

LEGAL



BRIEFS

The Marriage Questions

BY SUSAN MURRAY AND BETH ROBINSON

Update on Marriage

By the time you read this, we will have argued the freedom to marry case, *Baker v. State*, before the Vermont Supreme Court. In this month's column we answer some of the most common questions about the case that we have been hearing from our community.

When will the Court decide the case?

We don't know. The Vermont Supreme Court does not operate under any strict timetable. Because of the magnitude of this case, the Court may need quite a bit of time to read the sources cited in the parties' briefs, and to draft its opinion. We don't expect to hear from the Court until at least next Spring, although we could be wrong.

What is the Court deciding?

The Plaintiffs have argued that the State of Vermont cannot constitutionally prevent them from marrying. The State has asked the Court to throw out the case, arguing that same-sex couples have no constitutional right to marry, and are not allowed to marry under the current marriage laws. The Court could agree with the Plaintiffs, and could order the State of Vermont, through the town clerks, to issue marriage licenses to the Plaintiffs, and any other gay couples who apply. (That's what we've asked the Court to do.) The Court could agree with the State, and could throw the case out. (That's what the State wants.) Or, the Court might conclude that it needs more information about some specific fact question, and could remand the case for further

proceedings. (Most of the arguments in the case do not involve factual issues, though.)

What will it mean if the Plaintiffs prevail?

If the Court rules in the Plaintiffs' favor, then its decision will effectively remove from Vermont's laws the last remaining (but quite significant) badge of second class citizenship for gay and lesbian citizens. Those gay and lesbian couples who do wish to marry will be able to rely on a broad array of laws including the rights to bury one's spouse, to inherit from one's partner in the absence of a will, to act as legal guardian if one's partner becomes incapacitated, to own property with one's partner in a way that is secure from each spouse's individual creditors, to have certain privacy protections for confidential conversations with one's spouse, and to access laws and courts that are designed to deal with family breakups in the event that the relationship ends.

What do we do now?

Those who oppose full equal rights for gay and lesbian Vermonters and their families have already begun to mount a campaign in the legislature to pass a law, or even a constitutional amendment, to reinforce the legal discrimination against us and our families. We must be prepared. Win or lose in Court, we have a long struggle ahead of us. You can help by (1) writing your legislators to let them know that you are part of the community and should be entitled to the same range of choices as your heterosexual counterparts— let them know who you are, what you do in the community, and how the State's discrimination affects you and your family; (2) joining the Vermont Freedom to Marry Task

Force and helping to organize educational events around the state (e-mail info@vtfreetomarry.org, or give one of us a call); (3) sending money to the Vermont Freedom to Marry Task Force — please!; (4) talking to your friends, coworkers and neighbors about how it feels to be a second class citizen under the laws of this State.

What's going on in Alaska and Hawaii?

As you have probably heard, following a bitter campaign full of gay-baiting ads by well-financed out-of-state anti-gay groups, the voters in both those states recently passed constitutional amendments which allow those states to prohibit same-sex couples from marrying. However, the lawsuits in those states are proceeding forward. Although it appears that the constitutional amendments will keep the plaintiffs in those cases from claiming the right to marry, it's not clear that the amendments prevent the plaintiffs from continuing to assert an equal right to the various legal protections, supports and obligations that accompany that status. ▼

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 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.

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