

## Legal Briefs

### Dumb and DOMA

by Susan Murray and Beth Robinson

It's official. Congress has overwhelmingly passed, and President Clinton has signed, the inappropriately named "Defense of Marriage Act" ("DOMA").

Most everyone in our community knows that DOMA is bad, and that the passage of the law does not bode well for our struggle for legal recognition of our civil marriages, but many folks aren't sure what exactly DOMA does. Hopefully we can answer some of your questions here.

#### What does DOMA say?

DOMA has two major parts. The first provides that a state does not have to recognize a civil marriage between partners of the same gender even if that marriage was legal and valid in the state where it was celebrated. Significantly, this part of the law does not require one state to refuse to recognize same-gender marriages from another state, so some states may choose to continue to recognize all valid marriages from another state, including marriages between partners of the same gender. In other words, despite DOMA, Vermont can still decide to recognize same-gender marriages performed in other states, like Hawaii (once Hawaii recognizes our marriages).

The second part of DOMA, which has gotten less air play but which is extremely dangerous, states that the federal government will not recognize civil marriages between partners of the same gender for purposes of federal laws, such as tax laws, social security rules, immigration laws or family and medical leave laws, even if those marriages were valid where celebrated.

#### How will DOMA affect gay or lesbian couples who want to marry?

To understand the potential impact of DOMA, imagine that sometime in 1998, after the Hawaii Supreme Court has issued a final ruling in the case of *Baehr v. Miike* requiring Hawaii to recognize civil marriages between partners of the same gender, a Vermont same-gender couple travels to Hawaii to get married.

Ordinarily, Vermonters who choose to marry in Hawaii don't have to check in at the border and get their marriage passport stamped. They were married when they boarded the plane in Hawaii, they're married during the layover in Chicago, and they're married when they get off in Burlington.

Legally-married gay Vermonters, on the other hand, won't be able to take their marital status for granted. While they are in Hawaii, they will be considered legally married, for Hawaii state law purposes. However, even when they're in Hawaii, the federal government will not consider them to be married for the purposes of federal laws.

Once the gay newlyweds leave Hawaii, their status becomes even murkier. They may not be married while flying over Illinois air space, but may be married when they land in Burlington — again, depending upon what approach Vermont takes to recognition of valid same-gender marriages.

#### Is DOMA constitutional?

Many attorneys believe that DOMA is not constitutional. The United States Constitution requires states to give "full faith and credit" to judgments and other public acts from other states. Considering the substantial logistical problems that would arise if our states could adopt a varied patchwork of laws regarding the status of our marriages — not to mention the offense to our fundamental right to marry — courts will likely conclude that the portion of DOMA allowing states to refuse to recognize each others' marriages is unconstitutional.

Similarly, the United States Constitution gives states the authority to set their own laws regarding a wide variety of matters. The power to define marriage has historically belonged to individual states,

not Congress, and Congress' usurpation of that power may also be unconstitutional.

Finally, the United States Supreme Court recently recognized that the government can't constitutionally deny gays and lesbians our fundamental rights simply because the government doesn't like us. DOMA may be judged unconstitutional on the basis of this ruling.

#### Will someone challenge DOMA in the courts fairly soon?

Although we believe that DOMA is probably unconstitutional, the issue won't likely be resolved for a number of years. DOMA will continue to be completely irrelevant until the end of 1997 or beginning of 1998, when the Hawaii Supreme Court is expected to hand down its final decision requiring Hawaii to recognize same-gender marriages.

Once that happens, gay and lesbian couples from all over the country will likely flock to Hawaii to get married, and they'll return to their respective home states seeking to have their marriages recognized. They will also seek to be treated like other married couples by the federal government.

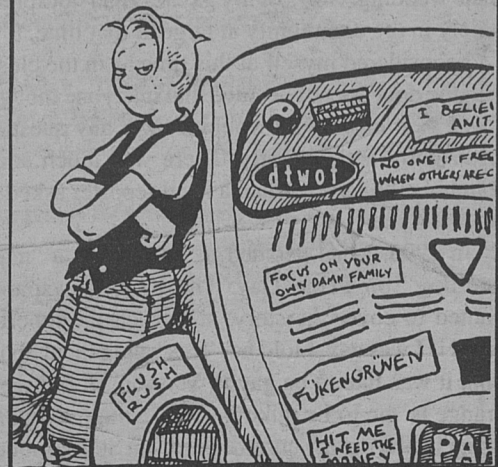
Some states will refuse to recognize the marriages, and, in light of DOMA, the federal government will undoubtedly do the same. Sometime in 1988, some such couples will sue, and courts will have to consider whether other states, and the federal government, can refuse to recognize such marriages. It will take at least a year for the cases to work their way up to appellate courts, and at least another year before the United States Supreme Court considers the issue.

#### What will happen in Vermont?

Whether Vermont will recognize valid same-gender marriages remains to be seen. We certainly hope and believe that when a validly married same-gender couple has to go to court because someone in Vermont (such as the State itself) refuses to treat them as legally married, the Vermont courts will adhere to the long-standing principles that a marriage valid where celebrated is valid everywhere, and that the public acts of one state are binding on another. ▼

*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 worker's compensation cases, and general 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.*

"I buy all my stuff at the Peace & Justice Store, where else?" -Lois, DTWOF



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### New HIV/AIDS Clinic Opens in St. Johnsbury

**ST. JOHNSBURY** — As the fourth and final step in providing a statewide network of HIV/AIDS treatment centers, the Comprehensive Care Clinics opened a site in St. Johnsbury early in October. Over the past year, clinics in Rutland and Brattleboro have expanded on services which had previously only been available in Burlington.

The Comprehensive Care Clinics offer state of the art health care in a confidential setting, and can provide services regardless of an individual's ability to pay. In addition to physical assistance, they offer social and emotional support for clients, family, and friends, along with a referral service for other physicians, counselors, and social service agencies.

Comprehensive Care Clinics employs a number of healthcare professionals, including an HIV/AIDS doctor, a nurse practitioner, and a social worker. An interview with epidemiologist Dr. Chris Grace and other members of the clinical support team appeared in the June 1996 issue of *OITM*.

For more information about the services available through Comprehensive Care Clinics, call the CCC's toll-free confidential line at 800-763-2460. ▼

### HIV/AIDS UPDATE: *What*

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*What does HIV/AIDS mean to the GLB community today?  
What about home testing kits, protease inhibitors and the HIV resistant gene?*

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