get one step further in the struggle for equality.

As Associate Justice John J. Greaney wrote in his concurring opinion:

"[N]either the mantra of tradition, nor individual conviction, can justify the perpetuation of a hierarchy in which couples of the same sex and their families are deemed less worthy of social and legal recognition than couples of the opposite sex and their families.

"The plaintiffs are members of our community, our neighbors, our coworkers, our friends. ... [They] volunteer in our schools, worship beside us in our religious houses, and have children who play with our children. We share a common humanity and participate together in the social contract that is the foundation of our Commonwealth. Simple principles of decency dictate that we extend to the plaintiffs, and to their new status, full acceptance, tolerance, and respect. We should do so because it is the right thing to do."

Euan Bear, Editor