

Human Rights Campaign: Q&A

Why was this decision significant?

The Vermont Supreme Court made history by ruling that Vermont's denial of marriage benefits to same-sex couples violates the Vermont constitution. The court declared that same-sex couples in that state may not be deprived of the statutory benefits and protections afforded persons of the opposite sex who choose to marry. The court's language affirming the rights of same-sex couples was monumental. In the ruling the justices said: to extend equal rights to same-sex couples "who seek nothing more, nor less, than legal pro-

tection and security for their avowed commitment to an intimate and lasting relationship is simply, when all is said and done, a recognition of our common humanity."

Did the Vermont Supreme Court case legalize same-sex marriage?

The decision does not automatically create same-sex marriage rights in Vermont, but directs the state legislature to either expand marriage to cover same-sex couples, or create a distinct mechanism (domestic partnership or other) that makes available to same-sex couples all of the benefits and privileges of marriage.

On what basis did the Vermont Supreme Court find that denying benefits to same-sex couples is unconstitutional?

The Vermont Supreme Court found that limiting marriage benefits to opposite sex couples was in violation of the Vermont constitution's "Common Benefits Clause." This clause says that the government ought to be "instituted for the common benefit, protection and security of the people, nation or community, and not for the particular emolument or advantage of any single person, family or set of persons who are part of only that community."

Can this ruling be appealed to the U.S. Supreme Court?

No. The decision cannot be appealed to the U.S. Supreme Court primarily because the Vermont court based its decision on the "Common Benefits

Clause" of the state constitution, and not on the U.S. Constitution.

When will the Vermont State Legislature take up the issue and will they legislate same-sex marriage or create a parallel system of benefits such as domestic partnerships?

The Supreme Court instructed the Vermont legislature to act in an "orderly and expeditious fashion" in extending all marriage benefits to same-sex couples. The Court warned the legislature that "[i]n the event that the benefits and protections in question are not statutorily granted, plaintiffs may petition this Court to order the remedy they originally sought." The legislature will convene in January for its 2000 session, which ends in May. Following the ruling, reaction from Vermont lawmakers has been mixed. Peter Shumlin, the president pro tempore of the Vermont Senate told the New York Times that he expected it would be much easier to get votes for a domestic partnership law than one creating full-fledged marriages, but "both are strong possibilities." Vermont Gov. Howard Dean (D) told the New York Times that he thought the legislature would pass a domestic partnership law. On CNN, Gov. Dean indicated that the Vermont state legislature would not pass a same-sex marriage bill but that he would support passage of comprehensive domestic partnership legislation. According to the Associated Press, Dean said that same-sex marriage, "makes me uncomfortable, the same as anybody else." Vermont Attorney General William Sorell told the

New York Times, "it would likely be a civilly sanctioned relationship that would, for all intents and purposes, have the same benefits and protection a traditionally married couple would have but wouldn't be called a marital relationship. They wouldn't be called spouses, they'd be called domestic partners, and for a number of people, that makes an enormous difference."

Would a domestic partnership statute truly replicate marriage?

No. The Court is mistaken in its assertion that marriage and domestic partnership are equal. They are not. Throughout history, we have seen that separate is never equal. Domestic partnership laws are a step in the right direction but - despite the faulty assumption of the Vermont Supreme Court - domestic partnership can never fully replicate marriage. The Human Rights Campaign urges the Vermont state legislature to support same-sex marriage because it is the only way to assure that same-sex couples are treated equally under the law.

If a same-sex couple enters a domestic partnership in Vermont and then moves to another state, will their new state be required to recognize

their commitment?

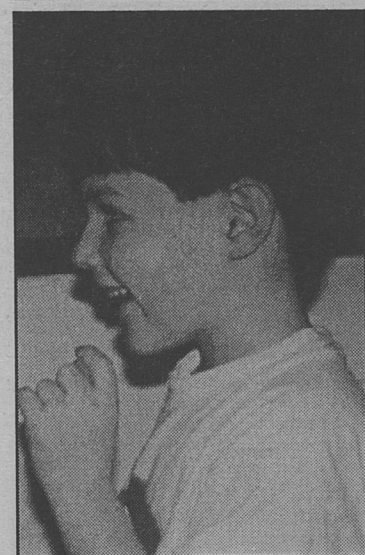
Probably not. Without legalized marriage, the recognition of same-sex couples will be subject to the laws of each individual state and the whims of their lawmakers. This status presents many practical, ethical and legal problems for same-sex couples who relocate.

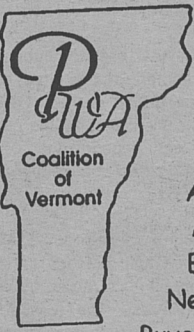
If the Vermont legislature approves same-sex marriage, will these marriages be honored in other states?

There is currently no state that recognizes same-sex marriages and there are at least 30 states that have explicitly banned gay marriage. Congress, in addition, passed the "Defense of Marriage Act" which allows states to not recognize same-sex marriages performed elsewhere and which denies Federal marital benefits to same-sex couples.

Can this decision be overturned in a right-wing led referendum?

No. There is no referendum mechanism in the State of Vermont. In addition, because of procedural hurdles, it would be nearly impossible for the State legislature to amend the state Constitution as a way to moot the Vermont Supreme Court's decision. ▼





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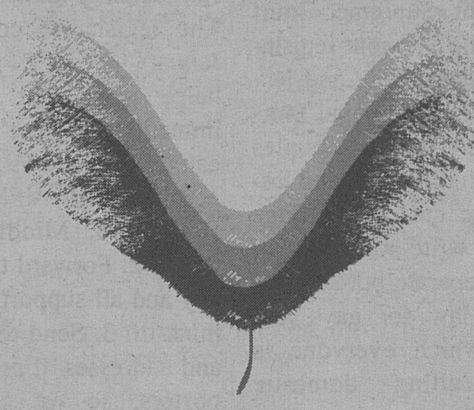
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The Samara Foundation of Vermont is a charitable foundation whose mission is to support and strengthen Vermont's gay, lesbian, bisexual, and transgendered communities today and build an endowment for tomorrow.

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