

Views: Civil Unions Aren't Enough, Part III

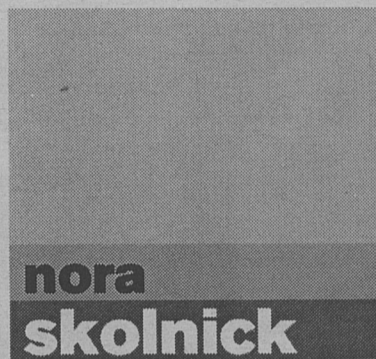
Vermont's civil union law provides raft of important benefits to same-sex couples while segregating us to a separate legal status from marriage. It denies same-sex couples the profound but intangible benefits of marriage. Likewise, it sends a dangerous message of exclusion, stigmatizing the very class of people – us – the law was designed to embrace. Apart from the weighty “symbolic” issues discussed previously, civil unions are disadvantageous in a variety of practical ways.

Civil Unions Face Greater Obstacles to Portability

The willingness of courts and other entities outside of Vermont, to recognize civil unions has, to date, been mixed. In terms of dissolution of civil unions, courts in two states have been unwilling to dissolve them while courts in two other states have done so. The differences between civil unions and marriage have been pointed out and used by courts ruling out child visitation with the non-custodial parent while that parent's civil union spouse is living with him or her in yet another two states. On the upside, a New York court allowed a surviving civil union spouse to bring a wrongful death claim when his partner died from of the (alleged) negligence of others. As you can see, the fact that we have civil unions, and not marriage, increases the problems couples face when they travel outside of Vermont, or return to their home state after joining in civil union.

It's true, even if we had marriage, same-sex couples who married in Vermont would face some obstacles to recognition of their relationships outside of Vermont's borders. It's quite clear that the obstacles are much, much higher when the legal status we carry is a completely new creature. It's more difficult to plug into the reams of court cases requiring respect for marriages that were valid in the state where celebrated, even if not ordinarily allowed in another state. If a state is inclined to recognize a civil union, it's far from clear how they will since there are no legal standards dictating what it means to recognize a civil union.

These problems aren't simply academic. Numerous and profound real-life impacts on couples joined in civil union exist. Who will inherit if a civil union spouse dies? Who makes medical decisions if a civil union spouse is incapacitated while traveling? Can a surviving civil union spouse bring a wrongful death claim in another state for the death of a partner? Is a civil union spouse in



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another state entitled to state law family-leave to care for a sick partner? Or will a civil union couple outside of Vermont have access to the courts to end their legal connection in the event that they part ways? Any suggestion that the civil union law's “separate” status is actually “equal” (or, as Governor Dean liked to say, in an effort to distance his pro-civil union, anti-marriage position from the shameful philosophy of Jim Crow, “different but equal”) is simply untrue. One of the benefits of marriage is the mobility of that legal status, and the civil union law falls far short on that measure.

Civil Unions Skirt Federal Benefits

Vermont residents Sandy Reeks and Pam Kinniburgh had to uproot, leave children, a home, family, and friends behind, and move to Canada because Reeks, a British citizen, could not get further visa extensions. Although the pair had joined in civil union in 2000, that legal status meant nothing to the federal government, and the couple could not take advantage of the immigration laws available to married transnational couples.

Holly Puterbaugh and Lois Farnham, of *Baker v. State* fame, joined that lawsuit in part because, as they began planning for their retirement years, they realized that Lois wouldn't be protected by social security survivor's benefits if Holly predeceased her – benefits that would be automatic if they were a heterosexual married couple.

Additionally, Vermont couples joined in civil union have to complete at least three federal income tax returns – one hypothetical return assuming a “married” status for federal purposes in order to calculate the state tax, and two separate, real federal returns, filed as “single” people. Couples that try to plan for the future, including tax planning, quickly discover that federal laws are designed to help married couples plan, and they recognize the intermingling of married couples'

finances, but offer no protection for civil union couples.

The General Accounting Office of the federal government has identified over 1000 federal benefits linked to marriage. These vital benefits are currently out of reach to couples joined in civil union. No doubt, given the federal “Defense of Marriage Act” (DOMA), if same-sex couples could marry in Vermont tomorrow, they would have obstacles to overcome before attaining these federal benefits. Those obstacles are surmountable. DOMA is unconstitutional for a slew of reasons, but until a same-sex couple in some state is allowed to marry, we won't be in a position to take on the constitutionality of DOMA. Federal law doesn't provide benefits to civil union spouses, but does provide benefits to married couples as defined by state law. The legal status of “marriage” would move us much further down the road to federal benefits than the newly invented status of “civil union.”

The civil union law represented a great step forward, but it was only a step. We cannot let the homophobia of those who oppose our claim to a seat at the table, the fears of politicians who feel they've done enough by conferring “partial” equality, or even our own internalized homophobia stop the movement forward. We're not advocating filing a lawsuit or pushing a marriage bill in the legislature tomorrow; the time for such measures will come. Until then, though, we must move beyond celebrating the civil union law and congratulating ourselves and our political allies who made it possible. Now is the time to recommit to the project of educating ourselves and our fellow Vermonters about the injustices that remain. We have more work to do! ▼

This op-ed is the final installment of a three part series. In the first part, published in February, the Vermont Freedom to Marry Task Force described the changes in the national landscape since Vermont's civil union law passed, and called for further movement toward marriage. In last month's installment, the Task Force discussed the intangible harms of the civil union law. If you would like to get involved please contact the Task Force at 802 388-2633 or info@vtfreetomarry.org.

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