Bill as Introduced

HB 73 - AS INTRODUCED

2009 SESSION

09-0317
05/01

HOUSE BILL ***73***

AN ACT relative to the solemnization of marriage.

SPONSORS: Rep. Weber, Ches 2; Sen. Lasky, Dist 13

COMMITTEE: Judiciary

ANALYSIS

This bill permits members of the clergy, religious officiants, and others who are licensed by the secretary of state to solemnize marriages.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 73 – AS INTRODUCED

09-0317
05/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT relative to the solemnization of marriage.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Who May Solemnize Marriage. Amend RSA 457:31 to read as follows:

457:31 Who May Solemnize. Marriage may be solemnized:

I. By a justice of the peace as commissioned in the state;

II. By any [~~minister of the gospel~~] ***member of the clergy*** in the state who has been ordained according to the usage of his or her denomination, resides in the state, and is in regular standing with the denomination;

III. By any ***member of the*** clergy who is not ordained but is engaged in the service of the religious body to which he or she belongs, ***and*** resides in the state, after being licensed therefor by the secretary of state;

IV. By a religious officiant or such other person or group as may be authorized by their church, religion, sect, or denomination to solemnize marriages in the way usually practiced among them, after being licensed therefor by the secretary of state;

V. Within his or her parish, by any [~~minister~~] ***member of the clergy*** residing out of the state, but having a pastoral charge wholly or partly in this state; or

VI. By judges of the United States appointed pursuant to Article III of the United States Constitution, by bankruptcy judges appointed pursuant to Article I of the United States Constitution, or by United States magistrate judges appointed pursuant to federal law.

2 Effect of Informality. Amend RSA 457:36 to read as follows:

457:36 Effect of Informality. No marriage solemnized before a person professing to be a justice of the peace or [~~minister of the gospel~~] ***member of the clergy*** shall be void, nor shall its validity be affected on account of want of jurisdiction or authority in such supposed justice or [~~minister~~] ***clergy member***, or on account of any omission or informality in the certificate of intention of marriage, if the marriage is in other respects lawful and has been consummated with the belief on the part of either of the parties thereto that they were lawfully married.

3 Repeal. RSA 457:37, relative to exception to the solemnization of marriage, is repealed.

4 Effective Date. This act shall take effect upon its passage.

Amendments

Senate Judiciary
May 19, 2009
2009-1714s
09/03

Amendment to HB 73

Amend the title of the bill by replacing it with the following:

AN ACT affirming religious freedom protections with regard to marriage and prohibiting the establishment of civil unions on or after January 1, 2010.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraphs; Affirmation of Freedom of Religion in Marriage. Amend RSA 457:37 by inserting after paragraph II the following new paragraphs:

III. Notwithstanding any other provision of law, a religious organization, association, or society, or any individual who is managed, directed, or supervised by or in conjunction with a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, shall not be required to provide services, accommodations, advantages, facilities, goods, or privileges to an individual if such request for such services, accommodations, advantages, facilities, goods, or privileges is related to the solemnization of a marriage, the celebration of a marriage, or the promotion of marriage through religious counseling, programs, courses, retreats, or housing designated for married individuals, and such solemnization, celebration, or promotion of marriage is in violation of his or her religious beliefs and faith. Any refusal to provide services, accommodations, advantages, facilities, goods, or privileges in accordance with this section shall not create any civil claim or cause of action or result in any state action to penalize or withhold benefits from such religious organization, association, or society, or any individual who is managed, directed, or supervised by or in conjunction with a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society.

IV. The marriage laws of this state shall not be construed to affect the ability of a fraternal benefit society to determine the admission of members pursuant to RSA 418:5, and shall not require a fraternal benefit society that has been established and is operating for charitable and educational purposes and which is operated, supervised, or controlled by or in connection with a religious organization to provide insurance benefits to any person if to do so would violate the fraternal benefit society's free exercise of religion as guaranteed by the First Amendment of the United States Constitution and part I, article 5 of the New Hampshire constitution.

V. Nothing in this chapter shall be deemed or construed to limit the protections and exemptions provided to religious organizations under RSA 354-A:18.

2 Obtaining Legal Status of Marriage. Amend RSA 457:46, I to read as follows:

I. ***Notwithstanding the provisions of RSA 457-A, no new civil unions shall be established on or after January 1, 2010.*** Two consenting persons who are parties to a valid civil union entered into prior to January 1, 2010 pursuant to this chapter may apply and receive a marriage license and have such marriage solemnized pursuant to RSA 457, provided that the parties are otherwise eligible to marry under RSA 457 and the parties to the marriage are the same as the parties to the civil union. Such parties may also apply by January 1, 2011 to the clerk of the town or city in which their civil union is recorded to have their civil union legally designated and recorded as a marriage, without any additional requirements of payment of marriage licensing fees or solemnization contained in RSA 457, provided that such parties' civil union was not previously dissolved or annulled. Upon application, the parties shall be issued a marriage certificate, and such marriage certificate shall be recorded with the division of vital records administration. Any civil union shall be dissolved by operation of law by any marriage of the same parties to each other, as of the date of the marriage stated in the certificate.

3 Contingency. If HB 436-FN-LOCAL and HB 310-FN of the 2009 regular legislative session become law, sections 1 and 2 of this act shall take effect January 1, 2010 at 12:02 a.m. If HB 436-FN-LOCAL and HB 310-FN of the 2009 regular legislative session do not become law, sections 1 and 2 of this act shall not take effect.

4 Effective Date.

I. Sections 1 and 2 of this act shall take effect as provided in section 3 of this act.

II. The remainder of this act shall take effect upon its passage.

2009-1714s

AMENDED ANALYSIS

This bill affirms religious freedom protections with regard to marriage. The bill also prohibits establishment of civil unions on or after January 1, 2010. This bill is contingent upon the enactment of HB 436-FN-LOCAL and HB 310-FN of the 2009 legislative session.

Committee Minutes

AMENDED
SENATE CALENDAR NOTICE
JUDICIARY

Printed: 05/14/2009 at 2:58 pm

✓ Senator Deborah Reynolds Chairman
✓ Senator Bette Lasky V Chairman
✓ Senator Matthew Houde
✓ Senator Sheila Roberge
✓ Senator Robert Letourneau

For Use by Senate Clerk's Office ONLY
☐ Bill Status
☐ Docket
☐ Calendar
Proof: ☐ Calendar ☐ Bill Status

Date: May 14, 2009

HEARINGS

Tuesday **5/19/2009**

(Name of Committee)	(Place)	(Time)
JUDICIARY	SH 103	1:45 PM

EXECUTIVE SESSION MAY FOLLOW

Comments: THE PURPOSE OF THIS AMENDED NOTICE IS TO ADD HB 73 AT 1:45 P.M.

✓1:45 PM	HB73	relative to the solemnization of marriage.
2:00 PM	HB694	adopting the uniform child abduction prevention act.
2:15 PM	HB695	adopting the uniform child custody jurisdiction and enforcement act
2:30 PM	HB70	relative to taking stones from stone walls.
2:45 PM	HB106	relative to penalties for land use violations.
3:00 PM	HB312	permitting a person to record a law enforcement officer in the course of such officer's official duties.
3:15 PM	HB322	(New Title) relative to the minimum age required to purchase fireworks.
3:30 PM	HB342	establishing a commission to study the juvenile court diversion law.
3:45 PM	HB504	relative to the termination of guardianship of a minor.
4:00 PM	HB520	establishing a commission to study the death penalty in New Hampshire.

Sponsors:

Gail Brown 271-3076

Sen. Deborah Reynolds
Chairman

AMENDED
SENATE CALENDAR NOTICE
JUDICIARY

Printed: 05/14/2009 at 2:58 pm

Senator Deborah Reynolds Chairman
Senator Bette Lasky V Chairman
Senator Matthew Houde
Senator Sheila Roberge
Senator Robert Letourneau

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Date: May 14, 2009

HEARINGS

Tuesday **5/19/2009**

(Name of Committee)	(Place)	(Time)
JUDICIARY	SH 103	1:45 PM

EXECUTIVE SESSION MAY FOLLOW

Comments: THE PURPOSE OF THIS AMENDED NOTICE IS TO ADD HB 73 AT 1:45 P.M.

HB73
✓Rep. Lucy Weber — Sen. Bette Lasky

HB694
Rep. Robert Foose — Rep. Laura Pantelakos

HB695
Rep. Robert Foose

HB70
Rep. Judith Day — Rep. Trinka Russell — Rep. John Henson

HB106
Rep. Sandra Keans — Rep. Elaine Lauterborn — Rep. Cynthia Dokmo

HB312
Rep. Joel Winters — Rep. Susi Nord — Rep. Maureen Mann — Rep. Neal Kurk
Rep. Jennifer Coffey

HB322
Rep. Mary Beth Walz

HB342
Rep. Gilman Shattuck

HB504
Rep. Fran Wendelboe

HB520
Rep. James Splaine — Rep. Robin Read — Rep. Lori Movsesian — Rep. David Welch
Rep. Laura Pantelakos

Gail Brown 271-3076

Sen. Deborah Reynolds
Chairman

Judiciary Committee
Hearing Report

TO: Members of the Senate

FROM: Susan Duncan, *Senior Legislative Aide*

RE: Hearing report on **HB 73** – *AN ACT relative to the solemnization of marriage.*

HEARING DATE: May 19, 2009

MEMBERS OF THE COMMITTEE PRESENT: Senators Reynolds, Lasky, Roberge, Letourneau and Houde

MEMBERS OF THE COMMITTEE ABSENT: No one

Sponsor(s): Representative Weber; Senator Lasky

What the bill does: This bill permits members of the clergy, religious officiants, and others who are licensed by the Secretary of State to solemnize marriages.

Who supports the bill: Representative Weber; Senator Lasky; Rep. Mary Jane Wallner; Rep. Bernie Benn; Rep. David Pierce; Claire Ebel; Gail Morrison; Jane Lemeland; Rep. Donna Schlachman; Karen Copellon; Logan Barbosa; Rep. Timothy Horrigan; Rep. Ed Butler; Rep. Thompson; Rep. Jim Splaine; Jessie Dawson; Sarah Pelkey; Rep. David Watters; Roger Quells; Dave Carlson; Ryan Marvin; Charles B. Juston; Judy Day; Janson Wu; Jamie Cooper; Faith Cook; Rep. Carole Brown; Rep. Claire Clarke; Ed Allard; Tony Dietrich; Rep. Maureen Mann; Robert Morin; John Dawson; Mo Baxley;

Who opposes the bill: Rep. Laurie Boyce; Bill Allenmein; Beverly Peters; David Bates; Rep. Wendelboe; Terry G. Smith; Diane Quinlan; Lorna A. Price; Rep. Sevenfeel; David Chamberlain; Donna Davey; Margaret Drye; Jack Fredyma; Margaret Svendsen; Jon Svendson; Kevin Smith; Austin Nimocks; David Parker; Shaun Doherty; Karen Rees; Hark Attorri; Gwyneth DeJayar; Guillard Faulk; Ann Marie Banfield; David Lambert; Peter Bonanto; Jeffrey Price; Laura Price; Barbara Haines; Robert Haines; Rep. John Flanders; Rep. Al Bardasaro; Richard Piebunolle; Rep. Beverly Rodeschin; Rep. Ed Gionet

Summary of testimony received:

- Representative Weber introduced the legislation and explained that this legislation was introduced back in November to affirm the right of religious groups to solemnize marriages.
- She said that she does support the forthcoming amendment as being much better for HB 436.

- Senator Lasky testified in support and explained that the legislation and proposed amendment affirm that all faiths may freely exercise tolerance and inclusion.
- Senator Reynolds presented amendment #2009-01707s and explained that this replaces all of HB 73 and affirms religious freedom, including religious freedom of an organization, association or society or individuals supported by the organization, association or society as well as non-profit institutions. She said that this affirms first amendment religious protections.
- Representative Horrigan testified in support of the proposed language.
- Kevin Smith of CPR Action testified in opposition.
- He said that the language of the amendment is, at best, redundant of first amendment protections. He said that he has never been afraid that he would have to perform a same sex marriage. He articulated concerns regarding Justices of the Peace, judges or business owners who, in his opinion, would have no protections.
- He articulated his concern for parents who object to educational curricula that may be offered.
- He distributed copies of letters that have been sent to the Speaker of the House and the Governor from law professionals who say that this does not provide protections.
- He said that there have been instances of businesses who could be labeled as "unlawful" such as doctors, psychiatrists who could have their professional licenses revoked.
- He said that there could be a whole set of problems.
- Mo Baxley testified in support and distributed copies of letters from various members of the clergy including members of the United Church of Christ, the Unitarians, Episcopalians and others in support of this measure.
- She also distributed copies of a petition with over 700 signatures in support.
- Representative Al Baldasaro testified in opposition and asked if the Committee members aren't confused here – and why do we keep hearing about the right to marry. He talked about the money that has supposedly 'poured' into the Senate in support of this legislation.
- He claimed that it is a conflict of interest for the Senators to vote on this bill and that it is disrespectful of other groups.
- He asked the Senate to do the right thing and send this bill to study.
- Margaret Drye testified in opposition. She said that this amendment is not germane to the legislation and is in violation of Senate and House rules in even bringing it forward.
- She said that she has a church conference center and that they are so afraid of this legislation that they have issued a warning on their website.

- She said that this should not come forward and asked that it be found "ITL."
- Austin Nemitz, Senior Legal Counsel for the Alliance Defense Fund testified in opposition. He assured the Committee that if full religious protections are not provided in this legislation, that litigation will ensue.
- Representative Laurie Boyce testified in opposition. She said that this is the "Life Free or Die" State and that she fears for florists or photographers who could be sued if they didn't want to perform these marriages.

Fiscal Impact: Not applicable

Action: Senator Lasky moved the bill and the amendment. Senator Houde seconded the motion. The Committee voted 3 to 2 in support of the bill as amended. Senator Reynolds will report the bill out of Committee.

sfd
[file: HB 73]
Date: May 19, 2009

Date: May 19, 2009
Time: 1:45 p.m.
Room: State House Room 103

The Senate Committee on Judiciary held a hearing on the following:

HB 73 (New Title) affirming religious freedom protections with regard to marriage and prohibiting the establishment of civil unions on or after January 1, 2010.

Members of Committee present:
Senator Reynolds
Senator Lasky
Senator Houde
Senator Roberge
Senator Letourneau

The Chair, Senator Deborah R. Reynolds, opened the hearing on HB 73.

Senator Deborah R. Reynolds, D. 2: My name is Senator Deb Reynolds and I serve as Chair of the Senate Judiciary Committee, along with Senator Lasky, Senator Houde, Senator Roberge and Senator Letourneau. The hearing on HB 73 is going to start in just a few minutes and I wanted to take this opportunity, in addition, to welcome you all here and just make a couple of quick announcements about the manner in which we are going to proceed today.

I recognize that many of you have come today and believe the issues surrounding the marriage equality bill are very important to you. However, I need to emphasize several important items. First, both the House of Representatives and the Senate have had two days of hearings on HB 436, the marriage equality bill. Members of the public and clergy from various denominations, as well as members of the public, have testified regarding HB 436 and the importance of protecting freedom of religion. This is very important to the Senate and is incorporated in the amendment that was passed on the floor of the Senate and in HB 310.

The amendments to HB 436 that will be offered today by the Governor amplify that on protecting the First Amendment right to religious freedom that was addressed during the course of the Senate hearing on HB 436.

Thus, today's hearing will focus on proposed amendments. Any testimony that is not relevant to the amendment will not be taken today.

The other important announcement has to do with the amount of time that we have scheduled to hear any proposed amendments. The total time that the Senate Judiciary Committee will take to hear HB 73, the proposed amendment, will be fifteen minutes. It is not unusual for the Senate Committee to address amendments to Senate and House bills during the course of the Committee hearing. That is how we will proceed today.

Thus, it is very important to me and to members of the Committee and to members of the public who have appeared today to understand that, given the limitations on time, we will only be able to hear from some who have come to speak in support or opposition to the amendments. In that vein, there are those who support and oppose the amendments and the bill wish to designate one or two spokespersons who will speak to the whole, that would be highly recommended.

The Senate Judiciary Committee has nine other bills that must be heard today given that the Senate has only until June 4th to hear any pending House bills. However, even if you don't have an opportunity to testify, we would welcome you to submit written remarks for the record. I want to repeat and underscore that there are many of you who may have the desire to testify today on the amendment; we simply do not have any additional time other than the fifteen minutes allotted. We have nine other bills. We have other sponsors who are here who are ready to proceed on their bills. Again, I want to thank you for coming.

I would like to now call the prime sponsor, Representative Weber and Senator Bette Lasky. Welcome.

Senator Bette R. Lasky, D. 13: Thank you, Madam Chair. Representative?

Representative Weber: Thank you, Madam Chair. Back in November, when it was introduced the purpose of HB 73 was to affirm the rights of religious groups to be free to solemnize marriage in accordance with their traditions. Given the direction that has been taken by HB 436, which clarifies the separation between religious and civil marriage, at this time I would simply state my support for the upcoming amendment, which is also intended to protect religious freedoms and which will mesh better with 436 than this bill as originally proposed. Thank you very much.

Senator Bette R. Lasky, D. 13: Thank you, Madam Chair. For the record, I am Senator Bette Lasky, representing District 13, Wards 3, 4, 6, 7 and 8 in

Nashua. HB 73 and the proposed amendment affirms the purpose for which I introduced the original HB 73 to clarify a portion of the marriage laws to include all faiths and to allow for all our citizens to freely exercise this freedom. I have reviewed the amendment and believe it reaffirms New Hampshire's long-standing history of tolerance and inclusion for all its citizens. Following me is my esteemed colleague and Chair of the Committee, Senator Reynolds, to present the amendment and I thank you all.

Senator Deborah R. Reynolds, D. 2: Thank you very much. Any questions? Thank you very much.

Senator Bette R. Lasky, D. 13: Good afternoon, Senator.

Senator Deborah R. Reynolds, D. 2: Good afternoon. For the record, my name is Senator Deb Reynolds and I have the honor and privilege of serving as the New Hampshire State Senator for Senate District 2.

Madam Chair, I am here to offer an amendment to HB 73. The amendment number is 2009-1707s. This bill replaces HB 73 as a whole and affirms religious freedom and protections with regard to marriage and prohibiting the establishment of civil unions on or after January 1st, 2010.

The new language in this amendment amplifies upon the good work that the Senate has done in ensuring religious freedom in concert with HB 436 that was passed in the Senate recently. It includes encompassing religious organizations, associations or societies or any individual who is managed, directed or supervised by or in conjunction with a religious organization, association or society, or any non-profit institution in an effort to make sure that all of these parties and organizations have First Amendment religious protections going forward on this important bill.

I would urge the Committee to vote ought to pass on the amendment and would be happy to take any questions that you may have.

Please see Amendment #2009-1707s, attached hereto and referred to as Attachment #1.

Senator Bette R. Lasky, D. 13: Thank you, Senator Reynolds? Are there any questions? Seeing none.

Senator Deborah R. Reynolds, D. 2: Thank you very much.

Senator Bette R. Lasky, D. 13: The Chair calls Representative Timothy Horrigan.

Representative Horrigan: Thank you. My name is Representative Timothy Horrigan. I represent Strafford County District 7, which is Durham, Lee and Madbury.

I just concur with the amendment. I think it does cover what is already in the Constitution, but I think it does clarify some key issues, issues of religious freedom and also I think it may clarify some states in between the civil act of marriage and the religious act of marriage. I think certainly I wouldn't think it wise to go so far as to have different restrictions on civil officiants of those religious officiants.

The only other point, I did submit written testimony, which would have taken up the whole fifteen minutes and I have already taken up too much time as it is, but I will say that this bill is not really about the wedding; it is about what comes after the wedding, the relationship that comes after the wedding. Hopefully, if you are lucky, it is the happily ever after.

I support the amendment and I urge the Senate and the House, when we get the chance, to pass it.

Please see Attachment #2.

Senator Deborah R. Reynolds, D. 2: Thank you very much. Any questions? I would like to call Kevin Smith.

Kevin Smith: Thank you, Madam Chair and honorable members of the Senate Judiciary Committee. For the record, my name is Kevin Smith, representing CPR Action and I rise to speak in opposition to the amendment to HB 73.

The language that the Governor, now Senator Reynolds, has provided, while at best being more specific in its level of detail, is frankly redundant of language that already exists in New Hampshire law and protections provided by the First Amendment of the U.S. Constitution for such institutions, organizations and individuals that are religiously affiliated. As one pastor stated to me after the amendment was proposed, "I have never been afraid that I would have to perform a same-sex marriage - that was never what the issue was about".

Rather, this amendment does not speak to the religious liberties of individuals, businesses and organizations not religiously affiliated, that the amendment does not address and they are and continue to be of great concern. Individuals, such as justices of the peace, judges, business owners

whose products serve the wedding industry, and parents who seek to have a voice in their child's education curriculum, all of whom may hold sincere religious belief, will now be at risk of being put in the precarious position of having to violate their conscience or risk being penalized by the Human Rights Commission for discrimination. I won't go into the cases that have already occurred in other states, as they are in the testimony, but I would ask that you please look at that and which religious liberties have been violated.

In a separate letter sent to both the Governor and the Speaker of the House, of which I will also provide for the Committee, five law professors from the law schools at the Universities of Michigan, Missouri, Notre Dame, Washington and Lee, and St. Thomas in Minnesota, all expressed their concern that New Hampshire's same sex marriage bill is inadequate in protecting the religious liberties of individuals and businesses not affiliated with religious organizations. In short, they cite individuals, or the small businesses that they own, that conscientiously object to same-sex marriage will be labeled as unlawful "discriminators" under state law and thus face a range of penalties at the hands of state agencies and local government such as the withdrawal of government benefits or exclusion from government facilities. Doctors and psychologists, social workers, counselors and other professionals who conscientiously object to same-sex marriage can have their licenses revoked as a simple example.

One of the professors who supports same-sex marriage also stated in this letter, HB 436, which this amendment seeks to fix, can be a great advance for human liberty, but careless or overly aggressive drafting could create a whole new set of problems for the religious liberty of those religious believers who cannot conscientiously participate in implementing the new regime. The net effect for human liberty will be no better than a wash if same-sex couples now oppress religious dissenters in the same way that those dissenters, when they had the power to do so, used to oppress same-sex couples.

These five law professors underscore the point that not only is it well within your constitutional boundaries to protect the religious liberties for men and women who conscientiously object to same-gender marriages based on their sincere religious beliefs, but that it is in fact reasonable and prudent to do so.

And, finally, they say additional precedent for religious accommodation is contained in New Hampshire's existing laws and similarly, federal statutes provide protections for religious and conscientious objectors in many different contexts. In short, protecting conscience is very much a part of the American and the New Hampshire tradition. The General Court should make the effort to continue that tradition.

RHB

Thus, when you begin your deliberations on the amendment for HB 73, we would respectfully ask that, at the very least, you consider protecting the religious liberties of those whom the amendment does not protect: men and women of good faith who simply do not want to be placed in the position of having their freedom of conscience violated in their attempt to freely practice a tenet of their religious belief. Thank you.

Please see prepared testimony and documents submitted by Kevin Smith, attached hereto and referred to collectively as Attachment #3.

Senator Deborah R. Reynolds, D. 2: Thank you for your testimony. Questions? Thank you very much. Mo Baxley?

Mo Baxley: Good afternoon. For the record, my name is Mo Baxley and I represent the New Hampshire Freedom to Marry Coalition. We fully support this amendment which protects both the individual liberties and religious freedom.

I bring with me today a letter supporting the rights of gays and lesbians to legally marry and the right of religious communities to continue to practice in their faith according to their beliefs. This letter is signed by leaders of New Hampshire's communities of faith, representing the United Church of Christ, Jewish, Episcopal, Congregational, Baptists and Unitarian Universalist faiths and over seven hundred signatures from their parishioners. Thank you.

Please see Mo Baxley's prepared testimony, attached hereto and referred to as Attachment #4. The letters of support are too voluminous to attach to this transcript, but are available in the original file.

Senator Deborah R. Reynolds, D. 2: Thank you. Any questions of Mo Baxley? Thank you very much. I'm going to call on Representative Baldasaro. Is he here? Would you like to come forward, sir?

Representative Baldasaro: Thank you, Madam Chair and Senators. For the record, my name is Representative Al Baldasaro. I'm from Londonderry, District 3, Rockingham County, which includes Auburn also.

I'm going to make this short and sweet and I'm not going to go and basically, for some of the stuff you're going to hear. I just actually got a chance to read the amendment. Anyways, I keep hearing about rights to marriage. Are we confused here? Unless the federal government changed its rights, this is just something there that is feel good legislation and it is a rush to judgment this

amendment here. I honestly believe, and I'm opposed to this amendment here because the Senate hopefully can look back and say we need to study this properly before we do a quick fix. I have read some articles here on the money being poured in. I'm hoping that any Senator Republican did not take any money from these groups here because I honestly believe there is a conflict of interest going on with this vote today on this amendment. Okay?

And, I'm hoping that we really take a look. Why are we moving forward? We are disrespecting many other groups within the state and it is not right. Okay? We are specifically gearing towards priests and religions, but we're forgetting about other groups that are out there. I'm hoping that the Senate does the right thing and does not let this go and maybe put it to study. Thank you.

Senator Deborah R. Reynolds, D. 2: Thank you. Any questions? Thank you very much, Representative. Representative Maureen Mann?

Representative Mann: I would like to withdraw my name, but I would like to...

Senator Deborah R. Reynolds, D. 2: Representative David Watters? Is Representative Watters here?

Representative Watters: I submitted written testimony.

Please see written testimony from Representative Watters, attached hereto and referred to as Attachment #5.

Senator Deborah R. Reynolds, D. 2: Okay. You did not wish to speak. Representative Claire Clarke is here, did not wish to speak. Representative?

Representative Clarke: Yes, but I support the bill.

Senator Deborah R. Reynolds, D. 2: And, Representative Beverly Rodeschin, did you want to speak?

Representative Rodeschin: No, I didn't want to speak, but you can put of record in opposition to this amendment.

Senator Deborah R. Reynolds, D. 2: Okay. Thank you. Margaret Drye has signed in in opposition. Did you wish to speak, Margaret?

Margaret Drye: I would, Senator. Thank you.

Senator Deborah R. Reynolds, D. 2: Please come forward. Thank you.

Ms. Drye: Thank you, Madam Chairman. I am Margaret Drye, for the record, from Plainfield. I am in opposition to this amendment.

To be germane to the issue, there are two points I want to make as a problem I have explaining to my children the germaneness of the amendments that you voted on to get us to this position. Not the overall issue of same-sex marriage, but legislative process. I don't believe it has come to the table or we have come to this point in an honorable way. I think you violated Senate and House rules about amendments and I am disappointed.

But, I have a Christian Conference Center in the Town of Plainfield, which is non-denominational, it is not affiliated with any denomination; it is a private, it is not a society, it is a conference center and it serves many churches. It has been there since 1972. They are so afraid of what is going on that they had to issue a special statement on their website about gay marriages. I don't know if they fall under the protection of the amendment the Governor proposed or the amendment you have here today. If there is any gray area, I believe you do a disservice to a very valuable town asset. It is part of our town FEMA plan. It is our emergency shelter. You would do a disservice if it is not a clear-cut protection for them under the law. I don't think they feel that way right now and I would ask that this is not the best legislation you could put forward right now.

I don't believe it came to this table in an honorable way. I ask you to vote these amendments inexpedient to legislate.

Please see prepared testimony from Margaret Drye, attached hereto and referred to as Attachment #6.

Senator Deborah R. Reynolds, D. 2: Thank you very much for your testimony. Any questions? Representative Ed Butler has signed in in support, does not wish to speak. Is that correct, Representative Butler?

Representative Butler: Correct.

Senator Deborah R. Reynolds, D. 2: And, is there... How about Austin Nimocks? Did you want to come forward, sir? Austin is going to be our last speaker today.

Attorney Austin Nimocks: Thank you, Madam Chair, members of the Committee. Good afternoon. My name is Austin Nimocks. I hold the title of Senior Legal Counsel for the Alliance Defense Fund. The Alliance Defense

Fund is an international legal organization and alliance. We deal in religious liberty, sanctity of life and family values issues.

I come today to speak against the amendment because it is inadequate as a whole to adequately protect the religious liberties of all granite staters. We have heard today in testimony already the words of individual liberties and tolerance for all, yet this amendment does not come close to granting all of that. By adding a couple of key words to protect individuals and businesses and others who are not directly affiliated with a religious organization the opportunity to fully protect all granite staters does exist that does not exist currently.

There are multiple case examples that we are involved directly. Because of the time constraints, I will not go into those cases, but I can assure the Committee that if full religious liberty protections are not provided, litigation will result and the religious freedoms of granite staters will suffer as a result. We have seen that in many other states in cases that are currently ongoing that we are directly involved in.

I thank the Committee for its time.

Senator Deborah R. Reynolds, D. 2: Thank you very much for your testimony. I want to note that there are a number of people who have signed in, but do not wish to speak. Barbara Haines from the Glory of the Lord Ministry has signed in and wished to speak, but unfortunately, we don't have time. Robert Haines is signed in in opposition. Barbara was in opposition as well. Representative John Flanders has signed in in opposition. In addition to that, it looks like Richard Piebrum has signed in in opposition. Ed Allard from the New Hampshire Stonewall Democrats has signed in support of. Tony Dietrich has signed in in support of. Looks like Robert Mann has signed in in favor of. John Dawson, in favor of. Edmond Gionet in opposition to the bill. Jamie Cooper in favor of the bill. Margaret Svendsen in opposition. Jon Svendsen in opposition to the bill. David Parker had signed in, and I'm sorry, David we could not hear you, but signed in in opposition. Shaun Doherty has signed in in opposition, as has Karen Reese. Faith Cook has signed in support of. Mark Attorri has signed in in opposition. Gwyneth DeJaeger has signed in in opposition. Looks like Mr. Faille has signed in in opposition, as has Ann Marie Banfield, David Lambert, Peter Bonanno. Representative Carole Brown has signed in in support of. Jeffrey Price and Laura Price have signed in in opposition. Margaret Drye has signed in in opposition and has testified. Jessie Dawson has signed in in favor. Sarah Pelkey has signed in in favor. Roger Qulls has signed in in favor. Dave Carlson has signed in in favor. Ryan Marvin has signed in in favor. Judy Day and Janson Wu have signed in in favor. With that, we are going to close.

I will read off the rest of these people. We have Representative Mary Jane Wallner, signed in in support of the bill, did not wish to speak. Representative Bernie Benn has signed in in support, does not wish to speak. Representative David Pierce has signed in in support, does not wish to speak. Claire Ebel has signed in in support, does not wish to speak. Gail Morrison has signed in support. Jane B. Lemeland has signed in in support. David Bates has signed in in opposition. Representative Donna Schlachman has signed in in support. Beverly Peters has signed in in support, I'm sorry, in opposition. Mary Thate has signed in in opposition and Bill Alleman has signed in support. We have also in favor, Representative Thomas of Manchester and Representative Splaine. Representative Laurie Boyce, are you here? Okay. If you could just speak quickly Laurie because we have got to close the hearing.

Representative Boyce: One minute. Thank you, Senator Reynolds. I just want to make a statement. It is not religious.

Senator Deborah R. Reynolds, D. 2: Could you sit down and state your name so that we can pick it up on the record, Laurie? Thank you.

Representative Boyce: Okay. My name is Laurie Boyce, Representative Belknap County District 5. We are the live free or die state and people like photographers, florists that don't want to do it, they can be discriminated against and be sued because they don't want to do it. So, the Governor doesn't say anything about that.

Senator Deborah R. Reynolds, D. 2: Any questions for Representative Boyce? Thank you very much for your testimony.

With that, we are going to close the hearing on HB 73.

Hearing concluded at 2:10 p.m.

Respectfully submitted,

L. Gail Brown
Secretarial Supervisor
6/17/09

6 Attachments

Attachment #1

Sen. Reynolds, Dist. 2
Sen. Lasky, Dist. 13
Sen. Houde, Dist. 5
May 19, 2009
2009-1707s
09/03

Amendment to HB 73

Amend the title of the bill by replacing it with the following:

AN ACT affirming religious freedom protections with regard to marriage and prohibiting the establishment of civil unions on or after January 1, 2010.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraphs; Affirmation of Freedom of Religion in Marriage. Amend RSA 457:37 by inserting after paragraph II the following new paragraphs:

III. Notwithstanding any other provision of law, a religious organization, association, or society, or any individual who is managed, directed, or supervised by or in conjunction with a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, shall not be required to provide services, accommodations, advantages, facilities, goods, or privileges to an individual if such request for such services, accommodations, advantages, facilities, goods, or privileges is related to the solemnization of a marriage, the celebration of a marriage, or the promotion of marriage through religious counseling, programs, courses, retreats, or housing designated for married individuals, and such solemnization, celebration, or promotion of marriage is in violation of his or her religious beliefs and faith. Any refusal to provide services, accommodations, advantages, facilities, goods, or privileges in accordance with this section shall not create any civil claim or cause of action or result in any state action to penalize or withhold benefits from such religious organization, association, or society, or any individual who is managed, directed, or supervised by or in conjunction with a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society.

IV. The marriage laws of this state shall not be construed to affect the ability of a fraternal benefit society to determine the admission of members pursuant to RSA 418:5, and shall not require a fraternal benefit society that has been established and is operating for charitable and educational purposes and which is operated, supervised, or controlled by or in connection with a religious organization to provide insurance benefits to any person if to do so would violate the fraternal benefit society's free exercise of religion as guaranteed by the First Amendment of the United States

Constitution and part I, article 5 of the New Hampshire constitution.

V. Nothing in this chapter shall be deemed or construed to limit the protections and exemptions provided to religious organizations under RSA 354-A:18.

2 Obtaining Legal Status of Marriage. Amend RSA 457:46, I to read as follows:

I. ***Notwithstanding the provisions of RSA 457-A, no new civil unions shall be established on or after January 1, 2010.*** Two consenting persons who are parties to a valid civil union entered into prior to January 1, 2010 pursuant to this chapter may apply and receive a marriage license and have such marriage solemnized pursuant to RSA 457, provided that the parties are otherwise eligible to marry under RSA 457 and the parties to the marriage are the same as the parties to the civil union. Such parties may also apply by January 1, 2011 to the clerk of the town or city in which their civil union is recorded to have their civil union legally designated and recorded as a marriage, without any additional requirements of payment of marriage licensing fees or solemnization contained in RSA 457, provided that such parties' civil union was not previously dissolved or annulled. Upon application, the parties shall be issued a marriage certificate, and such marriage certificate shall be recorded with the division of vital records administration. Any civil union shall be dissolved by operation of law by any marriage of the same parties to each other, as of the date of the marriage stated in the certificate.

3 Contingency. If HB 436-FN-LOCAL and HB 310-FN of the 2009 regular legislative session become law, sections 1 and 2 of this act shall take effect January 1, 2010 at 12:02 a.m. If HB 436-FN-LOCAL and HB 310-FN of the 2009 regular legislative session do not become law, sections 1 and 2 of this act shall not take effect.

4 Effective Date.

I. Sections 1 and 2 of this act shall take effect as provided in section 3 of this act.

II. The remainder of this act shall take effect upon its passage.

2009-1707s

AMENDED ANALYSIS

This bill affirms religious freedom protections with regard to marriage. The bill also prohibits establishment of civil unions on or after January 1, 2010. This bill is contingent upon the enactment of HB 436-FN-LOCAL and HB 310-FN of the 2009 legislative session.

Attachment #2

Testimony on HB 73
Rep. Timothy Horrigan (D-Durham)

I urge the committee reluctantly but strongly to pass the governor's proposed amendments to HB 73. I say "reluctantly" because the amendments add nothing to what is already in our state constitution, and I wish Gov. Lynch could have simply signed the bills we already sent him. I say "strongly" because Gov. Lynch says he will not stand up for marriage equality unless the General Court passes his amendments. Marriage equality is a good thing not just for gay people but for straight people as well—including Gov. Lynch.

This is not the most straightforward amendment I have seen in my five months as a legislator. But it does clarify the distinction between a wedding, a marriage ceremony and the marriage itself. This bill is about a contract between one person and another person. It is about a very special contract between two people who love each other and will spend their lives together— hopefully their entire lives if they are lucky. And it is about the relationship which follows that contract. A marriage ceremony is not really about the rings or the cake or the white dress or the rented tuxedos or any of that other delightful stuff at all. It trivializes this very important issue to whine about the caterers, the photographers, or anyone else aside from the couple, their families, and the officiant. These bills— HB 73 as well as HB 436 and HB310— are not about the fairytale wedding, they are about the Happily Ever After. Marriage equality means, quite simply, that every couple has an equal chance to live happily ever after, be they gay or straight.

I think it is appropriate to apply a stricter standard to civil officiants (e.g., a justice of the peace, a judge, etc.) as opposed to religious officiants. Civil officiants should be required to perform gay marriages, regardless of their personal religious beliefs— just as civil officiants currently are required to perform interracial marriages. There are some grey areas left in the law, since some churches don't have ordained clergy, others have very loose standards for ordination, and many churches have different ceremonies depending on couples' religious affiliations. But I think the proposed law does address those issues as well as they can be addressed.

As a practical matter, I personally find it impossible to imagine that the problems the opponents of this bill are so worried about will happen very often. Gay couples want to get married for the same reasons straight couples want to get married: because they love each other. They throw commitment ceremonies (and in the near future, weddings) because they want to share their joy with their family and friends. Choosing an officiant who is hostile to you makes no sense. Hiring a caterer or a photographer who is hostile to you makes even less sense. Even though plenty of things which make no sense do happen in this bizarre world of ours, I think it still makes sense to assume that gay couples, like straight couples, will choose people they like and who like them to make their weddings a reality. And let me remind you: this bill is not about the wedding, it is about the Happily Ever After.

Attachment #3

CPR ACTION
The Legislative Action Arm of Cornerstone Policy Research

To: New Hampshire Senate Judiciary Committee
Fr: Kevin H. Smith, Executive Director, CPR-Action
Re: Amendment to Hb73
Da: May 19, 2009

Madame Chair and Honorable Members of the Senate Judiciary Committee -

For the record, my name is Kevin Smith, representing CPR-Action, and I rise to speak in opposition to HB73, specifically the amendment as proposed by Governor Lynch. For the record, CPR-Action opposes HB436, the bill in which this amendment seeks to fix, though I will keep my remarks specific to the amendment to HB73 for the purposes of today's hearing.

The amendment you have before you is an attempt by the Governor to add language specific to religious institutions, organizations, and individuals affiliated with such, that seeks to add exemptions for them from having to perform or take part in same-sex marriage ceremonies.

However, the language the Governor has provided, while at best being more specific in its level of detail, is frankly redundant of language that already exists in New Hampshire law and protections provided by the first amendment of the US Constitution. for such institutions. organizations and individuals that are religiously affiliated. As one pastor stated to me after the amendment was proposed, "I've never been afraid that I'd have to perform a same-sex marriage - that was never what this issue was about."

Rather, it's the religious liberties of individuals, businesses, and organizations, not religiously affiliated, that the amendment does not address, that are and continue to be of grave concern. Individuals, such as justices of the peace or judges, business owners whose products serve the wedding industry, and parents whom seek to have a voice in their child's educational curriculum - all of whom may hold sincere religious beliefs - will now be at risk of being put in the precarious position of having to violate their conscience or risk being penalized by the Human Rights Commission for discrimination, penalties which carry fines from $10,000 for the first such case to $50,000 for the third instance.

As we know, the cases I speak of are not "what if" scenarios, but are in fact actual instances that have already occurred in other states:

* In New Mexico, a photographer was fined $6,600 by that state's Human Rights Commission for not agreeing to photograph a civil union ceremony because of her sincerely held religious beliefs.

* A fertility doctor in California is currently being sued for not agreeing to fertilize a same-sex couple, based upon his sincere religious objection that children need both a mother and a father.

* A Georgia counselor who worked for the Center for Disease Control, because of her sincere religious

beliefs, in good conscience could not counsel a same-sex couple. Despite referring the couple to a colleague of her's, whom the couple claims gave them exemplary service, she was discharged from her job for having done so.

* David Parker, a parent who is here today, did not need to be notified regarding the inclusion of same-sex families as diversity studies regarding his child in kindergarten according to a federal decision.

In separate letters sent to both the Governor and the Speaker of the House, (which I am providing copies of for the committee), five law professors from the Law Schools at the Universities of Michigan, Missouri, Notre Dame, Washington and Lee, and St. Thomas in Minnesota, all expressed their concerned that New Hampshire's same-sex marriage bill is inadequate in protecting the religious liberties of individuals and businesses not affiliated with religious organizations. In short, they cite:

Individuals (or the small businesses that they own) that conscientiously object to same-sex marriage will be labeled as unlawful "discriminators" under state law and thus face a range of penalties at the hands of state agencies and local governments, such as the withdrawal of government benefits or exclusion from government facilities.

For example:

Doctors, psychologists, social workers, counselors and other professionals who conscientiously object to same-sex marriage can have their licenses revoked.

Religious individuals who run a business, such as wedding photographers, florists, banquet halls, or bed and breakfasts, can be sued under public accommodation laws for refusing to offer their services in connection with a same-sex marriage ceremony.

Though, one of the professors, who supports same-sex marriage, stated the following:

I think HB 436 can be a great advance for human liberty. But careless or overly aggressive drafting could create a whole new set of problems for the religious liberty of those religious believers who cannot conscientiously participate in implementing the new regime. The net effect for human liberty will be no better than a wash if same-sex couples now oppress religious dissenters in the same way that those dissenters, when they had the power to do so, used to oppress same-sex couples.

These five law professors underscore the point that not only is it well within your constitutional boundaries to protect the religious liberties for men and women who conscientiously object to same gender marriages based on sincere religious beliefs, but that it is in fact reasonable and prudent to do so:

(The professors go on to state)

Additional precedent for religious accommodations is contained in New Hampshire's existing laws. For example, New Hampshire's general anti-discrimination laws, including its laws on sexual orientation discrimination, contain important religious conscience protections for "any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization." Similarly, federal

statutes provide protections for religious and conscientious objectors in many different contexts. In short, protecting conscience is very much part of the American, and New Hampshire, tradition. The General Court should make the effort to continue that tradition.

Thus, when you begin your deliberations on the amendment to Hb73, we would respectfully ask that at the very least that you consider protecting the religious liberties of whose whom the amendment does not protect: men and women of good faith who simply do not want to be placed in the position of having their freedom of conscience violated in their attempt to freely practice a tenant their religious beliefs.

Thank you.

Michigan Law

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April 30, 2009

DOUGLAS LAYCOCK
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BY E-MAIL AND OVERNIGHT

The Honorable Terie Norelli, Speaker
New Hampshire House of Representatives
107 N. Main St.
Concord, NH 03301
terie.norelli@leg.state.nh.us

Re: Religious liberty implications of HB 436

Dear Speaker Norelli:

I write to urge that HB 436, on same-sex marriage, be further amended to provide robust and specific protections for religious liberty. I have studied and written about the law of religious liberty for many years, and I have written about how to protect both sexual liberty and religious liberty in my co-edited book, *Same-Sex Marriage and Religious Liberty* (2008). I write in my personal capacity, and of course the University of Michigan takes no position on these issues.

I heartily endorse amendments on the lines proposed in the letter that Professors Thomas C. Berg, Carl H. Esbeck, Richard W. Garnett, and Robin Fretwell Wilson sent to you yesterday. I have not signed their letter, because I come to these issues from a rather different perspective, but their analysis of potential legal conflicts is accurate, and their proposed statutory language is necessary to legislation that is fair and just to all sides.

I support same-sex marriage. I think HB 436 can be a great advance for human liberty. But careless or overly aggressive drafting could create a whole new set of problems for the religious liberty of those religious believers who cannot conscientiously participate in implementing the new regime. The net effect for human liberty will be no better than a wash if same-sex couples now oppress religious dissenters in the same way that those dissenters, when they had the power to do so, used to oppress same-sex couples.

Nor is it in the interest of the gay and lesbian community to create religious martyrs in the enforcement of this bill. To impose legal penalties or civil liabilities on a wedding planner who refuses to do a same-sex wedding, or on a religious counseling agency that refuses to provide marriage counseling to same-sex couples, will simply ensure that conservative religious opinion on this issue can repeatedly be aroused to fever pitch. Every such case will be in the news

repeatedly, and every such story will further inflame the opponents of same-sex marriage. Refusing exemptions to such religious dissenters will politically empower the most demagogic opponents of same-sex marriage. It will ensure that the issue remains alive. bitter. and deeply divisive.

It is far better to respect the liberty of both sides and let same-sex marriage be implemented with a minimum of confrontation. Put religious exemptions in the bill, and at a stroke, you take away one of the opponents' strongest arguments. Let the people of New Hampshire see happy, loving, same-sex marriages in their midst; let them see (this cannot be helped) that some of those marriages fail, just as many opposite-sex marriages fail; let them see that these same-sex marriages, good and bad, have no effect on opposite-sex marriages. Same-sex marriage will be backed by law, backed by the state, and backed by a large and growing number of private institutions. Let the market respond to the obvious economic incentives; same-sex couples will pay good money just like opposite-sex couples. Let same-sex marriage become familiar to the people, and do these things without oppressing religious dissenters in the process. Much of the dissent will gradually fade away, and nearly all the rest will go silent, succumbing to the live-and-let-live traditions of the American people. The number of people who assert their right to conscientious objection will be small in the beginning, and it will gradually decline to insignificance if deprived of the chance to rally around a series of martyrs.

Exemptions for religious conscientious objectors will rarely burden same-sex couples. Few same-sex couples in New Hampshire will have to go far to find merchants, professionals, counseling agencies, or any other desired service providers who will cheerfully meet their needs and wants. And same-sex couples will generally be far happier working with a provider who contentedly desires to serve them than with one who believes them to be engaged in mortal sin, and grudgingly serves them only because of the coercive power of the law. Religious exemptions could also be drafted to exclude the rare cases where these suppositions are not true, such as a same-sex couple in a rural areas where has reasonably convenient access to only one provider of some secular service. Such rare cases are no reason to withhold religious exemptions in the urban areas where most of the people – and most of the same-sex couples – actually live.

The version of §457.37 posted on the General Court's website is inadequate to these purposes. It protects only those who officiate at marriages with respect to the choice whether to officiate, and it arguably protects that decision only to the extent that it is already protected by the state or federal Free Exercise Clause. Clergy are no doubt constitutionally protected, but judges may not be, and if they are not constitutionally protected, it is not clear that this bill gives them any additional protection.

The bill offers no protection even for religious organizations beyond the wedding ceremony. And it provides no protection for individuals who facilitate weddings. This is a mistake that threatens serious harm to a religious minority while conferring no real benefits on same-sex couples.

Enacting the right to same-sex marriage with generous exemptions for religious dissenters is the right thing to do. It respects the right of conscience for all sides. It protects the sexual liberty of same-sex couples and the religious liberty of religious dissenters. It is obviously better for the traditional religious believers; on a few moments' reflection, it is also better for the same-sex couples. Because it is better for both sides, it is better for New Hampshire.

I am available to discuss these issues further if that would be of any benefit.

Very truly yours,

Douglas Laycock

May 1, 2009

BY EMAIL AND FEDERAL EXPRESS

The Hon. John Lynch
Office of the Governor
State House
25 Capitol Street
Concord, NH 03301
governorlynch@nh.gov

Re: Religious liberty implications of H.B. 436

Dear Governor Lynch:

We write to provide you with an analysis of the effects of H.B. 436 on religious liberty. Those effects would be widespread and profound. If H.B. 436 is enacted in its current form—without meaningful religious-conscience protections—many religious organizations and individuals will be forced to engage in conduct that violates their deepest religious beliefs, and religious organizations would be limited in crucial aspects of their religious exercise. Instead of passing H.B. 436 in its current form, the General Court should take the time and care necessary to ensure that the legalization of same-sex marriage does not constrain the fundamental right of religious liberty.

Wide-ranging conflicts recognized by legal scholars

In the only comprehensive scholarly work on same-sex marriage and religious liberty to date,[1] legal scholars on both sides of the same-sex marriage debate agreed that codifying same-sex marriage ***without*** providing robust religious accommodations will create widespread and unnecessary legal conflict—conflict that will work a "sea change in American law" and will "reverberate across the legal and religious landscape."[2] The conflicts between religious liberty and same-sex marriage generally take one of two forms. First, if same-sex marriage is legalized without appropriate religious accommodations, religious organizations or individuals that object to same-sex marriage will face

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[1] SAME-SEX MARRIAGE AND RELIGIOUS LIBERTY: EMERGING CONFLICTS, Douglas Laycock, Anthony R. Picarello, Jr. and Robin Fretwell Wilson, eds. (Rowman & Littlefield 2008) (including contributions from both supporters and opponents of same-sex marriage).

[2] *Id.*, Marc Stern, Assistant Executive Director, American Jewish Congress, *Same-Sex Marriage and the Churches* at 1 ("Stern"). *See also id.*, Douglas Laycock, University of Michigan Law School, *Afterword* at 191-97 ("Laycock") (detailing the scope of "avoidable" and "unavoidable" conflicts).

a wave of new lawsuits under state anti-discrimination and other laws. So will many small businesses, which are owned by individual conscientious objectors. Likely lawsuits include claims that:

- Religious individuals who run a business, such as wedding photographers, florists, banquet halls, or bed and breakfasts, can be sued under public accommodations laws for refusing to offer their services in connection with a same-sex marriage ceremony.[3]

- Religious camps, day cares, retreat centers, counseling centers, or adoption agencies can be sued under public accommodations laws for refusing to offer their services to members of a same-sex marriage.[4]

- A religious college that offers special housing for married students can be sued under housing discrimination laws for offering that housing to opposite-sex, but not same-sex, married couples.[5]

- A religious school or university that has a code of conduct prohibiting same-sex sexual relationships can be sued under anti-discrimination laws for refusing to admit students (or children of parents) in a same-sex marriage.[6]

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[3] Stern at 37-39; *see also* Issues Brief at 3-5, 30-31; *Elane Photography* v. *Willock*, No. D-202-CV-200806632 (N.M. 2d Jud. Dist. Ct) (filed Jul. 1, 2008) (New Mexico photographer fined for refusing on religious grounds to photograph a same-sex commitment ceremony); *Bernstein* v. *Ocean Grove Camp Meeting Ass'n*, No. PN34XB-03008 (N.J. Dep't. of Law and Public Safety, Notice of Probable Cause issued Dec. 29, 2008) (finding that a religious organization likely violated public accommodations laws by denying a same-sex couple use of its wedding pavilion)

[4] Stern at 37-39; *see also Butler* v. *Adoption Media*, 486 F.Supp.2d 1022 (N.D. Cal. 2007) (administrators of Arizona adoption facilitation website found subject to California's public accommodations statute because they refused to post profiles of same-sex couples as potential adoptive parents); Robin Fretwell Wilson, *A Matter of Conviction: Moral Clashes Over Same-Sex Adoption*, 22 BYU J. PUB. L. 475 (2008) (describing clashes over same-sex adoption).

[5] Stern at 33, 48 ("[A] rule allowing only heterosexual couples into married housing will be illegal if same-sex marriage becomes legal."); *Issues Brief: Same-Sex Marriage and State Anti-Discrimination Laws* at 3-5, 30-31, available at http://www.becketfund.org/files/34a97.pdf ("Issues Brief").

[6] Stern at 31-33 (stating that "[t]he issue of church-school admission policies regarding children with parents in same-sex marriages will also arise," and noting that "Orthodox Jewish schools in New York have been grappling with whether to admit children of single mothers who conceived with assisted reproductive technology").

Second, religious organizations and individuals (or the small businesses that they own) that conscientiously object to same-sex marriage will be labeled as unlawful "discriminators" under state law and thus face a range of penalties at the hands of state agencies and local governments, such as the withdrawal of government benefits or exclusion from government facilities. For example:

- A religious university, hospital, or social service organization that refuses to provide employees with same-sex spousal benefits can be denied access to government contracts or grants on the ground that it is engaged in discrimination that contravenes public policy.[7]

- A religious charity or fraternal organization that opposes same-sex marriage can be denied access to government facilities, such as a lease on government property or participation in a government-sponsored charitable campaign.[8]

- Doctors, psychologists, social workers, counselors and other professionals who conscientiously object to same-sex marriage can have their licenses revoked.[9]

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[7] *See Catholic Charities of Maine* v. *City of Portland*, 304 F. Supp. 2d 77 (D. Me. 2004) (upholding ordinance forcing religious charity either to extend employee spousal benefit programs to registered same-sex couples, or to lose access to all city housing and community development funds); Don Lattin, *Charities Balk at Domestic Partner, Open Meeting Laws*, S.F. CHRON., July 10, 1998, at A-1 (describing how the Salvation Army lost $3.5 million in social service contracts with the City of San Francisco because it refused, on religious grounds, to provide benefits to the same-sex partners of its employees).

[8] *See Evans* v. *City of Berkeley*, 38 Cal.4th 1 (Cal. 2006) (affirming revocation of a boat berth subsidy at public marina due to Boy Scouts' exclusion of atheist and openly gay members); *Cradle of Liberty Council* v. *City of Philadelphia*, 2008 WL 4399025 (E.D. Pa. Sept. 25, 2008) (city terminated a lease with the Boy Scouts based on the Boy Scouts' policies regarding homosexual conduct); *Boy Scouts of America* v. *Wyman*, 335 F.3d 80 (2nd Cir. 2003) (holding that the Boy Scouts may be excluded from the state's workplace charitable contributions campaign for denying membership to openly gay individuals).

[9] Stern at 22-24 (noting that a refusal to provide counseling services to same-sex couples could be "considered a breach of professional standards and therefore grounds for the loss of a professional license"); *see also* Patricia Wen, *"They Cared for the Children": Amid Shifting Social Winds, Catholic Charities Prepares to End Its 103 Years of Finding Homes for Foster Children and Evolving Families*, BOSTON GLOBE, June 25, 2006, at A1 (explaining how Massachusetts threatened to revoke the adoption license of Catholic Charities for refusing on religious grounds to place foster children with same-sex couples); Robin Fretwell Wilson, *A Matter of Conviction: Moral Clashes Over Same-Sex Adoption*, 22 BYU J. PUB. L. 475 (2008) (describing dismissals and resignations of social services workers where conscience protections were not provided).

- Religious fraternal organizations or non-profits that object to same-sex marriage can be denied food service licenses, child-care licenses, or liquor licenses on the ground that they are engaged in unlawful discrimination.[10]

- Religious universities or professional schools can have their accreditation revoked for refusing to recognize the validity of same-sex marriages.[11]

- Church-affiliated organizations can have their tax exempt status stripped because of their conscientious objections to same-sex marriage.[12]

All of these conflicts either did not exist before, or will be significantly intensified after, the legalization of same-sex marriage. It is, of course, impossible to predict the outcome of future litigation over these conflicts, and religious liberty advocates will litigate these claims vigorously under any protections available under state and federal law. At a minimum, however, the volume of new litigation will be immense. And religious liberty advocates can also be expected to sue state and local governments for implementing, or even considering implementing, policies that harm conscientious objectors. Thus, two things are certain: H.B. 436, in its current form, will have numerous unintended and detrimental effects on religious organizations and individuals. And it will spawn years of costly litigation, not only for religious organizations and individuals, but for small businesses owned by conscientious objectors across the state.

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[10] Stern at 19-22 (noting that many state regulators condition licenses on nondiscrimination requirements).

[11] Stern at 23 (describing how religiously affiliated law schools have unsuccessfully challenged diversity standards imposed by the American Bar Association as a condition of accreditation); D. Smith, *Accreditation Committee Decides to Keep Religious Exemption*, 33 MONITOR ON PSYCHOLOGY 1 (Jan. 2002) (describing a proposal of the American Psychology Association to revoke the accreditation of religious colleges and universities that have codes of conduct forbidding homosexual behavior), available at http://www.apa.org/monitor/jan02/exemption.html.

[12] Jill P. Capuzzo, *Group Loses Tax Break Over Gay Union Issue*, N.Y. TIMES, Sept. 18, 2007 (describing the case of *Bernstein* v. *Ocean Grove Camp Meeting Ass'n*, in which the state of New Jersey revoked the property tax exemption of a beach-side pavilion owned and operated by a Methodist Church, because the Church refused on religious grounds to host a same-sex civil union ceremony); Douglas W. Kmiec, Pepperdine Law School, *Same-Sex Marriage and the Coming Antidiscrimination Campaigns Against Religion* in SAME-SEX MARRIAGE AND RELIGIOUS LIBERTY: EMERGING CONFLICTS 107-121 (describing attacks on tax exemptions for religious organizations with objections to same-sex marriage); Jonathan Turley, George Washington University Law School, *An Unholy Union* in SAME-SEX MARRIAGE AND RELIGIOUS LIBERTY: EMERGING CONFLICTS 59-76 (arguing for same-sex marriage but against withdrawal of tax exemptions for religious organizations with conscientious objections)

Inadequacy of the Current Language

Some may argue that H.B. 436 provides sufficient protection for religious conscience because it was amended it to add a section entitled "Affirmation of Freedom of Religion in Marriage." That section (now Section 4 of the Bill) provides that members of the clergy "shall not be obligated or otherwise required by law to officiate at any particular civil marriage or religious rite of marriage in violation of their right to free exercise of religion . . . ."[13] In other words, no clergy member can be forced to officiate at a same-sex marriage.

But with or without Section 4, "[n]o one seriously believes that clergy will be forced, or even asked, to perform marriages that are anathema to them."[14] Such blatant interference with the internal operations of a church would clearly violate the First Amendment. Section 4, then—along with the issue of "forced officiating" that it addresses—is completely unnecessary. It is merely a distraction from the real issues of religious liberty that the General Court should address.

Precedent for providing religious accommodations

This wave of conflict between same-sex marriage and religious liberty is avoidable.[15] But it is avoidable only if the General Court takes the time and effort required to craft the "robust religious-conscience exceptions" to same-sex marriage that leading voices on both sides of the public debate over same-sex marriage have called for.[16]

New Hampshire would not be breaking any new ground by providing religious accommodations. Other states dealing with the same issue have provided religious accommodations broader than those in Section 4 of H.B. 436. In Vermont, for example, when the Legislature recently enacted a same-sex marriage bill, it included several religious-conscience protections, including protections for religious organizations that refuse to provide "services, accommodations, advantages, facilities, goods, or privileges" related to the solemnization or celebration of a marriage.[17] When Connecticut passed

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[13] H.B. 436 § 4, available at http://www.gencourt.state.nh.us/legislation/2009/hb0436.html.

[14] Stern at 1.

[15] *See, e.g.*, Laycock at 192-194 (describing "avoidable conflicts").

[16] David Blankenhorn and Jonathan Rauch, *A Reconciliation on Gay Marriage*, NEW YORK TIMES, Feb. 22, 2009, at WK11, available at http://www.nytimes.com/2009/02/22/opinion/22rauch.html?_r=1 (arguing for recognition of same-sex unions together with religious-conscience protections).

[17] *See* 18 VT. STAT. ANN. § 5144(b) (clergy solemnization); 8 VT. STAT. ANN. § 4501(b) (fraternal benefit societies); 9 VT. STAT. ANN. § 4502(l) (public accommodations laws not applied to accommodations related to the celebration or solemnization of marriage), available at http://www.leg.state.vt.us/docs/2010/bills/Passed/S-115.pdf.

its same-sex marriage bill a few weeks later, it provided additional conscience protections, including protection from "state action to penalize or withhold benefits" from religious organizations,[18] and specific protections for religious organizations that provide "adoption, foster care or social services."[19]

Although Vermont and Connecticut's protections are important, they leave out a number of the foreseeable collisions between same-sex marriage and religious liberty described above. In Connecticut, for example, a Catholic university that offers married-student housing would have to offer housing to married same-sex couples or risk violating state law. Similarly—and sadly—neither state protects individuals or small businesses. So, for example, wedding advisors, photographers, bakers, and caterers who prefer to step aside from same-sex ceremonies for religious reasons receive no protection. Despite these shortcomings, however, the fact that both Vermont and Connecticut adopted conscience protections in their same-sex marriage laws confirms an important principle: the conflicts between same-sex marriage and religious liberty are real, and they deserve legislative attention.

Additional precedent for religious accommodations is contained in New Hampshire's existing laws. For example, New Hampshire's general anti-discrimination laws, including its laws on sexual orientation discrimination, contain important religious-conscience protections for "any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization."[20] Similarly, federal statutes provide protections for religious and conscientious objectors in many different contexts.[21] In short, protecting conscience is very much part of the American, and New Hampshire, tradition. The General Court should make the effort to continue that tradition.

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[18] *See* CONN. PUBLIC ACT 09-13 § 501, available at http://www.cga.ct.gov/2009/AMD/S/2009SB-00899-R00SA-AMD.htm.

[19] *See* CONN. PUBLIC ACT 09-13 § 503, available at http://www.cga.ct.gov/2009/AMD/S/2009SB-00899-R00SC-AMD.htm.

[20] N.H. REV. STAT. ANN. § 354-A:18 ("Nothing contained in this chapter shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.").

[21] 32 C.F.R. § 1630.11 (accommodating conscientious objectors to military service); 42 U.S.C. § 300a-7 (accommodating health care professionals who conscientiously object to participating in medical procedures such as abortion or sterilization); 42 U.S.C. § 2000bb *et seq.* (Religious Freedom Restoration Act lifts government-created burdens on religious exercise).

It can do so by adopting a simple "marriage conscience protection" modeled on the existing conscience protections in New Hampshire's sexual orientation discrimination laws. The "marriage conscience protection" would provide that:

> No individual and no institution or organization entitled to protection under R.S.A. § 354-A:18 shall be penalized or denied benefits under the laws of this state or any subdivision of this state, including but not limited to laws regarding employment discrimination, housing, public accommodations, licensing, government grants or contracts, or tax-exempt status, for refusing to provide services, accommodations, advantages, facilities, goods, or privileges related to the solemnization of any marriage, for refusing to solemnize any marriage, or for refusing to treat as valid any marriage, where such providing, solemnizing, or treating as valid would cause that individual, institution, or organization to violate their sincerely held religious beliefs.

This language has several important benefits. First, as noted above, it is modeled on existing protections in New Hampshire law (§ 354-A:18) for any "religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization."[22] It is also modeled on the protections that Vermont and Connecticut recently enacted in their same-sex marriage laws, which protect the conscientious refusal "to provide services, accommodations, advantages, facilities, goods, or privileges . . . related to the solemnization of a marriage."[23]

Second, it lists the primary areas of law where the refusal to treat a marriage as valid is likely to result in a penalty or denial of benefits ("laws regarding employment discrimination, housing, public accommodations, licensing, government grants or contracts, or tax-exempt status"). Finally, it provides protection only where providing services related to a marriage, solemnizing a marriage, or being forced to treat a marriage as valid would "violate . . . sincerely held religious beliefs." This phrase is drawn from numerous court cases discussing the First Amendment to the U.S. Constitution and ensures that the religious-conscience protection will apply only to a "violation" of "sincere" and "religious" beliefs—not to situations that merely make religious people uncomfortable, not to insincere beliefs asserted as a pretext for discrimination, and not to non-religious moral beliefs.

This "marriage conscience protection" would alleviate the vast majority of conflict between same-sex marriage and religious liberty, while still allowing for full recognition of same-sex marriages. It has ample precedent in both New Hampshire and

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[22] N.H. REV. STAT. ANN. § 354-A:18.

[23] 9 VT. STAT. ANN. § 4502(l) (2009), available at http://www.leg.state.vt.us/docs/2010/bills/Passed/S-115.pdf.

federal law. And it represents the best in the American and New Hampshire tradition of protecting freedom of conscience.

Conclusion

Enacting H.B. 436 without robust religious accommodations will lead to damaging, widespread, and unnecessary conflict between same-sex marriage and religious liberty. The General Court should avoid that conflict by crafting an appropriate religious accommodation provision. On that note, we would welcome any opportunity to provide further information, analysis or testimony to the General Court.

Very truly yours,[24]

Thomas C. Berg
St. Ives Professor
University of St. Thomas
School of Law (Minnesota)

Carl H. Esbeck
Professor of Law
University of Missouri

Robin Fretwell Wilson
Professor of Law
Washington and Lee University
School of Law

Richard W. Garnett
Professor of Law
University of Notre Dame
Law School

[24] Academic affiliation is indicated for identification purposes only. The universities that employ the signers take no position on this or any other bill.

Attachment #4

Good Afternoon

For the record my name is Mo Baxley and I am representing the NH Freedom to Marry Coalition.

We fully support the Governors amendment which protects both individual liberties and religious freedom.

I bring with me today a letter supporting the rights of gays and lesbians to legally marry and the right of religious communities to continue to practice their faith in accordance to their believes.

This letter is signed by leaders of New Hampshire's communities of faith representing The United Church of Christ, Jewish, Episcopal, Congregational, Baptist and Unitarian Universalist faiths and over 700 members of their congregations.

I thank you for your time.

1 min to talk

Ms Bayley
See Attachment #4

Religious Affirmation of Marriage

WE THE UNDERSIGNED, LEADERS OF NEW HAMPSHIRE FAITH COMMUNITIES, DECLARE OUR COMMITMENT TO MARRIAGE, OUR OWN AND OTHERS. The most fundamental of human rights is the right to love and form a family. We believe in the institution of marriage and that our faith calls us to support allowing gay and lesbian couples to participate in the rights and responsibilities of legal marriage.

We respect the fact that the debate and discussion continue in many of our religious communities as to the theological and liturgical issues involved. However, we draw on our many faith traditions to arrive at a common conviction: we are resolved that the State may not favor the convictions of one religious group over another to deny any individual their fundamental rights.

As leaders of communities of faith we commit ourselves to public action, visibility, education and mutual support in the service of the right and freedom to legally marry. We sign below with joyful affirming support for those who wish to make such a lifetime commitment.

Reverend Gary M. Schulte, New Hampshire Conference Minister, United Church of Christ

Rt. Rev. V. Gene Robinson, Episcopal Bishop of New Hampshire

Reverend Tod L. Hall, Vicar, Church Of The Epiphany, Lisbon, NH

Reverend Patricia Dubois, East Congregational United Church of Christ, Concord, NH

Reverend Barbara Luckett Currie, Deering Community Church, Deering, NH

Reverend Canon Charles LaFond, Canon for Congregational Life, The Episcopal Diocese of New Hampshire

Reverend Mark Hamilton, First Church Congregational, Rochetser, NH

Reverend Mary A. James, First Congregational Church of Wakefield, Wakefield, NH

Rabbi Richard L. Klein, Temple Beth Jacob, Concord, NH

Reverend Jane Thickstun, Keene Unitarian Universalist Church, Keene, NH

Reverend Virginia Fryer, Lebanon United Methodist Church, Lebanon, NH

Reverend Barbara McKusick Liscord, Unitarian Universalist Congregation in Milford, Milford, NH

Reverend Jeanne Nieuwejaar, First Unitarian Congregational Society of Wilton, Wilton, NH

Reverend Carol Snow-Asher, Center Harbor Congregational Church, Center Harbor, NH

Reverend David Pendleton, 1st Congregational United Church of Christ, Haverhill, NH

Rabbi Rosenwasser, Temple B'nai Israel, Laconia, NH

Reverend Susan Ackley, Plymouth, NH

Reverend Fran Gardner, St. Barnabas' Episcopal Church, Berlin, NH

Reverend Dawn E. Garrett-Larsen, Nelson Congregational Church, Nelson, NH

Reverend Dr. Judith A. Gooch, Plymouth Congregational United Church of Christ, Plymouth, NH

Reverend Beverly L. Lindsey, Chester Congregational and Baptist Church, Chester, NH

Reverend William E. Exner, St. Matthew's Church Episcopal Church, Goffstown, NH

Reverend Jeffrey D. Thornberg, St. John's Episcopal Church, Portsmouth, NH

Reverend Dr. Guy J.D. Collins, St Thomas Church, Hanover, NH

Reverend Celeste Hemingson, St. Paul's Episcopal Church, Concord, NH

Reverend Kurt C. Wiesner, All Saints' Episcopal Church, Littleton, NH

Reverend Grace Pritchard Burson, Grace Episcopal Church, Manchester, NH

Reverend Kendra Ford, First Unitarian Universalist Society of Exeter, Exeter, NH

Reverend Dr. Leanne Tigert South Church, United Church of Christ, Concord, NH

Reverend Eleanor L. McLaughlin, Ph.D., Randolph, NH

Reverend Caroline Fairless St. Andrews, New London, NH

Reverend Jason Wells, Grace Episcopal Church, Concord, NH

Reverend Carla J. Bailey, The Church of Christ at Dartmouth College, Hanover, NH

Reverend Dr. Teresa Gocha, Plymouth, NH

Rev. Sarah Rockwell, Vicar, St. Peter's Episcopal Church, Londonderry, NH

Rev. Patrice Ficken, Canterbury, NH

Rev. Kimberly S. McKerley, Pilgrim United Church of Christ Brentwood-Kingston Brentwood, NH

Reverend Dr. Mary E. Westfall, Community Church of Durham, Durham, NH

Reverend Dena McPhetres, UU Society of Laconia, Laconia, NH

Reverend Maren C. Tirabassi, Union Congregational United Church of Christ, Madbury, NH

Reverend Dr. Emily Geoghegan, Concord

Reverend Carlos Jauhola-Straight, South Congregational Church, Concord, NH

Reverend Noel Bailey, St. Paul's Episcopal Church, Lancaster, NH

Reverend Charles E. Lindner, M. Div., Lebanon, NH

Reverend Dr. Frank L. Irvine, Jr., South Church, Concord, NH

Reverend Daniel Bernier, Christ Episcopal Church, Portsmouth, NH

Reverend Susan LeSueur, Church of the Transfiguration, Derry, NH

Reverend Curtis Metzger St. Stephen's Episcopal Church, Pittsfield, NH

Reverend Dr. Robert "Odie" Odierna Rector of Church of the Good Shepard, Nashua, NH

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Religious Affirmation of Marriage Equality

WE THE UNDERSIGNED, MEMBERS OF NEW HAMPSHIRE FAITH COMMUNITIES, DECLARE OUR COMMITMENT TO MARRIAGE, OUR OWN AND OTHERS. The most fundamental of human rights is the right to love and form a family. We are people of faith who believe in the institution of marriage and believe that our faith calls us to support allowing gay and lesbian couples to participate in the rights and responsibilities of legal marriage.

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We see the inclusion of gay and lesbian couples as recognition of the underlying values of marriage as an institution. We categorically oppose a Constitutional Amendment that creates a second class status for any group of citizens.

As members of community's of faith we commit ourselves to public action, visibility, education and mutual support in the service of the right and freedom to marry. We sign below with joyful affirming support for those who wish to make such a lifetime commitment.

Name	Address	phone	e-mail	Congregation
The Rev Jane W Van Zandt	58 Hanson Rd Chester NH 03038	954583	episrev@adelphia.net	Manchester Grace Church
✓ The Rev. Richard C.L. Webb	43 Thorndike Pond Rd Jaffrey, NH 03452	532-6672	webbs@cyberportal.net	All Saints' Peterborough
Mary-Lu Schaller	61 Fairview St. Littleton	444-0466		All Saints' Littleton
The Rev. Carleton Schaller Jr.	61 Fairview Street, Littleton, N.H.			All Saints' Littleton.
✓ The Revd Susan L. LeSueur	18 Gaits Dr, Derry NH	(603)216-2625	slesueur@comcast.net	Derry, Transfiguration
✓ Ursula W. Keller	229 Shore Drive Laconia NH	03246		
✓ The Rev. Sally Hague	PO Box 1680 Grantham	03753	(603-863-1150 hagues1<@aol.co	
✓ The Rev. Daniel Fenn	1465 Hooksett Rd #280 Hooksett NH	03106	fennyd@aol.com	
The Rev. Scott W. Gleeson	206 Coburn Woods, Nashua NH	03063		Grace, East Concord
✓ The Rev. William Exner	19 West Main St, Goffstown	03045		St. Matthews Goffstown
The Rev. Willis Otterp	83 Irving Dr. Weare NH		deaconwill@comcast.net	Hopkinton
Linda M. Otterp	83 Irving Dr. Weare NH 03281		pchet-linda@comcast.net	Hopkinton

Religious Affirmation of Marriage Equality

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Name	Address	e-mail	Congregation
Beth Diamond	18 Linden St Exeter	BethDiamond1@AOL.com	FUSE
Edward N. Caylor	158 Woodland Road, Hampton	e_caylor@comcast.net	FUSE
Janet M. Caylor	158 Woodland Road, Hampton	janetcaylor@hotmail.com	FUSE
Tom Hanson	3 Fox Chapel Ct, Exeter NH	03833@comcast.NET	FUSE
Richard Sawler	34 Johnson Drive Newmarket NH	03857	FUSE
Malcolm E. Wetherbee	24 String Bridge, Exeter, NH.	03833	fuse
Helen Kruppa	27 Captain's Way Exeter, NH	03833	FUSE
Diane Dunn	P.O. Box 1143 Hampton NH	03843	FUSE
Patricia Josa	24 String Bridge, Exeter	03833 pyosha@comcast.net	FUSE
Zachary J Morris	22 Victoria Dr, Hampton Falls NH	03844 zje2@unh.edu	Fuse
Greg Frazar	2 Millstream Drive Exeter, NH 03833	[redacted]	FUSE

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Name	Address	e-mail	Congregation
Kathy Sawler	37 Johnson Dr Newmarket NH 03857	KSawler@kw.com	FUSE
✓Donna Schlachman	2 Longley Ave. Exeter		First Unitarian
Jennifer Morriss	22 Victoria Drive Hampton Falls NH		First Unitarian Society of Exeter
Dixon Hummel	54 Columbus Ave Exeter		FUSE
✓Margery Prazar	2 Millstream Dr. Exeter NH 03833		First Unitarian Society of Exeter
Bob McConnell	10 Northrup Drive, Brentwood, NH 03833		F.U.S.E.
Kathleen J. Bear	#17 21 Manson ave Kittery ME 03904		FUSE
Susan McConnell	10 Northrup Dr. Brentwood NH 03833		F.U.S.E.
Paula Wall	84 North Rd. Fremont NH 03044		Fuse Next
Miranda Lam	40 Exeter Farms Road, Exeter N/H 03833		FUSE
John Morgenthau	7 Riverwoods Dr. F-206, Exeter, N.H.		F.U.S.E.
Bob Moore	38 Andrews Lane East Kingston, NH 03827		F.U.S.E.

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Name	Address	phone	e-mail	Congregation
		225-0596	JLemeland@aol.com	
Jane B. Lemeland	38 Auburn St. Concord			UU Concord
DARLENE OLIVO	38 A KIMBALL ST CONCORD	226-4033	WRITE_ART@YAHOO	UU Conc
Barbara Stewart	3 Griffin Road Epsom, NH 03234	300-9238	barbaraghstewart @gmail.com	UU Concord
WAYNE FREY	26 CONCORD St. CONCORD NH			UU CONCORD
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Marilyn Knight	66 Bear Hill Rd Henniker NH 03242-3322	428-7313		UU Concord
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Tom Morse	12 Darnell Dr. Concord, NH 03301			St. Paul's Episcopal Concord
Margaret Copley	Franklin, NH			U.U. Concord
Sara McNeil	25 Old Main Rd - Warner, NH			UU Concord
Ann Kontak	3 Wilfred Ave. Concord, NH		ann.kontak@verizon.net	

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Beth Gabrielli	10 Via Tranquilla Concord		e.gabrielli@comcast.net	Concord

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Name	Address	phone	e-mail	Congregation
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Elaine S. Pinkham		224-5069	ESPinkham@aol.com	Concord UU
Jan Hutchinson		219 0564	bjhutch35@yahoo.com	Concord UU
Nancy M. Wood	84 Branch Tpk unit 79	228-5457	NW0056@comcast.net	Concord UU
Betsy Peabody	#181 169 Portsmouth St. Concord NH	545-1844		Concord UU
Dr. Eberhart	94 Indian Ridge Rd. Contoocook, NH	223-7985	LBEMSW@yahoo.com	Concord UU
Dorothy G. Doyle	149 East Side Dr Concord 03301			
Betty B Eberhart	4 70 Gould Hill 03229			Contoocook
Rev. Ward [illegible]	274 Pleasant St Concord, NH 03301			Concord UU
Hanna M. Harleigh	#181 169 Portsmouth, St. Concord NH 03301	545-1845		Concord UU
Linda Hatchett	38 Tanglewood Dr Henniker NH 03242	428-0440	lhatchett@goffstown.k12.nh.us	Concord UU
John L Hatchett	38 Tanglewood Dr. Henniker NH 03242	428-6400	jlhatchett@mac.com	Concord UU

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Nancy Morse	12 Dwinell Dr. Concord 03301			UU-Concord
Thomas W. Morse	12 Dwinell Dr. Concord 03301			St. Paul's Episcopal, Concord
Sara McNeil	25 Old Main Rd. - Warner 03278			UU - Concord
Abby Whitcom	5 Jordan Ave, Concord			UU-Concord
MARIAN Stanton	P.O Box 495 Concord 03301			UU. - Concord
M Brunette	56 Auburn	226 9151		UU Concord
Barbara Ellard (Richard)	112 Old Yennicken Rd Hopkinton			UU Concord
Susan Mairlender	32 Bink Rd Wilmot, NH	603-526-5904	(Susan Mairlender)	
Art Mairlender	32 BANK RD WILMOT NH	603 526-5904	(Art mairlender)	
Monica Terkow (Terkow)	5335 Main Manchester, NH	mhtkw@comcast.net		UUC Concord
Greg Terkow	203 Louden Rd Apt 207 Concord NH 03301			UUC Concord NH

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Kirsten Walling	211 Brodeway Rd Hopkinton	223-2340	wallingkr@aol.com	Concord UU
Laurel Horne	16 Kimball St	227-9374		Concord UU
CHRIS SOULE	91 PAGE RD	224-8485	chrissoule@comcast.net	Concord UU
Betsy Peabody (Felts)	#181 169 Portsmouth St.	224-2876	betspeabo@aol.com	Concord UU
Susan Fultz	1587 Hopkinton Rd (Hipkiss)	746-2293		Concord UU
Leslie Ring	166 Hutchins Hill Rd Hopkinton (Ring)	225-9806		Concord UU
Mary Babineau / Beaver Brook Dr	(Babineau) Bow NH	225 9681		Concord UU
Laura Kinson	35 Stone St.	224-5751	—	concord UU
Gail Smuda	28 Allerton St. Concord	228 1276	FEMART NH @ YAHOO	Concord UU
Tondy McGowan	1191 Gorham Pond Rd. Dunbarton	497.2287		Concord UU
Becky Hadley	11022 montalona Rd	603-774-5489	Dunbarton NH	Concord UU
John Tobin	60 Stone St Concord NH 03330	225-1102	jtobinjr@comcast.net	Concord UU

Religious Affirmation of Marriage Equality

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As members of community's of faith we commit ourselves to public action, visibility, education and mutual support in the service of the right and freedom to marry. We sign below with joyful affirming support for those who wish to make such a lifetime commitment.

Name	Address	phone	e-mail	Congregation
Marjorie S. Waters	14 Wages Street Concord NH			UU Concord
Elizabeth Gabrielli	40 Via Tranquilla Concord NH			UU Concord
Jane Austin	149 E Side Dr.			Concord
David Barth	307 Snow Rd North Field NH 03276	6302873	hadleybarth@hotmail.com	"
Laurie Silkworth Drury	57 Albin Rd. Bow, NH 03301	603-225-7913	MOMTECATE@aol.com	UU Concord
Abe D. Wahle	149 Eastside Drive Concord, N.H. 03303			
Richard Blood	43 Eastman St. Concord NH 03301			UU Concord
JEAN REYNOLDS	26 CONCORD ST. CONCORD, NH 03301	225-2629	JEANRYNLDS@AOL.COM	UU CONCORD
Scott Mayo	80 Kearsarge Ave. Contoocook	746-4494		UU Concord, NH

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Name	Address	phone	e-mail	Congregation
Crystal Kennard	20 concord gardens apt	731-4184		UU church
Mary Sawyer	7 Ames Keag Rd		msayer@comcast.net	
Dick de Sève	80 Lakes Lore Dr Gilmanton	03237	267-6672	hawkwtchr@aol.com Concord UU
Douglas Wecksteina (Lilo Masters)	11 Timins Rd Bow,	224-6603,	dwecksteina@comcast.net	Concord UU
Lilo Masters	73 CURRIER, CONC.	LMASTERS30@aol		UU
Hazel Zimmer	65 Shore Dr.	524-3620	lwynn@metrocast.net	not UU Laconia
Marcy Charette (Marcy Charette)	125 Fowler Rd, Concord			UU Concord
Marli Tamsen (Marli Townsend)	50 Hunting Rd Concord			UU Concord

[redacted]

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Name	Address	phone	e-mail	Congregation
Jessica Ell	9 Weston Rd Belmont	524.1422		AT OM
[illegible]	149 E. Side Dr Concord	225-2360	imips@totalnh.net	UMC
Frank Irvine	39 Mountain Rd Concord NH		firvine@comcast.net	So Congregational
Matthew Schofield	25 Central Rd. Rye, NH			
Martha Bauer	158 Amesbury Rd Contoocook NH			
Janet Copestakes (Copestakes)	149 Mountain Rd Concord 03301			
Karen Ryan (Karen Ryan)	60 Stone St. Concord, NH 03301			Concord
Alexander Wilson (Alexander Wilson)	42 Joanne Dr Hooksett NH 03106		wilsmat@comcast.net	Concord
Rachel Allen Parsons	121 Newmarket Rd Warner NH	456-3611	—	UU Church Concord NH
Miriam Holt	4 Amoskeag Rd Concord 03301			UU Church - Concord
Julie Fowler	Oneida St Pittsfield NH	435-8605		UU Church - Concord
Parker Colby (Parker Colby)	149 East Side Dr 181	224 2478		" " "

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Name	Address	phone	e-mail	Congregation
Nancy (Weckstein)	11 Timmins RD Bow, NH 03304			Concord UU Church

[redacted]

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Name	Address	phone	e-mail	Congregation
(Joanna Henderson)		746-3396		
✓ Joanna Henderson	466 Penacook Rd, Hopkinton, NH	(603) 630-1872		Concord UU
✓ [illegible]	307 Shaw Rd Northfield		Hadley Barth hadleybarth@hotmail.com	Concord UU
(Ron Fowler)				
✓ [illegible]	ONEIDA JT			PITTSFIELD N.H
✓ (Craig Blowin)				
Craig J. Blowin	7 Checkerberry Ln Henniker			Concord U-U
(Patricia Dahme)				
[illegible]	104 School St	2252985		Concord UU
(Eric Halter)				
✓ [illegible]	51 NAVES ST CONCORD	223-6979		CONCORD UU
(Annicchiarico)				
Michael Annicchiarico	514 N. State St. Concord	225-6263		Concord UU
(Karen M. mayo)				
Karen M Mayo	80 Kenesaw Ave Contoocook NH	03229 746-4494		Concord UU
(Bob Gabrielli)				
BOB GABRIELLI	40 VIA TRANQUILLA CONCORD NH		BGABRIELLI@comcast.net	
WILLIAM C. ALLEN	129 FISHERVILLE RD. #23 CONCORD NH 03303	603-228-9187	wmcallen@comcast.net	CONCORD UU

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Name	Address	phone	e-mail	Congregation
John Warner	4 School St., Warner NH	456-2740	jwjarner@worldnet.att.net	Concord UU
Nancy M. Wood	84 Branch Tpke #79 Concord NH	228-5457	NWood56@comcast.net	UU Concord
Susan (Koerber) Koerber	31 Stark Hwy N Dunbarton NH 03046	774-4512	SKoerber@ssinet.net	UU Concord
Barbara G.H. Stewart	3 Griffin Road Epsom, NH 03234	300-9238	barbdave@polyroll.com	UU Concord
Anne Dupre	1 Johnson Ave Concord NH	225 9891	bluesky-3@verizon.net	UU Concord
Denise Elswick	180 Spring St Contoocook NH 03229	746-2205	virginiaholly57@hotmail.com	Concord UU
Mary (Mary) (McCarthy) McCarthy-Tuttle	5 Riverrd 03242 Henniker, NH			Concord UU
Linda Hatchett	38 Danglewood Dr Henniker, NH		lhatchett@goffstown.k12.nh.us	Concord UU
Barbara Kise	17 Shupt St. Concord NH			UUC
Margaret Copeley	352 Prospect St. Franklin	224-7055		UU Concord
Kristin Nelson	46 Allison St. Concord NH		KLN75A@AOL.COM	UU Concord
Peg Gross	7 Sunset Ave. Concord, N.H.			

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Name	Address	phone	e-mail	Congregation
Kay Whitman	9 Wiggin St Concord	226-1920		Concord UU
Patricia Lodi (Lodi) (A.D.)	29 Rockingham St. Concord	224-6111		Concord UU
Ward Copeland Co	149 Manchester Rd Concord	224-9692		UU Concord
Matt Soule	149 Manchester Rd Concord			Concord UU
Deanne Harleigh	169 Portsmouth St. #181	224-2846		Concord UU
Ken Koerber	31 S. Stark Hwy North Dunbarton	774-4512	KCKOERBER@GSINET.NET	cc
Laurel Adams (Anderson) & Susan Laney	Concord			Concord
Rick L Mitchell	PO Box 164 Ctr. Barnstead	590-0934		Concord UU
Marianne Fleischman	8 Deer Track Lane Concord, NH 03301	224-7572		Concord UU
Anne Kontak	3 Wilfred Ave Concord, NH 03301	226-4413		Concord, UU
Robert B. Williams Jr.	110 King Rd Chichester NH 03258	798-5919		Concord UU

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Name	Address	phone	e-mail	Congregation
Stacey Graham	122 Pleasant St Concord NH 03301	816-419-2132	sgraham@pierceslaw.edu.	
Joan N. Harris	981 Loudon Rd. Hopkinton NH 03229	603-225-7468		
(Norman) Norman D. Harris	" "	"	"	
Darlene Olivo	53 Autumn St Concord, NH 03301	226-4033	dholivo@i-55.com	Concord UU
Lorraine Ellis	69 Spring St, Contoocook NH	746-6170		Concord UU
Linda Demelin Williams	110 King Rd Chichester NH 03258		Lnilemud@msn.com	Concord UU
LORNA LANDRY	35 Bow Center Rd Bow NH			Concord UU
Shelley Randall	2 Holt St. Concord, NH 03301			Concord UU
Ginnie Warner	41 School St., Warner, NH. 03278			Concord UU
ANNE LA FORCE	64 RIDGE ROAD CONCORD NH			CONCORD UU

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Bill Rogers	159 Gorham Rd, Epsom, NH 03234	(603) 340-3952	wrogers@metrocast.net	Concord, UU
Judy Gilman	28 Warren St A2 Conc 03301	603-224-1969		Concord UU
(Lisa) Liza D. Eberhart	94 Indian Ridge, Contoocook, NH 03301	603 225 2985	lbcmsw@yahoo.com	Concord UU
Schuyler Merritt	64 Perley St #1, Concord, NH 03301	603 228-4551		Concord UU
Patricia (Bass) Bass	39 Via Tranquilla Conc NH 03301	603 224-4308		"
Paul N. Morgan	1507 Alton Woods 03301		MorganPaul1WBH@hotmail.com	Concord UU
(Betz) Carolyn N. Betz	124 Rowe Mtn Rd. Bradford NH 03221			Concord UU.
Abigail Charbeneau	41 Concord St 03301	715 1313		" "
Brian Kugel	104 School St Concord NH 03301	228 9192	bckug@amcast.net	UU
CRAIG WHITSON	5 JORDAN AVE. CONCORD NH 03301			
WAYNE FREY	26 Concord St Concord, NH 03301			Concord UU
(Creed) Catherine Creep	576 Kearsarge Warner, NH			Concord UU

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Name	Address	phone	e-mail	Congregation
	P.O. Box 320	603-568-5769		Concord
Vicki Johnson	Concord NH 03302		hjohnson919@comcast.net	
Pat Hoertdoerfer (Hoertdoerfer)	3 Echo Lane Henniker, NH 03242		Phantdoerfer@ma.rr.com	
Lisa Williams	19 1/2 Dakin St, Concord	715-5577		UU Concord
Gail Rider	12 Blevens Dr Concord			UU
Carolyn Scheiner (Carolyn)	109 School St Concord			UU
Diane Pinkham (Elaine Pinkham)	65 Apple Tree Lane Hopkinton			

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Paul Cote	70 Sherwood Forest Exeter	pcote308@comcast.net	
Rae Kalish	7 Riverbank Dr.	roselle79@earthlink.net	
Jay Reiter	16 Prescott St Newmarket	JayPhotos@TCQ.NET	
Steven Vogl	40 Langdale Dr. Hampton	SVogl@comcast.net	FUSE
Laura E. Marshall	20 Main St., Exeter, NH	lemarshall@exeter.edu	FUSE
Jean Rowley	61 Main St, Epsom, NH	jcrowley@ttlc.net	
Vandy Duffy	P.O. Box 125, Exeter, NH		FUSE
Linda Hudson	3 Glendale Rd. No Hampton NH		FUSE
Peg Goddard	210 Cushing Rd.	pjpgoddard@comcast.net	Newmarket UU Church
Elizabeth D Blanton	10 Chestnut St. #1304,	Exeter	FUSE

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Name	Address	e-mail	Congregation
Susan gorman	19 garfield Exeter	susan@susangorman.net	FUSE
Peter Degnan	2 Fox Chapel Ct Exeter	ahpd@hotmail.com	FUSE
Keith Lanigan	77 Priest Road, N. Hampton	KeithRemichaelHackman.	
Douglas Flockhart	62 Park Ct. Exeter	hartflock@comcast.net	FUSE
Margaret N. Kuliga	35B Charter St. Exeter	Kuligasadventure@aol.com	FUSE
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James Schlough	21 William Circle, Stratham	Schlough@comcast.net	FUSE
Holly Westerdale	234 North Rd. Fremont, NH	holly-thewritehand@comcast.net	
Adrienne R. Drennan	24 Captain's Way Exeter NH	—	FUSE
Barbara Rinkunas	15 Cass St. Exeter, NH		First Unitarian Society of Exeter
James G Morris	22 Victoria Dr Hampton Falls NH 03844		FUSE
SARAH JAMES	70 COURT St Exeter NH	03833	FUSE

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Name Address phone e-mail
Congregation

UUFES

Suzanne Federer Kearsarge NH

Andrea R. Walsh PO Box 2280 Conway NH 03818

Donna Polhamus PO Box 101 Tamworth, NH 03886 603 323-7391

Mary Edes PO Box 121 Silver Lake, NH 03875 603 367 9420

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Gail Munroe 57 Fawn Dr. Silverlake, NH 03875

Stephen A. Rull, M.D. P.O. Box 12, Silver Lake, N.H. 03875 603-367-9420 REVMKE@MAC.COM

Lisa Lee 274 W Bay Freedom NH 6035394543

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Deborah Cary 34 Barker Pole Rd Meredith Lake, NH 569-4654 cary@worldpath.net

Lu Greenwood PO Box 1110 N Conway NH 03860 3566707

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Gretchen Cherington	PO Box 126 Meriden, NH	603-298-5396	gc.consulting@valley.net	Meriden
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Penny Arcone	PO Box 235 Meriden NH	03770		Meriden
Rev. Robyn Carpenter	P.O. Box 233 Plainfield NH	03781		Plainfield
Rev. Susan Gregory Davis	Box 391 Meriden NH	03770		Meriden
Rigel Gable	510 saint gaudens rd cornish NH	03745		Meriden
Rev Charlotte Hoerde	Gurney	Sullivan I		

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(Annicchiarico) Jason Annicchiarico	514 N State St. Concord NH	225-6262		bancoal comcast.ne
(Marcel Duhamel) Rev. Marcel P. Duhamel	32 Depot Hill Rd Hennicker, NH	428-4310		Concord UU
(Dorothy) Dorothy Robinson	P.O. Box 2931 Concord NH	824-1264		Concord UU
Missy Long	11020 Montclona	Dunbarton NH 03046		Unitarian
Linda Ashford	91 Page Rd Bow, NH	224 8955	lashford@ashfordlaw.info	UU
(Colby) Eleanor Colby	149 East Side Dr. Concord NH			UU
Lois Brown	149 East Side Dr #310 Concord NH	(603) 226-4856		UU Concord
Amy Sheridan	51 Noyes St, Concord NH			UU-Concord
(Drury) Ed Drury	57 Albin Rd Bow NH	225-7913		UU Conc.
Julie Lombard	106 W. Parish Rd Concord, NH	228-6831		UU Concord
ANNALEE LOMBARD	(SAME AS ABOVE)			(child)
(Savitcer) Susan M Savitcer	418 Rollins Rd	Hopkinton NH	0062997	UU-C

Religious Affirmation of Marriage Equality

WE THE UNDERSIGNED, MEMBERS OF NEW HAMPSHIRE FAITH COMMUNITIES, DECLARE OUR COMMITMENT TO MARRIAGE, OUR OWN AND OTHERS. The most fundamental of human rights is the right to love and form a family. We are people of faith who believe in the institution of marriage and believe that our faith calls us to support allowing gay and lesbian couples to participate in the rights and responsibilities of legal marriage.

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As members of community's of faith we commit ourselves to public action, visibility, education and mutual support in the service of the right and freedom to marry. We sign below with joyful affirming support for those who wish to make such a lifetime commitment.

Name	Address	phone	e-mail	Congregation
Nancy J.B. Franklin	141 River Rd - Plainfield	298-8519	nancy.j.franklin@valley.net	Meriden Congregational Church
[illegible]	143 Colby Hill Rd. Meriden NH			Hanover Friend
Judith Pettengill	13 Woodmere Dr., Hanover NH	643-2164		Hanover Friends Mtg
Maureen Gordevin	141 Loomis Rd Plainfield, NH	603-469-3512		Meriden Cong. Church
Judith A. Hovde Hardy	92 Grantham Mt. Rd. Meriden, NH	6034693939		MCC
Mary E Hovde	121 Grantham Mt. Road Meriden, NH	469-3807		MCC
Tarri Crane	121 Grantham Mt. Rd Meriden, NH	469-3807		MCC

M

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Name	Address	phone	e-mail	Congregation
Rev. John M. Gregory-Davis	Po Box 391 Meriden, NH 03770	469-3234	Mer.Con@Valley.Net	
Hadley Pensgen	520 N. Raquette Rd. Massena, NY	315-764-7610		
Diane Minard	718 Willow Brook Rd Plainfield NH 03781	603-987-7788		
Thom Wolke	729 Stage Rd Plainfield, NH 03781			
William Chappelle	17 Rocky Hill Way #254 Enfield NH 03748		billchappelle@earthlink	
Jane D. Gibson	42 Mechanic St. - Lebanon, N.H.	448-2527		
Laine Gillespie	17 Rocky Hill Way #254 Enfield NH 03748			
Christine Greenough	134 Main St. P.O. Box 205, Meriden	469-3590		UCC
Glen Greenough	" "			"
DONNA BEAUPRE	20 GRANTHAM RD MERIDEN NH	469-3425		
STEPHEN BEAUPRE	20 Grantham Rd. Meriden NH	469-3425		
Elaine Lenz	Box 278, Meriden, N.H. 03770			

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Name	Address	phone	e-mail	Congregation
Charles B Higgins	176 Wentworth Rd Danbury NH 03230	7683374		South Danbury NH
Calvin F Dpitz	34 Cloutier Rd Danbury NH	768-3874	opitz @ alum. mit.edu	" " "
Linda Kunhardt	PO Box 271 Ctr. Sandwich NH	284-6171	redrock@corpresources.net	"
[illegible]	32 Montirello Dr Andover NH 03216	735-5528		South Danbury
Mary Lynch	5 Montirello Dr. Andover NH 03216			" "
Janet Ashburn	Box 116	Milton, NH		South Danbury, NH
Nancy Roberts	528 Kinsman Rd. Grafton, NH. 03240			
Jeremy A Opitz	34 Cloutier Rd Danbury, NH. 03230			
Linda Rayhill	310 Walker Brook Road South Danbury NH 03230			
Virginia P. Higgins	176 Wentworth Rd.		Danbury NH	03230
Audrey Curren	Box 360		Danbury NH	03230

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Name	Address	phone	e-mail	Congregation
	279 Elm St.	603-722-8585		St. John the Baptist
✓ THE REV. PETER FAAS	SANBORNVILLE, N.H.	03872	REVFAAS@AOL.COM	
✓ Dorothy A Whittaker	1788 Vt Route 102 Brunswick VT 05905	802-962-3351		St Pauls Lancaster NH 03584
The Rev John Leslie	67 Ridge Rd Concord NH 03301	224-3131		St Paul's Concord
✓ The Rev. Heidi Frantzdale	247 Pound Rd Madison NH	frantzdale@mindspring.com 367-8220		St Andrew's Tamworth.
✓ Duane D. Dale	247 Pound Rd. Madison NH	603-367-8220 ddale@DFDassociates.com		St. Andrew's Tamworth
✓ The Rev. Anne S. L. Webb	43 Thornelike Pond Rd, Gilford, NH 03452			
✓ The Rev. John T.P. Jackson	41 Gore Rd, Lancaster NH 03584			
✓ W. Anne Jackson	41 Gore Rd. Lancaster NH 03584	jtpj@earthlink.net		St. Pauls
✓ Jane Gledden	206 Coburn Woods - Nashua, NH			Grace East Concord
(Peter) Brendan Whittaker	1788 VT RT 102 Brunswick VT 05905			St. Luke - Woodsville
✓ The Rev Reverend Gurney	Episcopal Church of the Messiah			No. Woodstock

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Name	Address	phone	e-mail	Congregation
Rev Reo Clawson McLane	1638 Hebron Randolph	466-5980	revmcclanes@ncia.net	St. Barnabas Berlin
Nathan Morin	54 Whitehouse Ave Berlin	603-752-3569	ndmorin@lycos.com	St. Barnabas
Sherry Hinton	174 Blanchard St.	6037525764	sherryuhinne@yahoo	St. Barnabas
michael Lambert	60 Main North Road Hooksett NH 03106	603 396 6311		
Brett Greenwood	174 Blanchard st.	603-752-5764		St. Barnabas
Wally Bibbey	6 Norman Ave - Gorham -	603-466-3468		St. BARNABAS.
Cynthia Morin	54 Whitehouse Ave	Berlin	603-752-7362	

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Name	Address	phone	e-mail	Congregation
Wendy Olson	13 Winterberry Ln Penacook	603-753-0168	wmo8080@comcast.net	UU Franklin
[illegible]	13 Winterberry Ln Penacook, NH	603-753-0168	MMN0221@Comcast.net	UU Frankl
Phyllis Tucker	61 Pinewood Dr	603 542-0241	prat@earthlink.net	UU Franklin
Barbara Sen	PO Box 359, Contoocook, NH 03229			UU. Conc.
[illegible]	PO Box 133, Sanbornton, NH 03269			UU Franklin
[illegible]	4 Washington Ave Franklin, NH 03235			UUC Franklin
[illegible]	116 South Main St Franklin, NH 03235	603 934 3030	[redacted]	UU Fran
[illegible]	116 S. main Franklin N.H.	(603) 254-6145	jra715@yahoo.com	U.U. I VOTE!
Jennifer Anderson	2462 B River Rd. Bridgewater NH 03264			UU Franklin
Coral Theberge	41 Edwards St. Franklin NH 03276			UU Franklin
[illegible]	1146 New Hampton Road, Sanbornton NH 03269			UU
Benjamin Del Frari	41 Windsong Pl Meredith, NH 03253		bdelfrari@yahoo.com	UU Franklin

Rev. Dr. Therese Baumberger	109 Pleasant St Franklin NH 03235		Net-tess@ubunzan.net	UU Franklin

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Name	Address	phone	e-mail	Congregation
Marjorie Matthews / Marjorie Matthews	1 N. Balch St., Hanover	643-5517	Marjorie.Matthews@valley.net	St. Barnabas
James Matthews	1 N. Balch St. Hanover	643-5517	matthews@mac.com	St. Barnabas
J. Peter Williamson	P.O. Box 222 Etna	643-5225		St. Barnabas
Margaret Green	3 Bridgman Rd, Hanover	643-2404	gr@dartmouth.edu	St. B.
Ann Bz Ster	POB 293, New London, NH 03257		astedu@colby-sawyer.edu	St. Barnabas
Frederick Specht	PO Box 293, New London, NH 03257			St. Barnabas
Augusta Prince	80 Lyme Rd., Hanover, NH 03755			St. Barnabas
George F. Clabaugh	80 Lyme Rd. Hanover, NH 03755			St. Barnabas
Josephine S. Bruce	80 Lyme Rd. Hanover, NH 03755			St. Barnabas
[illegible]	[illegible] Hanover NH			St. Barnabas
(Thekla) Beth Hilgartner	126 Orfordville Rd. Orford, NH 03777			

NHFTM PO BOX 4064 CONCORD NH 03302 223-0309 INFO@NHFTM.ORG WWW.NHFTM.ORG

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The Rev James Allen	229 Shore Dr, Laconia		carleanem@metrocast.net	St Stephen's, Pittsfield
The Rev John LeSueur	18 Guita Dr Derry, NH 03038	603-216-7675	LeSueurJ@Comcast.net	Faith Merrimack
The Rev. W. Allan Knight	58 Hanson Rd. Chester, NH 03036	603 845-4583	allan65050@adelphia.net	Grace Church Manchester
The Rev. Mary Adebonojo	50 Bagdad Rd Durham NH	(603) 868-5318		St George's Durham
Wayne D. Shirley	50 Bagdad Road Durham NH	(603) 868-5318		St. George's Durham
The Rev Robin Thomas Soller	PO Box 635 Meredith NH 03253			Trinity, Meredith
The Rev. Sarah Rockwell	10 Pond Rd. Derry, NH 03038			St. Peter's, Londonderry
The Rev. Canon Martha F. Dyner	PO Box 347, Charlestown NH 03603			St. Luke's Charlestown Union, W. Claremont
Elizabeth P. Hess	38 Nekal Ln. Randolph 03593	466-5718	mcdess@ncia.net	St Barnabas, Berlin
Thomas S Tuthill	PO Box 1063 New London	763 9036	centralofe tds.net	St Andrews
The Rev Cricket Cooper	52 Gould Rd New London NH		cricket@standrewsnl.org	
The Rev Amanda K Stott	17 A Stark St, Nashua, NH 03064			Good Shepherd, Nashua

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Name	Address	phone	e-mail	Congregation
Mary LeRoy	P.O. Box 186 Center Harbor			UU Cong. Franklin
Susan Haines	7271 Pleasant St. Loudon, N.H.			UUCF
Kristen Wilder	1146 New Hampton Rd. Sanbornton, NH			UUCF
Joyce Turgeon	402 Hill Rd. Franklin NH			UUCF
Margaret Chicklas	14 Solar Acres Rd. Alexandria NH 03222			UUCF
Steve Pheberge	41 Edward St.	Franklin NH	03235	
David Strohmeyer	178 S Main	Franklin		UUCF
Neal Rath	447 Calef Hill Rd	Sanbornton	NH	UU Cong Ecu
Donna Baker-Hartwell	222 Tucker Mt. Rd.	E. Andover, NH	03231	
Lindley Kynerich	132 Hermit Woods Rd	Sanbornton NH	03269	UUCF
Pauline Crabb	PO Box 133 83 Stage Rd	Sanbornton	NH 03269	#133
Cindy Taylor	713 Hill Rd.	Franklin, NH	03235	UU Franklin,

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Stephanie VanHorn	Franklin NH	934-9210	stephanievh@copper.net	UUCF *
Kathlene Fleckenstein	71 Salisbury Rd Franklin, NH	934-6037	supermule@earthlink.net	Unitarian Universalist Congregation of Franklin
Vincent S. Ribas	4 Washington Ave Franklin NH	934-5330	Vince_Ribas@Hotmail.com	UUCF
Elin Shartar	51 Main St New Hampton, NH	630-1690		UUCF
MaryAnn Schmidl	20 Heron Hill Rd Salisbury	648-6886		UUCF
Susan Scott	285 Main Franklin	934-3287		UUCF
Sheryl Anderson	447 Calef Hill Rd. Sanbornton, NH	9345467		UUCF
Mary A. Robinson	385 W. Main St.	Tilton, NH	286-8517	UUCF
Beth Robinson	385 W. Main St.	Tilton, NH	286-8517	UUCF
Barbara Freeman	382 Chase Hill Rd	Andover NH	934-2442	UUCF
Joseph Schmidl	267 Hemenway Road Salisbury	603/648-6886	joe@blackwaterenvironmental.com	UUCF
Christine Peffer	1046 New Hampton Rd.	Sanbornton, NH		UUCF

* Unitarian Universalist Congregation of Franklin

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Lee Marcroft	54 Apple Way, Weare	603-529-2863	LMARC122@Earthlink.com	UCC Deering
Jim Carpenter	4 C E DEERING RD DEERING	603-529-2963	"	UCC DEERING
Donald Johnson	Deering	6035292764	DJJ1@nyu.edu.	UCC Deering
Lynn R. Huggard	Deering	603 464-4781		UCC Deering
Donald P. Kelly	6 CHAMBERLIN CT., SUITE 44, DEERING	464-4223	and2boiledeggs@Yahoo	"
Christine Marcroft	54 Apple Way Weare, NH	603-529-2863	LMARC122@Earthlink.net	UCC Deering
Suzanne Huggard	Deering	603-464-4781 / 603 529-2064		UCC Deering
Christine Hague	35 Abijah Bridge Rd Weare NH	03281	pastorbarbara2003@yahoo.com	UCC Deering
Barbara Curtis	6 Emerald Dr., Hillsboro, NH			Deering@C
Gayle J. Waters	189 Clement Hill Rd, Deering, NH	03244		"
Jane H. Waters	" " "	"		
Priscilla E. Beaudrault	61 Sawyer Rd. Weare, NH			

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Name Address phone e-mail
Congregation

UUFES

Suzanne Federer Kearsarge NH

Andrea L. Walsh PO Box 2280 Conway NH 03818

Donna Polhamus PO Box 101 Tamworth, NH 03886 603 323-7591

Mary Edes PO Box 121 Silver Lake, NH 03875 603 367 9420

James H Clemens PO Box 201 Freedom, NH 03836 603 539 7119

Gail Munroe 57 Fawn Dr. Silverlake, NH 03875

Stephen A. Rull, M.D. P.O. Box 121, Silver Lake, N.H. 03875 603-367-9420 REVRGE@MAC.COM

Lisa Lee 274 W Bay Freedom NH 603 539 4543

Bobbi A. Hoyt 54 Long Sands Rd. Ossipee 03814

Deborah Cary 34 Barber Pole Rd Moultonborough 569-4654 cary@worldpath

Ann Greenwood PO Box 1110 N Conway NH 03860 356 6707

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Karen Wade	229 Old St Rd			U.C.C-Deering
Charlotte J. Price	92 Pondview Rd.			UCC Deering
Bryan Terry	220 E. Deering Rd · Deering, NH 03244			ucc. Deering

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Sally Thacher	PO Box 434 Dublin 03444	603-563-8959	—	Dublin Comm. Church
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Nancy Crawford	194 Boulder dr. Dublin	603 563-8021	necrawford@verizon.net	" "
JP Crawford	" " " "	563-5010	—	" "
Emily Benger	PO Box 392 Dublin NH 03444			
[illegible]	PO Box 303 Dublin, NH 03444	563-8911		"
[illegible]	716 Main St.			
Curt Merrick	1571 Main St.	562-8772		Dublin, NH 03444
Peter Imhoff	82 Old Harrisville Rd Dublin	563-8188		Dublin Comm. Church
Willard Goodwin	PO Box 184 Dublin,	563-7184		Dublin Comm Church
Katharine Fox	PO Box 347 Dublin			Dublin Comm. Church
Margaret Gurney	121 Boulder Dr. Dublin, NH	03444		Dublin Community Church

OVER

Religious Affirmation of Marriage Equality

WE THE UNDERSIGNED, MEMBERS OF NEW HAMPSHIRE FAITH COMMUNITIES, DECLARE OUR COMMITMENT TO MARRIAGE, OUR OWN AND OTHERS. The most fundamental of human rights is the right to love and form a family. We are people of faith who believe in the institution of marriage and believe that our faith calls us to support allowing gay and lesbian couples to participate in the rights and responsibilities of legal marriage.

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We see the inclusion of gay and lesbian couples as recognition of the underlying values of marriage as an institution. We categorically oppose a Constitutional Amendment that creates a second class status for any group of citizens.

As members of community's of faith we commit ourselves to public action, visibility, education and mutual support in the service of the right and freedom to marry. We sign below with joyful affirming support for those who wish to make such a lifetime commitment.

Name	Address	phone	e-mail	
Beth Healy	BOX 299 Harrisville 03450	827-3618		Dublin Comm. Chur
Rosamond Cady	629 NH Rte 137 Harrisville, NH 03450	924-3120		Dublin Community Church
Peggy Amabile	PO Box 357 Dublin NH 03444	563 8448		Dublin Community Church
Margaret Cady	629 NH Rte 137 Harrisville NH 03450	924-3120		Dublin Community Church
Mary Clark	413 Upper Jaffrey Rd. Dublin PO Box 188	563-8453		Dublin Community Church
Tom Clark	PO Box 188 Dublin	563-8453		" "

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Name	Address	phone	e-mail	Congregation
Kate Shaper	325 pleasant st.	(802) 785-4403	Kshaper@sps.edu	St. Paul's Chapel
ELIZA CRATER	~~52 STONEHILL~~ 325 Pleasant St.	(914) 234-4509	ecrater@sps.edu	St. Pauls Chapel
Barbara K. Pacelli	325 Pleasant street	(603) 227-0653	bkpacelli@sps.edu	St. John's Church

12-3-05
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Name	Address	phone	e-mail	Congregation
Callie Lowenstein	St. Paul's School 325 Pleasant St. Concord, NH 03301	603-230-6478	clowenstein@sps.edu	Unitarian Universalist Church of Concord
Bethany Baker	186 Elm St Westfield, NY 14787	716-326-6365	bbaker@sps.edu	St. Peter's Episcopal Church, Westfield NY
Anne Clark	325 Pleasant St. Concord, NH 03301	603 228-6267	aclark@sps.edu	St. John the Evangelist Dunbarton, NH
Bea Gordon	325 Pleasant St Concord NH 03301	603-230-6792	bgordon@sps.edu	@UCC/ Episcopalian
Mary Caroline Dyke	325 Pleasant St. Concord, NH 03301	603-230-6051	mdyke@sps.edu	St. Mark's Church Gastonia, NC (Episcopal)
Anne Baer	325 Pleasant St. Concord, NH 03301	603-230-6458	abaer@sps.edu	Episcopal/ Chur
Raisa Ramos	325 Pleasant St. Concord, NH 03301	603.230.6577	rramos@sps.edu	Archdiocese of New Yor
Gabriel Fanelli	325 Pleasant St. Concord NH 03301	(603)230-6703	g.fanelli@sps.edu	All Saints Episcopal Church, San Francisco, CA
KATHERINE SELCH	ST. PAUL'S SCHOOL 325 PLEASANT ST. CONCORD, NH 03301	(603)230-6576	KSELCH@SPS.EDU	TEMPLE SHALOM LANCASTER PA
Pamela Kelly	Unitarian Universalist NH/VT District 41-A So. State St, Concord, NH 03301		pam@NHFaithfulDemocracy.org	Unitarian Universal
Les Norman	8 HAYFIELD LANE NEW LONDON NH 03257	603-763-8891	lesnorman@adelphia.net	1st Congregational UCC Wilmot
Robert W. Bacon	8 West Brook Ct Ct Sunapee NH 03446	603-352-3470	bobgaibacon@juno.com	UCC of Sunapee

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Name	Address	phone	e-mail	Congregation
Penny Culliton	PO Box 25 Temple, NH 03084		Jaffrey (United Church, UCC)	
Ellen Lankhurst	1262 White Mnt Hwy Milton, NH 03851	652-4958		UCC, Madbury
Roger S. Burkart	1262 white Mt. Hwy milton, NH. 03851	652-4324	rburkart@metrocast.net	UCC
Rev. Kendra Ford	238 Highland St	431 6675	KendraFord@exeternet.org	First Unitarian Society of Exeter
Sign Rodger Clubberland	[illegible]			Exeter USA
Toni Rodger	[illegible]			Exeter USA

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Name	Address	phone	e-mail	Congregation
✓ Rev. Bill Beardsley	73 Howard Hill Rd Jaffrey NH	603-532-7047		United Church of Jaffrey
✓ Benjamin M Crossley	P0656 Jaffrey NH	603 5326469	—	United Chur[illegible] Jaff
✓ Owen R. Houghton	262 NUTTING RD Jaffrey	603-532-6970		UCC
✓ Robert W. Ballou	8 WESTBROOK CT SWANZEY	603-352-3470		UNITARIAN OF JAFFREY
✓ Gail E. Ballou	8 Westbrook Ct. Swanzey NH			UC Jaffrey

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Name	Address	phone	e-mail	Congregation
[illegible signature]	27 Pound Rd, Wilmot NH 03287			KUUF
[illegible signature]	257 Lamson Lane - New London NH 03257			KUUF
[illegible signature]	336 Barrett Rd - N. London NH 03257			
	" " " " " "			
[illegible signature]	252 Hall Farm Rd, New London NH			
[illegible signature]	575 CHIEF RD MANCHESTER NH 0310[illegible]			
Thomas M Maloof	130 King Hill Rd, New London		TOMMALOOF@ADELPHIA.NET	KUUF
Robert L. Stanley	PO Box 831 Sunapee NH 03782		DENBOBSTAN@gmail.com	KUUF
Sandra LeBeau	336 Barrett Rd New London 03257		mlebeau@adelphia.net	KUUF
Elizabeth J Maloof	130 King Hill Rd, New London NH 03257		Lizzij048@[illegible]	KUUF
Kristin Gildersleeve	PO Box 831 Sunapee NH 03782		rgildersleeve@[illegible]	
John W. Williams	93 Hilltop Place New London NH			

NHFTM PO BOX 4064 CONCORD NH 03302 223-0309 INFO@NHFTM.ORG WWW.NHFTM.ORG

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Name	Address	phone	e-mail	Congregation
✓ Hamilton Wood	134 Woodland Drive, Cartoocook, NH	603-746-3760		

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Name	Address	phone	e-mail	Congregation
Mary Williams	93 Hilltop Place N.h. N.H.	603-526-4419		KUUF
Donna Klingler	PO Box 64 Elkins NH	03233 603-526-6871		KUUF
Elizabeth Klingler	PO Box 64 Elkins, NH	03233 (603)526-6871		KUUF
Donna Geese	128 Stagecoach Rd, Sunapee, NH	03782 603-763-2516		KUUF

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Name	Address	phone	e-mail	Congregation
Carolyn Shannon	93 Barrett Hill Rd. Walpole	756-2945		U.U.
Katherine Delaney	47 Meadow Rd. Keene,			UU
Jessica Peck	67 Old Homestead Hwy Nh Swanzey	357-7875		KUUC
Frank W Clum	110 Arch St #14 Keene NH	387319		KUUC
Stephanie Haas	83 Wood St. Keene	verino27@hotmail.com		KUUC ✓
Deborah Konietzka	26 Elm St, Keene	352-1649		UU
Virginia H Turnbull	Jaqueline Place, Keene			UU
Donald M Bike	20 Middletown Rd	Nottingham NH		UU
Lucy G. Treslow	21 Colby St.	Keene, NH		U.U.
Tricia Stott	223 Cross Road	Goshen, NH		UU
Elizabeth J. Williams	75 Log Cabin Rd, Nelson, NH	847-9064		UU
Mary Healy	71 Shaker Farm Rd S. Marlborough NH	8764428		K UUC

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Name	Address	phone	e-mail	Congregation
Tom Haynes	531 Marlboro St Keene NH	357-7645		UU
Carlo LaSeeke	363 Chapman Rd Keene	357-4357		UU
Kelli Mace	37 Fitzwilliam rd Richmond NH	239-6824		UU
Vicky Pittman	543 Washington St #10 Keene NH	hometownvk@hotmail.com		UU Keene
Carolyn C. Allen	25 Soaw Rd. Warrisville NH 03450			UU Keene
Dr Lynne Hutchinson	18 Jennison St. Keene NH 03431			UU Keene
Christine Ranson	65 Colonial Dr. Keene	358-3106	Iamtheloraxl3@hotmail.com	
Susan Hay	65 Langwell Rd Keene	398-7278	~~sue2mot~~t	UU
Don Hutchinson	18 JENNISON St Keene NH	352-3933		UU
George Kenyhercz	688 West St Keene			UU
James E. Swart	26 Iceland Circ Keene NH	352-0434		UU
Dan Willson	8 FLAGG RD MARLOW NH 03456		K1ZS@AMSAT.org	UU

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✓ Sue Hale-(deSève)	80 Lakeshore Drive	267-6672	Suehale@aol.com	UU church
✓ (Amelia) Amelia O'Kane	[redacted]	848-5929	AmeliaAKane@aol.com	UU Church concord NH
✓ Anna M. Allen Warner	121 Deeringwood Rd	456-3611		UU church Concord NH
✓ Francine Philippe (Francine) Philippe	234 East Side Dr. Concord	228-1776	fphilippe@aol.com	UU church

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Name	Address	phone	e-mail	Congregation
Debby deMoulpied (Demoulpied)		227-0222		
Shaw Dired	Bow NH			U.U.
Katie Dunn (Dunn)	PO Box 218	Canterbury 03224	783-4994	U.U
Bonnie Argeropoulos (Argeropoulos)	3 Reed Rd	Bow NH 03304		
Victoria Wakelin (Wakelin)	Pittsfield, NH			U.U.

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Name	Address	phone	e-mail	Congregation
✓ Nancy Kearon (Kearon)	334 Battle St. Webster NH			UU church
✓ Christiane Casserly (Casserly)	459 Carrie Ave. Pembroke, NH			UU Congre
✓ Rose Marian Bliss	149 East Side Dr #377 Concord	228-4915		UU Congr
✓ Tom Burgess (Burgess)	P= 3 x 21 6	Epsom NH		UU - Comm

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Name Address phone e-mail Congregation

DAISY KINCAID oldmissdaisy@yahoo.com 19 SACO ST. #11 CTR. CONWAY 03813 UUFES

Helen Crowell hcrowell@adelphia.net 11 Wild View Dr Intervale NH 03845 UUFES

Zoe Ukrainetz 94 Chatham Rd Stow, Me

Richard Cary 34 Barber Pole Rd, Mirror Lake, NH 03853

Lois Glidden songlidden@hotmail.com PO Box 540 Mirror Lake, NH 03853 UUFES

Melissa Myers Po Box 466, Tamworth NH 03886 itsnotthatfar@yahoo.com UUFES

Andy Davis PO B 2280 Conway 0388 447-2113 UUFES

Mary Edes Po Box 121 Silver Lake, NH 03875 revmje@mac.com UUFES

Eleanor Jenkins 381 Tuttle Hill, Freedom NH 03836

Tom Reichheld PO Box 2078, Wolfeboro NH 03894 tomreichheld@hotmail.com

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Claes Thelemarch Tamworth NH, telemark@nhla.net UUFES

Mary LeRoy Center Harbor N.H. UUFES.

Kim Hamel 7 Tern Ln. Wolfeboro NH 03894 akh425@metrocast.net

Marsha & John Chandler 60 Holman St Laconia UUFES

Gail Munroe 57 Fawn Dr. S-L. NH 03875 GMJL52@YAhoo.com UUFES

Suzanne Federer 56 Country Rd Kearsarge NH 03847 UUFES

Vickie Thelemarch 475 Daniels Rd Tamworth UUFES

George E. Zink 3121 Chinook Trail, Wonalancet, NH 03897

Sally J. Zink 3121 Chinook Trail, Wonalancet NH 03897

Ellin Leonard 388 Sandwich Rd North Conway 03560 Ellin Leonard@adelphia.net

Susan Bruce PO Box 652 Intervale, NH 03845 UUFES Tamworth Susanb_bb67@msn.com

David Emerson 1024 West Main St Ext Albany NH 03818

[Via Les Norman]

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Rev. Patricia Dubin	107 NH Drive Webster NH	746-5667	praisepapa@Tds.net	East Cong - UCC
Duane Bailey	11 Hampstead, Concord	224-8058	dbaileyflute@Comcast.net	So. Cong. Church UCC and East Cong UCC
Amy Beatham-Strong	495 Rimmon St. Manchester, NH	232-6619	abeatham-strong@parker.com	East Cong, UCC
Jo Beatham-Strong	495 Rimmon St. Manchester NH.	232-6619		East Cong. UCC
SALLY RAND	15 Brookline Dr.	228 6791	natesarker@earthlink.net	East. cong. church
NATE RAND	15 Brookline Dr.	228 6791	natesarker@earthlink.net	east cong. church
Donna Worthen	880 Peaked Hill Rd Bristol NH 03222	744-6447		East Cong Church
Judith Lonergan Edward Lonergan	149 East Side Dr #270 Concord NH 03301	224-6475	lonerganj@AoL.com	EAST CONG. U.CC.
Sylvia Haulet	57 Gabrielle St.	669-0288		East Church
Susan L Campbell	98 Milford St. Manchester	641-5939		East Church
Betty Barrell	Havenwood, Concord NH			
Deborah B. Monson	38 Graham Rd., Concord		gumby1@usadatanet.net	East Church

OVER

Lucie Worthen 880 Peaked Hill Rd Bristol, NH 03222 744-6447 dancingqueen626@verizon.net ECC

Amber Beatham-Strang 495 Rimmon St Manchester N.H 03102 232-6619 Vone ECC

Kay Garrigan 2 Beaver Meadow Concord NH 03301 228-0106 East Cong. Church

Amber Thompson 47 ahen St Manchester N.H 03102 [redacted] ECC

Margaret Andersen 259 Eastside Drive Concord NH 03301 228-2399 East Cong. Church

Jan Richards 110 Hoit Rd Concord NH 03301 224-8179 East cong UCC

Isaac Wilson 495 Rimmon St. manchester NH 232-6619

Arlene Thurau 149 East Side Dr. #141 Concord NH 03301

Ruth K. Whittier 33 Christian Ave #189 Concord NH 03301

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WE THE UNDERSIGNED, MEMBERS OF NEW HAMPSHIRE FAITH COMMUNITIES, DECLARE OUR COMMITMENT TO MARRIAGE, OUR OWN AND OTHERS. The most fundamental of human rights is the right to love and form a family. We are people of faith who believe in the institution of marriage and believe that our faith calls us to support allowing gay and lesbian couples to participate in the rights and responsibilities of legal marriage.

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As members of community's of faith we commit ourselves to public action, visibility, education and mutual support in the service of the right and freedom to marry. We sign below with joyful affirming support for those who wish to make such a lifetime commitment.

Name	Address	phone	e-mail	Congregation
√Thomas Van Loon	1 Mallard Ln.	437-5615	tvanloonnh.aol.com.	Concord UU
John L. Hatchett	38 Tanglewood Dr.		jlhatchett@mac.com	Concord UU
√Fred Metting	2 Holt Rd Hemiker - 2			Concord
Esther Kperanaugh	25 Conant Dr. Concord	——		Concord
√Mark Anderson	4 Susan Lane Concord, NH	228-5386	phil1226@hotmail.com	Concord
√Carol M Soule	149 E. Side Dr	228 3845	dndsoule@comcast.net	Concord
~~Kathy~~ Katharyn S Hok	174 Little Pond Rd. Concord NH 03301		rhok@comcast.net	224-7272
√James B Lemeland	38 Auburn St. Concord, N.H.		JLemeland@aol.com	225-059[illegible]
√Marilyn Knapp	66 Bear Hill Rd Henniker NH 03242	428-7313		Concord UU
√Cameron Sayre-Powell	3 Longview Dr. Henniker	428-7059	CSPowell@tds.net	Conc. UU

Off South St.

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Name	Address	Congregation
Jeremy James	70 Court St. Exeter	FUSE
Patricia Adams	8 Seminole Place, Londonderry	FUSE
Cynthia Cary	77 Priest Rd, Nottingham	FUSE
Laurie Loosigian	58 Washington St Exeter	FUSE
Wayne Long	58 WASHINGTON ST EXETER	FUSE
Boris Starinsky	72 CASE RD, NOTTINGHAM, NH	FUSE 03290
James R. Silbaugh	21 William Circle, Stratham NH	03885
	20 MAIN ST., EXETER, NH	CHRIST CHURCH, PORTSMOUTH

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Name	Address	Congregation
Ingeborg Lock	7 Minuteman LN Exeter NH	FUSE - Exeter
Beryl Stawicki	72 Case Rd. Nottingham NH	FUSE - Exeter
Lynne L Schlough	21 William Circle Stratham NH	FUSE - Exeter
David J. Szarwark	4 Laurel Lane Stratham NH	FUSE
Elizabeth Buchanan	4 Meadow Lane, Exeter NH	FUSE E Buchanan
Eric R Hott	9 North Rd, Fremont NH	Fuse
Stephanie Cook Goblirsch	14 Carriage Dr Exeter	FUSE
Pamela Greene	325 Thaxter Rd Ports.	FUSE
Raymond Bolton	325 thaxter Rd PORTS.	FUSE
Mary Faith	9 North Rd	Fremont NH FUSE

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Name	Address	Congregation - Monadnock Monthly Meeting of the Religious Society of Friends (Quaker) Jaffrey, NH
Andrea Linn	Sand Hill Road, Peterborough, NH	
Rodman Towner	5 MYRTLE AVE. ANTRIM, NH	
Jean Stone	PO Box #146 Temple, NH	
Sheila	92 South St Jaffrey	Monadnock Meeting
Holly E. Herman	16 Grant Rd Pbro	" "
Anita Jenkins	P.O. 212 Hancock N.H.	
Virginia H. Hillegass	133 Forest Rd. P.O. Box 345, Greenfield NH 03047	
Carolyn Sassi	8 Eastwood Dr. Jaffrey, NH 03452	
W. Carlson	35 Jennifer Dr. Nashua NH 03062	
Kim Brady	55 Antrim Rd. Hancock NH 03449	
TRAVIS BELCHER	WILTON NH 03086	
Eleanor Cappa	33 Wellcraft Hill Newfoundland 03071	

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Name	Address	Congregation
Karen Bradbury	10 Misty Lane Pelham NH 03076	Nashua UU
Constantina Cleveland	21 Simpson Rd. Windham, NH 03087	"
Jing Thayer	37 Coal St Nashua 03064	
Stuart Davidson	61 Forest Rd Hollis 03049	Nashua UU
[illegible]	125 Lille Road, Nashua 03062	Nashua UU
Jeannette Brooks	55 Kent Lane Nashua	Nashua UU
Harry Punkhin	13 WENOB DR HUDSON NH	NASHUA UU
Ethan George	18 Shingle Mill Dr. Nashua, NH	
Barbara Pugh	42 Greatstone Dr. Merrimack, NH 03054	Nashua UU
Georgia Lundberg	19 Cameron Dr. - Nashua 03062	

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Name	Address	Congregation
Hilary Keating	5 Coburn Woods, Nashua, NH	Nashua UU
Cris Cleveland	46 Cobbetti Pond Road, Windham NH	Nashua UU
W Bryan Ecke	8 Wallace Brook	Brookline NH
Teresa & George	18 Shingle Mill Dr.	Nashua 03062
Nancy Dovey	3 Autumn Leaf Dr.	Nashua NH 03060
Stanley L. Neuman	25 Danbury Rd	Nashua, N.H. 03064
Linda Mandra	9 Metropolitan Ave	Nashua NH 03064 UU
Tom Mandra	9 Metropolitan Ave	Nashua, NH 03064 UU

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Name	Address	Congregation
Janice Audsley	5 Norlin Rd Ln. Hudson NH	
Barbara D. Kourajian	34 Amherst St	Nashua Nashua
Joseph A. Rotta	10 MISTY LANE PELHAM, NH	NASHUA
Ellen Barr	5 Ainsmore St	Nashua
Shari Machado	85 Strawberry Bank Rd #26 Nashua, NH	Nashua
Candace Gregg	37 Cypress St. Nashua 03064	UU Nashua ~~03064~~
Bob Jourdan	17 Woodward Rd	Merrimack NH
Ellen L. Fisher	8 Wallace Brook Rd., Brookline NH	Nashua UU
Robert Keating	5 Coburn Woods. Nashua, NH. 03063	

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Name	Address	Congregation
Mary Elaine Rest	51 Gillis St Nashua NH	Nashua UU
Roy Goodman	410 E. Dunstable Rd Nashua, NH	Nashua UU
David Golden	27 Orchard Dr Hollis, NH 03049	
Geoff Skelton	25 Kern Drive Nashua NH 03060	Nashua NH
Stephen Pugh	22 Gwalstone Dr, Merrimack, NH 03054	Nashua U.U.
Sylvia Lundberg	19 Cameron Drive Nashua, NH 03062	Nashua NH
Mic Dow	63 Chestnut St.	Nashua N.H.
Kathy Grossman	140 Ridge Rd Hollis NH 03049	Nashua NH UU
JoAnn Logan	24 McElwain St, Merrimack	nashua
Jennifer Madden	"Same"	

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Name	Address	Congregation
[illegible]	136 CASTLE HILL RD, WINDHAM	UU Nashua
[illegible]	51 Birch St Derry	UU Nashua, NH
Cynthia L Hudson	1 Glen Rd. Bedford NH	UU Nashua
Joan L. Connacher	32 Charlotte Ave Nashua NH. 03064	UU Nashua
[illegible]	25 Kern Dr Nashua, NH	
Merri Woolsey	54 Heritage Cir Hudson	UU Nashua
[illegible]	17 W. Glenwood ST NASHUA	UU NASHUA

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Name	Address	Congregation
Stephanie Marshall	7 Nelson Dr. Exeter NH	FUSE
Patricia Ryden	3 Pine Grove Rd Exeter, NH	FUSE
Andrew Deardorff	2 Highland St. Newton, NH	FUSE-Exeter
Neil Adams	8 Seminole Place Londonderry NH	FUSE
Laura Deramo	1 Glenera Ln Exeter, NH	FUSE
Donna Mogardo	16 Prescott St Newmarket, NH	FUSE - Exeter
Jerry Goddard	220 Cushing Rd Newmarket, NH	FUSE Exeter
Barbara Benham	97-4 North Rd Fremont, NH	Fuse-Exeter

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Name	Address	Congregation
Sheryl M. Scott	PO Box 337 Exeter NH	Exeter Congregational Church
Rev. Wesley E Burwell	1 Greenleaf Dr Exeter,	Exeter UCC
Donald B. Cox	25 Elliot St. Exeter N.H.	Exeter Congregational.

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Name	Address	Congregation
Erik Hollis	20 Main St Exeter	Exeter UCC
William E Campbell	111 High St	Exeter, NH Congregational Church
Dorothy & Wilson Eaves	4 Granite St.	Exeter N.H. 03833
Michael Denney	11 Bicknell St	Kittery, ME 03904
William Modlin	6 Strawberry Lan	Raymond NH 03077
Wayne Wolfe	6 Strawberry Ln	Raymond NH 03077
Robert J. Devanton	POBox 284	Newfields, NH 03856
Virginia F. Jones	15 Block Dr.	Brentwood NH 03833

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Name	Address	Congregation
✓Beverly Gustine	56 Stratham Green, Stratham, Exeter	
✓Miriam Stahl	1 River Rd. Exeter NH	Exeter Cong UCC, UCC
✓ALISON HOBBIE	20 Main St. Exeter, N.H. 03833	Exeter Congregational Church
✓Dorothy Burwell	1 Greenleaf Dr.	Exeter Cong'l Church
✓Kristin Vaughan	348 Water St.	Exeter Congregational Church/UCC
✓Eileen Cusick	348 Water St	Exeter Congregational Church/UCC
✓Steve Sanborn		Exeter Congregational Church/UCC
✓Nancy Rockwell	16 Coach Rd	Exeter Cong'l Church
✓Robert Gilbert	4 Wheelwright Ave Exeter, NH	Exeter Congr. Church

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Name	Address	Congregation
✓ Laura Williams	13 Hall Place, Exeter, NH 03833	Exeter Congregational Church
✓ Kathy Baumbach	8 Gill St Exeter	Exeter Congreg. (UCC)
✓ Donald B Cole	25 Elliot St.	Exeter NH Congregational Church
✓ Susan A. Cole	25 Elliot St.	Exeter, NH
✓ Cynthia J. Baker	[illegible] John Rd, Rye	Exeter Congregational
✓ Karen T. Prior	14 Pickpocket Rd. Exeter, NH	Exeter Congo
✓ [illegible] Richardson	11 Riverwoods Dr	Exeter Congregational Church
✓ Susan D Eyle	4 Pinewood Dr	~~Stratham NH~~ Exeter Congregational Church
✓ Sally A. [illegible]	4 Wheelwright Ave Exeter, NH 03833	Exeter Cong Church

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Members and friends of the First Unitarian Society of Exeter (F.U.S.E.)

Name	Address	phone or e-mail	Congregation
Jan Flodell	21 Dunbarton Oaks Strathaven NH	7783957	F.U.S.E.
Paul Cote	Exeter, NH	772-4850	F.U.S.E.
Marty Nowland	Nottingham, NH	7342295	F.U.S.E.
William Young	7 Walnut St Exeter	603 686 7266	F.U.S.E.

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Members and friends of the First Unitarian Society of Exeter (F.U.S.E.)

Name	Address	phone or e-mail	Congregation
Jana F. Marshall	20 Main St., Exeter, NH	lemarshall@exeter.edu	F.U.S.E.
Anne Dunn	PO Box 1143 Hampton, NH	929-9850	F.U.S.E.
[illegible]	PO Box 1143, Hampton, NH		F.U.S.E.
Robert E. Moore	38 Andrews Lane East Kingston, NH 03827		F.U.S.E.

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Name	Address	phone or e-mail	Congregation
Elizabeth Buchanan Buchanan	4 Meadow Ln, Exeter NH 03833	7784835	
			F.U.S.E.
GEORGE C. GALLO George C. Gallo	27 TIMBERLANE RD. HAMPSTEAD, NH 03841	(603) 329-6679	F.U.S.E.
Andrew Beardorff Andrew D. Beardorff	20 Highland St. Nashua, NH 03858	603-782-3474	F.U.S.E.
PAUL D. COTE	70 Sherwood Forest EXETER, NH 03833	603-772-4850	
			F.U.S.E.

RELIGIOUS AFFIRMATION OF MARRIAGE EQUALITY F.U.S.E.

Name	Address	phone or email
Reina Smoley-Balog	20 Congress St. Salisbury, MA 01952	603-793-1258
Douglas Hurlehurst	62 PARK Ct. EXETER, NH	HARTFLOCK@COMCAST.NET
Elizabeth J. Nielsen	7 Riverwoods Dr. Apt. C-210 Exeter, N.H. 03833	
Patricia Yosha	24 String Bridge, Exeter, NH03833	
Pauline Wall	84 North Rd, Fremont NH 03044	
Raymond Poole	7 Minuteman Lane, Exeter NH 03833	
Marion Pinnegar	26 Hampton Rd Exeter NH 03833	
DONNA MOGARDO	16 PRESCOTT ST NEWMARKET NH 03857	
ADRIANNE DRUMMEY	24 CAPT. WAY EXETER NH 03833	
Kathleen Schenker	3 Long Heel Rd Stratham, NH 03885	
Jessica Michelsen	12 Thelma Drive, Exeter, NH 03833	
BORIS STASIUK	72 CASE ROAD, NOTTINGHAM, NH 03290	
BERYL STASIUK	72 CASE RD. NOTTINGHAM NH 03290	
Jody Coulland	52 South Rd No Hampton NH 03862	

RELIGIOUS AFFIRMATION OF MARRIAGE EQUALITY F.U.S.E.

Name	Address	phone or email
David Weber	2 Folsom St. Exeter	772-1781
JENNIFER MORRISS	22 VICTORIA DR. HAMPTON FALLS	772-7030
Donna Schlachman	2 Langdon Ave. Exeter	772-4934
Jim Morriss	Victoria Drive Hampton Falls	772-9030
John L. Coulard	52 South Rd N. Hampton	964-5149
[illegible]	16 Prescott Newmarket	JAY@JayReiter.com
Rev. Kendra Ford	238 Highland St Portsmouth	431 6675
Laurie Loosigian	58 Washington St. ~~Portsmouth~~ Exeter NH	778-3127
Amy M. Teed	2 BLOSSOM LANE EXETER, NH	772-8356
Linda Hillier	3 Glendale Rd. ~~No Hampton NH~~	964-5074
Anne Tufts	2 Blossom Ln Exeter NH	772-8356
(Susan Richmond) Susan Richmond	52 Bassett Ln Newfields NH	772-7699
David Sandman	8 Oak Lane Strafford NH	775-7724
Jessica Williams	8 Oak Lane Strafford NH	775-7724

RELIGIOUS AFFIRMATION OF MARRIAGE EQUALITY F.U.S.E.

Name	Address	phone or email
Elizabethe Plante	10 Chestnut St. #1304 Exeter, NH	580-5866
DAN CHARTRAND	10 CHESTNUT ST. #1304 EXETER, NH	DCHARTRA@RCN.COM (603)770-3014
Paul R. Robinson	155 South RD Brentwood NH.	pbrobie@comcast.net
Eveleine R. Robinson	155 South Rd. Brentwood, NH.	
Carolyn L. Rodger	9 Cubberland Dr Newmarket NH	deerspot@verizon.net
Stephanie Marshall	7 Nelson Dr. Exeter NH	stephmarshall@verizon.net
Edward N, Caylor	158 WOODLAND RD, HAMPTON, NH	e_caylor@comcast.net
JANET M CAYLOR	158 WOODLAND RD HAMPTON NH	janetcaylor@hotmail.com

>RELIGIOUS AFFIRMATION OF MARRIAGE EQUALITY
>
>
>WE THE UNDERSIGNED, MEMBERS OF NEW HAMPSHIRE FAITH COMMUNITIES, DECLARE

>OUR COMMITMENT TO MARRIAGE, OUR OWN AND OTHERS. The most fundamental of

>human rights is the right to love and form a family. We are people of
>faith who believe in the institution of marriage and believe that our
>faith calls us to support allowing gay and lesbian couples to
>participate in the rights and responsibilities of legal marriage.
>
>We respect the fact that the debate and discussion continue in many of
>our religious communities as to the theological and liturgical issues
>involved. However, we draw on our many faith traditions to arrive at a
>common conviction: we are resolved that the State may not favor the
>convictions of one religious group over another to deny individuals
>their fundamental rights.
>
>We see the inclusion of gay and lesbian couples as recognition of the
>underlying values of marriage as an institution. We categorically
>oppose a Constitutional Amendment that creates a second class status
>for any group of citizens.
>
>As members of communities of faith we commit ourselves to public
>action, visibility, education and mutual support in the service of the
>right and freedom to marry. We sign below with joyful affirming support

>for those who wish to make such a lifetime commitment.
>
>
>Name Address
>Faith Community
>
>
>
>Mary C Tavares
>---
>27 Lafayette Rd
>---
>Portsmouth, NH 03801
>---
>- Clergy person Rockingham Association
>United Church of Christ
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Religious Affirmation of Marriage Equality

WE THE UNDERSIGNED, MEMBERS OF NEW HAMPSHIRE FAITH COMMUNITIES, DECLARE OUR COMMITMENT TO MARRIAGE, OUR OWN AND OTHERS. The most fundamental of human rights is the right to love and form a family. We are people of faith who believe in the institution of marriage and believe that our faith calls us to support allowing gay and lesbian couples to participate in the rights and responsibilities of legal marriage.

We respect the fact that the debate and discussion continue in many of our religious communities as to the theological and liturgical issues involved. However, we draw on our many faith traditions to arrive at a common conviction: we are resolved that the State may not favor the convictions of one religious group over another to deny individuals their fundamental rights.

We see the inclusion of gay and lesbian couples as recognition of the underlying values of marriage as an institution. We categorically oppose a Constitutional Amendment that creates a second class status for any group of citizens.

As members of community's of faith we commit ourselves to public action, visibility, education and mutual support in the service of the right and freedom to marry. We sign below with joyful affirming support for those who wish to make such a lifetime commitment.

Name	*Address* *Congregation*	*phone*	*e-mail*
Ellin Leonard		603 356 0219	ellinleonard@adelphia.net
Richard Carey	UUFES Winnisquam Lake	569-4654	
Paula M Super	Nashua VV	(603) 424-2528	paula@thesupers.o
Mimi Faint	UUFES Winn Lake	569-4812	
Sylvia G Denton	UUFES	Wolfeboro 515-3496	
JAMES PITTMAN	UUFES	TAMWORTH	jaspitt@hotmail.com
Betty Donzaud	UUFES	Tamworth	207 625-8560
Peter Charles	UUFES	Tamworth	603-323-8265
Stacy Sand	UUFES	Tamworth, NH	13 Chestnut Lane Madison 447-4207
Heidi Crowell	UUFES Tamworth NH	603 365 5252	hcrowell@adelphia.net

Lyn Slanetz Silverlake, NH 603-367-4689
Roderick Forsman Intervale NH 603-356-3061
Susan Bruce Jackson, NH (UVF-ES) 603-383-8936

Miriam Morrell N. Conway NH 603-356-2429
Ruth Kletnick 206 Middle Rd Deerfield, NH. 603-463-5741
Carol Meredith DEERFIELD COMMUNITY CHURCH, UCC 8 Hall Center Rd., Deerfield NH 603-463-7595
Jim MacDougall 20 Walnut St #2 Somersworth N.H. 03878 603 692 2529
Ed Butler Route 302 Hart's Location 374-6131
Leslie Ethier Rt. 302 Hart's Loc. 374-6131
David Emerson 1624 W. MAIN ST. EXT. Albany NH. 447-5395
Patricia E. [illegible] 117 E. Main St., Conway, NH 03818 447-3112
Jay Madmen 170 Burnt Meadow Brownfield ME 04010
Brittany Guevara Intervale, NH (603) 356-9110
Leah McCarthy Freedom, NH (603) 539-5389
Jane Harris Hart's Location NH (603) 374-6131
Ed Albright Poppie Hill Dr, Glen NH (603) 383-4252
Lucille T Madmen 170 Burnt Meadow Rd Brownfield ME 207935-7712
Tina Clark PO Box 445 Chocorua NH 03817
Deborah Fabick PO Box 96 Freedom, NH 03836

Religious Affirmation of Marriage Equality

WE THE UNDERSIGNED, MEMBERS OF NEW HAMPSHIRE FAITH COMMUNITIES, DECLARE OUR COMMITMENT TO MARRIAGE, OUR OWN AND OTHERS. The most fundamental of human rights is the right to love and form a family. We are people of faith who believe in the institution of marriage and believe that our faith calls us to support allowing gay and lesbian couples to participate in the rights and responsibilities of legal marriage.

We respect the fact that the debate and discussion continue in many of our religious communities as to the theological and liturgical issues involved. However, we draw on our many faith traditions to arrive at a common conviction: we are resolved that the State may not favor the convictions of one religious group over another to deny individuals their fundamental rights.

We see the inclusion of gay and lesbian couples as recognition of the underlying values of marriage as an institution. We categorically oppose a Constitutional Amendment that creates a second class status for any group of citizens.

As members of community's of faith we commit ourselves to public action, visibility, education and mutual support in the service of the right and freedom to marry. We sign below with joyful affirming support for those who wish to make such a lifetime commitment.

Name	*Address* *Congregation*	*phone*	*e-mail*
Martha W. Chandler	60 Holman St #2 Concord 03246	603-524-3987	
John P. Chandler	"	"	
Charlotte H. Hill	Silver Lake, NH	603-367-4361	
George E. Zurko	Wonalancet, NH	603-323-8893	
Edward J. Jenkins	Eaton, N.H.	603-539-4843	
Joan M. Rondeau	Chocorua NH	603-323-8864	
Barbara Cockwell	Silver Lake NH	603-367-9731	
Margaret Fieser	Tamworth, NH	603-323-9430	

Attachment #5

Rep. David Watters
Strafford 4

Testimony is support of House Bill 73 as Amended.

House Bill 73 recognizes the equality of gays and lesbians under New Hampshire law relating to marriage, as specified in HB 436 as amended, and it ensures the Constitutional right of freedom of religion for religious organizations and their employees. It also secures the rights of freedom of religion to fraternal organizations. House Bill 73 fairly balances Constitutional rights in New Hampshire by crafting language that reflects a diversity of conscience and traditional practices regarding marriage even as it asserts the fundamental principle that in the laws of the state of New Hampshire, there will be marriage equality. This bill reflects the wisdom and will of the legislative and the thoughtful leadership of Governor Lynch. I urge the Senate to pass House Bill 73 as Amended.

Attachment #6

Margaret Drye
PO Box 3
Plainfield, NH 03781
603-675-9159
May 19, 2009

Senate Judiciary Committee
State House, Room 103
Concord, NH 03301

Re: HB 73

To the members of the Committee:

During your recess the last of February, about 50 home-schooled students took part in a week-long seminar in order to learn how state government operates. I spent the week explaining how unique New Hampshire is in requiring all bills to have a public hearing.

What ever happened to legislative process?

The current HB436, proposing the entirely new concept of different kinds of marriages, was amended on the Senate floor (no public hearing.) The current companion policy, HB 310, was amended on the Senate floor and the House floor (no public hearing.) The amendment offered on HB 310 (exempting certain religious officials) was not even close to being germane to the bill to which it was amended (reimbursing judges for mileage!) **This is in clear violation of your own Senate Rule #45:** *No amendment to any bill shall be proposed or allowed at any time or by any source, including a committee of conference, except it be germane.* Now the governor, instead of vetoing it and giving his reasons, with a hope that the legislature will re-work it, does everything backwards. Is it any wonder the general public gets disillusioned with politics?

Although the governor's proposed amendments to the marriage bill do actually seem germane to the bill we are looking at today, they still have serious flaws.

There is a Christian Conference Center in our town that is not affiliated with any particular denomination. It currently serves as the town's emergency shelter and is a charitable organization for NH tax purposes. It does not seem that this center falls under the protection of the governor's proposed amendments to this bill. Nor is it clear that independent Christian churches, unaffiliated with any particular denomination, would be covered, either.

Due to the fact that you have not followed your own rules to get to this place and that there may be unintended consequences that have not been properly examined or corrected in what the governor is proposing, I ask that you vote against the amendments to HB73 at this time.

Sincerely,

Margaret M Drye

Speakers

SENATE JUDICIARY COMMITTEE

Date: 5/19/09 Time: 1:45 p.m. **Public Hearing on** HB 73

HB 73 – relative to the solemnization of marriage.

Please check box(es) that apply:

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
☐	☑	☐	Karen Coelho	Franklin
☐	☑	☐	Logan Barbosa	Franklin
☐	☐	☑	Rep Fran Wendelboe	Belknap 1
☑	☑	☐	Rep. Timothy Horrigan	Strafford #7
☐?	☐	☑	Laurie J Boyle	Belknap 5
☐	☐	☑	Jerry D Smith	OCF
☐	☐	☑	Diane Quinlan	Roman Catholic Bishop of Manchester
☑	☐	☒	Rep Ed Butler	Carroll 1
☐	☐	☒	[illegible] Price	Belmont
☐	☐	☒	Rep Elaine Sanborn	Belknap 5
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SENATE JUDICIARY COMMITTEE

Date: 5/19/09 Time: 1:45 p.m. Public Hearing on HB 73

HB 73 – relative to the solemnization of marriage.

Please check box(es) that apply:

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
☐	☑	☐	Sen. Mary Jane Wallner, Majority Leader	Concord
☐	☒	☐	REP. BERNIE BENN - ASST MAJ LEADER	HANOVER
☐	☒	☐	Rep. David Pierce	Grafton 9
☐	☒	☐	Claira Ebel	NHCLL
☒	☒	☐	Gail Morrison	Self
☐	☒	☐	Jane B. Lemeland	self
☐	☐	☒	David Bates	Rockingham 4
☐	☒	☐	Rep. Donna Schlachman	Rockingham 13
☒	☐	☒	Beverly Peters	~~Goffstown~~
☒	☐	☒	Mary Thate	Bedford
☐	☑	☐	Bill Alleman	self
☐	☑	☐	Rep. Laurie Boyce	
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SENATE JUDICIARY COMMITTEE

Date: 5/19/09 Time: 1:45 p.m. Public Hearing on HB 73

HB 73 – relative to the solemnization of marriage.

Please check box(es) that apply:

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
☐	☑	☐	Representative Thompson	Manchester
☐	☑	☐	Rep. Jim Splaine	Portsmouth
☐	☐	☐		
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SJC Hearing – Gay Marriage Amendments

SENATE JUDICIARY COMMITTEE

Date: 5/19/09 **Time:** 1:45 p.m. **Public Hearing on** HB 73

HB 73 – relative to the solemnization of marriage.

Please check box(es) that apply:

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
☑	☑	☐	Timothy Horrigan	Strafford #7
☑	☐	☑	Margaret Drye	Self
☐	☐	☑	David Chamberlain	Self
☐	☑	☐	Jessie Dawson	self
☐	☑	☐	Sarah Pelkey	Self
☐	☒	☐	Rep. DAVID WATTERS	STRAFFORD 4
☐	☒	☐	Roger Qualls	
☐	☒	☐	Dave Carlson	
☐	☒	☐	Ryan Marvin	NH Equal Rights
☐	☒	☐	Charles Bigelow	Merrimack #8
☐	☐	☑	Donna Davey	self
☐	☑	☐	Judy Day	self
☐	☑	☐	JANSON WU	GLAD
☐	☐	☐		
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SENATE JUDICIARY COMMITTEE

Date: 5/19/09 **Time:** 1:45 p.m. **Public Hearing on** HB 73

HB 73 – relative to the solemnization of marriage.

Please check box(es) that apply:

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
☑	☐	☑	Barbara Haines	Glory of the Lord Min.
☑	☐	☑	Robert Haines	
☐	☐	☑	Rep. John W. Flanders Sr.	
X ☑	☐	☑	Rep Al Baldasaro	Londonderry/Auburn
☑	☑	☐	Rep Lucy Weber, Sponsor	Cheshire 2
X ☐	☑	☐	Rep. Claire Clarke	
☑	☐	☑	Richmond Piebrook [illegible]	(need to leave by 2³⁰)
☐	☑	☐	Ed Allard	NH Stonewall Democrats
☐	☑	☐	Tony Dietrich	"
✓ ☐	☐	☒	Rep Beverly Rodeschin	Sullivan 2
✓ ☑	☒	☐	Rep. Maureen Mann	Rockingham 1
☐	☒	☐	Robert W. Mann	
☐	☒	☐	John Dawson	Self
☐	☐	☒	Edmond Gionet	Grafton 3
✓ ☒	☒	☐	Mo Baxley	NHFTMC
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(2)

SENATE JUDICIARY COMMITTEE

Date: 5/19/09 **Time:** 1:45 p.m. **Public Hearing on** HB 73

HB 73 – relative to the solemnization of marriage.

Please check box(es) that apply:

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
☑	☐	☑	Jack Fredyma	Private, SD427 comm.
☐	☑	☐	Jamie Cooper	Private Party
☐	☐	☒	Margit Svendsen	Self
☐	☐	☒	Jon Svendsen	Self
☒	☑	☑	Kevin Smith	CPR-Action
☑	☑	☑	Austin Nimocks	ADF
☑	☐	☑	David Parker	self
☐	☐	☑	Shaun Doherty	State Rep
☐	☐	☑	Karen LeRees	Private
☐	☑	☐	Faith Cook	LPNH
☐	☐	☑	MARK ATTORRI	Self
☐	☐	☑	Gwyneth DeJager	private
☐	☐	☑	Michael Faulk	Private
☐	☐	☑	Ann Marie Bearfield	private
☐	☐	☑	David D. Lambert	private
☑	☐	☑	Pete Bonanno	private
☐	☑	☐	Rep. Carole Brown	Merr. Dist 8
☐	☐	☑	Jeffrey Lewis	Private Party
☐	☐	☑	Laura Price	Private Party

Testimony

Submission A

Testimony Against the Lynch Amendment to the NH Senate and House

My name is Jack Fredyma and I currently live in Dover, NH. I appear today as a private citizen but also as a former public member of the SB 427 Commission that studied the issues of recognizing same sex marriage and/or civil unions back in 2004-05. In the majority report, the issue of religious liberty was addressed and recommended that justices of the peace be included in a class for religious freedom. Enclosed is a copy of this finding.[1] The Lynch amendment fails to include these protections and has other flaws which require this body to vote no or at least table the matter for full hearings next year due to the numerous and complex issues that are present.

I. Amendment Fails to Protect Religious Liberty for Justice of The Peace, Teachers, Parents, Etc.

Currently all the States that have legislatively recognized same sex marriage have not included protections for Justice of the Peace whom perform such ceremonies in lieu of religious solemnization. First, Connecticut when civil unions passed in 2005, justices of the peace had a exemption[2]. A copy of this description is enclosed from GLAD's 2007 Manual for Connecticut that was now taken away in 2009 when same sex marriage was passed. In Massachusetts, Justice of the Peaces was instructed to either perform these marriages or resign[3]. NH should not follow these examples and instead include this class of person as a having religious liberty if the intent is to provide religious freedom to those oppose same sex marriage.

Second, NH should not following these examples of narrowly tailored religious exemption clauses proposed because real cases of persons in businesses and parents have faced discrimination claims, being fined by state commissions, or lost religious freedoms that exists from other jurisdictions. Enclosed are examples:

(1) A year ago, the New Mexico Human Rights Commission ordered a Christian photographer to pay $6,600 for declining to photograph a lesbian commitment ceremony[4] [5].

(2) Traditionalist Christians who founded eHarmony.com were forced to create new Web site facilitating relationships their religion considers immoral due a lawsuit/complaint in New Jersey[6][7].

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[1] Commission to Study All Aspects of Same Sex Civil Marriage and the Legal Equivalents Thereof, Whether Referred to as Civil Unions, Domestic Partnerships, or Otherwise SB 427, Chapter 100:2, Laws of 2004.: RELIGIOUS FREEDOM BEING AN ESSENTIAL RIGHT IN NEW HAMPSHIRE, NO PERSON SHOULD BE REQUIRED TO PERFORM ANY MARRIAGE WHICH WOULD OTHERWISE OFFEND HIS OR HER CONSCIENCE, pp. 24-25.

[2] http://lmafoc.convio.net/site/DocServer/CivilUnionCT.pdf?docID=1361. "Connecticut Civil Unions"

[3] http://www.boston.com/news/local/connecticut/articles/2008/07/07/justices_of_the_peace_split_on_civil_unions/?page=full

[4] http://www.claytoncramer.com/WvEP_Commisions_Complaint.pdf

[5] http://www.telladf.org/UserDocs/ElaneRuling.pdf, Willock v. Elane Photography

[6] http://www.nj.gov/oag/newsreleases08/pr20081119a.html, Press Release Settlement with eHarmony, Inc.

[7] http://www.nj.gov/oag/newsreleases08/pr20081119a-eHarmony-SA.pdf. Settlement Agreement, Consent Order and General Release, Eric McKinley

(3) The California Supreme Court ruled last year that providers of in-vitro fertilization must perform the procedure on women in lesbian relationships even if they believe strongly that children need both mothers and fathers[8].

(4) David Parker, a parent, did not need to be notified regarding same sex families inclusion as diversity studies regarding his child in kindergarten according to a Federal decision[9].

II. Amendment Has Additional Defects

In addition, the Lynch Amendment does not cure other defects, i.e. DOMA challenge and Language for Statutory Laws for Divorce and Protection of Children that are contradicted due to lack of terms for same sex relations. Finally, GLAD is currently a litigant against the Federal DOMA law and adding marriage to same sex couple is intended to further drive this lawsuit[10] [11]. With all these flaws, the Lynch Amendment and/or the entire bill of HB436 with its previous amendments, it should be Tabled or voted Inexpedient to Legislate (ITL) at this time.

Sincerely,

Jack T, Fredyma
54 Bridle Path
Dover, NH 03820

Attachments:

1. Findings SB 427 Commission to Study All Aspects of Same Sex Civil Marriage, Etc
2. 2007 GLAD publication "Connecticut Civil Unions"
3. Boston Globe Article "Justices of the peace split on civil unions"
4. New Mexico Human Right Commission, Complaint, Willock v. Elane Photography
5. New Mexico Human Right Commission, Decision, Willock v. Elane Photography
6. New Jersey Division on Civil Rights, Settlement Agreement. Consent Order and General Release, Eric McKinley
7. New Jersey Division on Civil Rights, Settlement Agreement. Consent Order and General Release, Eric McKinley
8. California Supreme Court Decision, Benitez v. North Coast Women's Care Medical Group.
9. GLAD Press Release DOMA Lawsuit, Release Gill, Etc. v. Office of Personnel Management, Etc.
10. GLAD DOMA Lawsuit, Complaint Gill, Etc. v. Office of Personnel Management, Etc.

[8] http://data.lambdalegal.org/in-court/downloads/benitez_ca_20080818_supreme-court-decision.pdf, Benitez v. North Coast Women's Care Medical Group.

[9] http://www.massresistance.org/docs/parker_lawsuit/motion_to_dismiss_2007/order_motion_to_dismiss_022307.pdf, David Parker v. William Hurley, U.S. District Court for District of Massachusetts

[10] http://www.glad.org/doma/lawsuit/, Press Release Gill, Etc. v. Office of Personnel Management, Etc.

[11] http://www.glad.org/uploads/docs/cases/gill-complaint-03-03-09.pdf, Gill, Etc. v. Office of Personnel Management, Etc.

C. RELIGIOUS FREEDOM BEING AN ESSENTIAL RIGHT IN NEW HAMPSHIRE, NO PERSON SHOULD BE REQUIRED TO PERFORM ANY MARRIAGE WHICH WOULD OTHERWISE OFFENDHIS OR HER CONSCIENCE.

The Commission observes where same sex partners are granted legal recognition, conflict has arisen with respect to public officials who are required to perform such ceremonies. The states of Vermont and Connecticut provide contrasting approaches to this problem. Both have civil unions but Vermont does not permit public official an opportunity to object to performing such ceremonies for religious reasons or reasons of conscience. In contrast, Connecticut allows an exemption for public officials who have religious or conscientious objections from performing ceremonies for same sex couples.

ANALYSIS AND CONCLUSIONS

In New Hampshire, this issue is not addressed currently in the statutory code because no legal recognition has been extended to same sex partners (gays or lesbians) judicially or legislatively. However, the issues of religious freedom are very well defined under the New Hampshire Constitution which gives legal protections for religious freedoms in Part I, Article 4, 5, and 6:

[Art.] 4. [Rights of Conscience Unalienable.] Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience. *June 2, 1784*

[Art.] 5. [Religious Freedom Recognized.] Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace or disturb others in their religious worship. *June 2, 1784*

[Art.] 6. [Morality and Piety.] As morality and piety, rightly grounded on high principles, will give the best and greatest security to government, and will lay, in the hearts of men, the strongest obligations to due subjection; and as t he knowledge of these is most likely to be propagated through a society, therefore, the several parishes, bodies, corporate, or religious societies shall at all times have the right of electing their own teachers, and of contracting with them for their support or maintenance, or both. But no person shall ever be compelled to pay towards the support of the schools of any sect or denomination. And every person, denomination or sect shall be equally under the protection of the law; and no subordination of any one sect, denomination or persuasion to another shall ever be established. *June 2, 1784 Amended 1968 to remove obsolete sectarian references.*

The Commission finds that persons who may be involved in the process of performing marriages do not lose their constitutional rights of religious freedom and rights of conscience just because the are a public employee that may be involved in overseeing marriage in the performance as a justice of the peace. The Commission finds that the Vermont model is inappropriate to protect religious freedom for public employees who oversee the solemnizing of civil unions. The Commission recommends that if any legal status is given to same sex couples (gays or lesbians) by the state, then the protections of religious liberty for public employees should be kept consistent with the New Hampshire Constitution for Part I, Article 4, 5, and 6.

The Commission notes that the right to religious liberty for public employees is not a license to engage in other type of discrimination such as on the basis of race or natural origin that are both protected under Federal law and also New Hampshire statutes RSA 354-A:13.

This section was accepted by the Commission 7-4 on October 24, 2005 by roll call vote as follows:

YEAS - Barnes, Brassard, Earnshaw, Fredyma, Mooney, Prescott, Soltani.

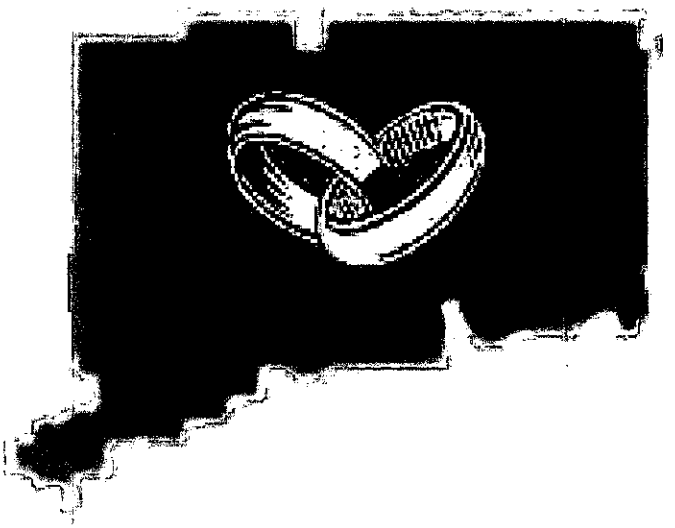
NAYS - Buckley, Butler, Fuller-Clark, Vaillancourt.

ABSTAINING – Fitch, Dupee.

ABSENT – Odell, Gallus, MacKay.

GLAD
equal justice under law

Connecticut Civil Unions



April 2007

This document is intended to provide general information only and is not intended to provide guidance or legal advice as to anyone's specific situation. Moreover, the law is constantly changing and evolving and this publication is based upon the information that is known to us as of this printing. For guidance on your particular situation, you must consult a lawyer. You should not act independently on this information. The provision of this information is not meant to create an attorney-client relationship. Check our website, www.glad.org, for the latest information.

If you have questions about this publication, other legal issues or need lawyer referrals, call GLAD's Legal InfoLine weekdays between 1:30 and 4:30 p.m. at:

(800) 455-GLAD (4523) or (617) 426-1350

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Introduction

Connecticut has joined Vermont as the second state to allow same-sex couples to enter into a civil union, which provides all the rights, benefits and responsibilities that are granted to a spouse under state law.[1] In Vermont, the status of civil union was created for the very first time by the Vermont legislature in 2001 in response to a ruling by the Vermont Supreme Court that the exclusion of same-sex couples from marriage violated the Vermont state constitution. In Connecticut, without any compulsion from a court, the state legislature passed a law, "An Act Concerning Civil Unions," that was signed by the Governor on April 20, 2005 and became effective October 1, 2005.

Although GLAD sees this as a constructive first step toward full equality for same-sex couples in Connecticut, GLAD is still committed to achieving marriage equality in Connecticut through its lawsuit, *Kerrigan & Mock v. Department of Public Health,* filed in New Haven Superior Court in August 2004. GLAD represents seven loving and committed same-sex couples who seek to marry in Connecticut.[2] In September 2006, the superior court ruled against GLAD's claims on the grounds that, since civil unions are available, the plaintiffs have suffered no constitutionally recognizable harm. GLAD has appealed this ruling, and the case will next be heard in the Connecticut Supreme Court sometime in 2007.

While civil unions provide state-based legal rights similar to those of marriage, couples joined in them are more likely to face discrimination against their relationships by other states, and cannot make any claim to the 1138 federal rights associated with marriage. Also, the Connecticut Civil Union Law defines marriage as "the union of one man and one woman" which emphasizes the second class status being imposed on gay people and same-sex relationships.

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[1] California provides a registered domestic partnership system which is nearly as comprehensive.

[2] GLAD's co-counsel in this matter include New Haven attorney Maureen M. Murphy, attorneys Kenneth Bartschi and Karen Dowd of Horton, Shields & Knox in Hartford and the ACLU of Connecticut.

Whether you should enter a civil union, and what it all means, are questions this publication is meant to address. Inevitably you will have questions to which there are simply no definitive answers at this time. In a moment of social change like the present, there are no guarantees and those who come forward and participate in the civil union process will be "pioneers" of a sort.

This document is intended to provide general information only and is not intended to provide guidance or legal advice as to anyone's specific situation. Moreover, this is a rapidly evolving area of the law; and, therefore, these questions and answers are based upon the information that is known to us as of this printing and that can change at any time. For guidance on your particular situation, you must consult a lawyer. You should not act independently on this information. The provision of this information is not meant to create an attorney-client relationship. You may call the GLAD Legal InfoLine at (800) 455-GLAD (4523) or check our website www.glad.org for the latest information and to obtain lawyer referrals.

What Is A Civil Union?

A Connecticut civil union is not a marriage. It is a legal status, parallel to civil marriage at the state law level, in which the parties to the civil union "shall have all the same benefits, protections and responsibilities under [Connecticut] law ... as are granted to spouses in a marriage...." (Civil Union Law, Public Act 05-10, §§1(1), 14-15).

When Will Connecticut Civil Unions Be Available?

The new Connecticut law, "An Act Concerning Civil Unions," was enacted and signed by the Governor on April 20, 2005. It became effective on October 1, 2005.

What Is The Difference Between Marriage And Civil Unions?

First, there is a difference. Civil unions will provide state-based legal rights that normally come along with marriage, and that is a tremendous advance over where things stood previously in Connecticut.

However, marriage is more than the sum of its legal parts. Because it is a social, cultural and legal institution, access to marriage provides protections to the married family on each of those levels. The word is itself a protection because others understand that when you are married you are a family. For some, being married allows them to express externally the nature of the commitment they feel internally. Marriages receive widespread respect.

Beyond these intangible protections, there are some concrete differences. The word "marriage" is the gateway to the 1138 federal protections afforded married couples. Without that word, same-sex couples in civil unions have no claim for those legal protections. While those protections are presently withheld from married couples of the same-sex, we do not believe that discrimination will stand the test of time.

At the state law level, the Civil Union Law gives public officials the explicit right not to officiate at a civil union while there is no such explicit exemption in the marriage laws. Moreover, there are certain circumstances in which 16 and 17-year-olds may marry, but you must be 18 to join in a civil union (unless you are ruled an emancipated minor by a court). There are also almost certainly important details to be worked out particularly where state law interacts, or works in tandem, with federal law.

Finally, it will be harder to gain respect for one's civil union in other states – in whole or in part – than it would be for a marriage. While marriages of same-sex couples will face discrimination in some places, marriages are advantaged over civil unions

Justices of the peace split on civil unions

AP Associated Press

By Noelle Frampton
Connecticut Post / July 7, 2008

STRATFORD, Conn.—Sonia Osuna beamed as she declared the woman in a white dress and the woman in a suit standing before her as life partners. It was the latest of about 30 civil union ceremonies Osuna has performed as a Stratford justice of the peace since they became legal under Connecticut law in October 2005.

She conducted the ceremony with vigor, going so far as to call the union a "marriage" although under the law here and in 47 other states, it is not recognized as such.

"God does not make a love that is wrong," she told the Stratford couple, Vivien Byrd and Deirdre Simeon.

Osuna is among the justices of the peace in Connecticut who choose to join gay couples in civil unions. Others opt not to perform the ceremony and, unlike their counterparts in Massachusetts, aren't penalized for that decision.

Justices of the peace in Connecticut can refuse to perform a civil union just like they can opt not to do a wedding, for whatever reason.

There are 53,000 justice of the peace slots in the state, but the Secretary of the State's Office estimates that fewer than half of those 20,000 to 25,000 are filled.

Because not every community collects data, there are no official numbers on how many will or will not perform civil unions, which provide virtually the same legal rights as marriage in the state.

But it's clear that there is a significant difference between the numbers of JPs who will officiate at weddings between a man and woman, and same-sex unions. Stratford reports that 15 of its 41 justices of the peace have specified they will perform civil unions, while Milford and Ansonia each name 17 of 24 as willing, according to their respective town clerk offices.

Byrd and Simeon, who picked Osuna to perform their ceremony after viewing her Web site, were surprised to learn that someone on the list they got from the Bridgeport Vital Records Department could have turned them down.

Simeon said they felt "more comfortable" with a justice of the peace officiating, and feel that all justices of the peace, as public officials, "should perform the ceremony as part of their duties.

"They play a major role because a lot of ministers ... don't want to get involved," she said. "We basically were left with no other choice."

Some local justices of the peace said they won't perform same-sex unions for

religious reasons.

"I am a Catholic," said Milford Justice of the Peace Marilyn Wardell. "I believe in marriage, and marriage to me is between a man and a woman."

Deborah Smith, another of those who isn't named as a civil union officiator by the Milford town clerk's office, said she hadn't given civil unions much thought because she doesn't perform many weddings, either.

"By law, people are allowed to be joined civilly," she said. "You're not performing a religious ceremony. (But) if you have that right to say no, I believe that's a good thing."

In Massachusetts, where justices of the peace are gubernatorial appointees, they were warned after their state legalized gay marriage in 2004 that they are to perform same-sex marriages or resign. Some gave up their posts over the issue.

Vermont, the first state to legalize civil unions, elects its justices of the peace and, like Connecticut's, gives JPs discretion regarding particular civil unions or weddings. They could find trouble in a blanket refusal to do civil unions, however, because that could be considered illegal discrimination based on sexual orientation.

Av Harris, communications director for Connecticut Secretary of the State Susan Bysiewicz, said public employees, such as town clerks who give marriage and civil union licenses, are prohibited from discriminating. But justices of the peace are simply nominated by their political parties and are therefore in a different category.

"If you go to a justice of the peace and they say, 'Well, I'd rather not,' that's their right," he said. "Just like a lawyer can refuse to take somebody's case."

Although some justices of the peace opposed the law and won't officiate at civil unions, there are many others who will, and so couples have options. Plus, it's so easy to become a justice of the peace in Connecticut that just about anyone could, he said.

Saul Haffner, a Westport justice of the peace and president of the state Justice of the Peace Association, believes that most justices who actively conduct weddings he estimated that about 2,000 are will conduct civil unions, too.

"My guess is that there are a handful of people who don't want to do civil unions," he said. "I've done maybe three or four. They're wonderful, loving ceremonies."

Haffner said he's "a great believer in personal freedom" and therefore applauds Connecticut for giving justices the choice, although, "You get into a sticky position if you were to bring up race."

In any case, it doesn't seem to be as much of an issue anymore, he said.

"Civil unions in the state of Connecticut have gone way down," he said. "I haven't done one in a year at least. When they first came out, I did two right away ... then another one."

According to the state Department of Public Health's Vital Records Section, municipalities reported 649 civil unions in 2005, 729 in 2006, 458 in 2007, and so far this year 87 through last month. Those numbers could be somewhat skewed, though, because towns don't always report civil unions immediately.

Osuna said the civil union business has been steady for her. Before Byrd and Simeon's ceremony June 20, there were two same-sex unions reported in Stratford this year. Bridgeport, Fairfield and Ansonia had none, while Milford

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ABOUT THIS LIST

reported one.

Last year, Bridgeport reported three while Stratford recorded 13, Milford had six, Fairfield four and Ansonia one. Bridgeport and Milford each had 12 unions in 2006; Stratford had nine, Fairfield eight and Ansonia two.

The mayors of Stratford and Milford, both justices of the peace, differ in their stance on the subject. Stratford Mayor James Miron has specified that he will perform civil unions and Milford Mayor James Richetelli has said he won't.

Richetelli, who is Catholic, said his choice "is a personal decision that I've made that I would perform wedding ceremonies, but not civil unions."

Carol Buckheit, associate director of Love Makes a Family, a statewide advocacy organization for same-sex couples, didn't take issue with Connecticut's approach to JPs.

She said there are plenty of justices and ministers, for that matter willing to officiate unions, and the organization's Web site has "listed scores" of them.

Sonia Osuna, for all her enthusiasm about joining lovers, believes freedom to choose is best.

"If you don't believe in it, why should you officiate one?" she said. "I wouldn't ... and why would they want me to perform something that I'm not in belief of?"

Osuna is getting married in September. ■

BILL RICHARDSON
GOVERNOR

BETTY SPARROW DORIS
SECRETARY

STATE OF NEW MEXICO
DEPARTMENT OF WORKFORCE SOULUTIONS

RAYMOND GONZALES
DEPUTY SECRETARY

Labor Relations Division
Human Rights Bureau
Director: Francie Cordova
Phone: (505) 827-6838
Fax: (505) 827-6878

November 28, 2007

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Jordan Lorence, Esq.
15333 N. Pima Rd. Ste 165
Scottsdale, AZ 85260

RE: Vanessa Willock vs. Elaine Photography
HRD #06-12-20-0685

Dear Mr. Lorence:

Enclosed is the Commission Complaint regarding the above captioned case.

Each party may obtain subpoenas or subpoenas duces tecum from the Human Rights Commission. All requests for subpoenas must be in writing and received by the Human Rights Division no later than seven (7) working days prior to the hearing date. The request should include the name and address of the person on whom the subpoena will be served. The subpoenas will be prepared and mailed to the requesting party for service.

The Commission shall conduct the hearing in such a manner that affords the parties a fair and full opportunity to present their positions. While the Commission is not bound by the formal rules of evidence governing New Mexico courts, it shall permit reasonable direct and cross examination of witnesses.

HRD #06-12-20-0685

It may also limit testimony that is not relevant or is duplicative. This hearing procedure is designed to assist the Commission panel or hearing officer appointed by the Commission to expedite the hearing process for the benefit of all parties.

All Exhibits must be prepared in copies of seven (7). The complainant's exhibits should be numbered and the respondent's exhibits should be lettered. Please review the Rules regarding the hearing that have been provided to you. Also, remember that you must prove your case and any damages by a preponderance of the evidence as required by law.

Should either party have any questions regarding the hearing, do not hesitate to call Ms. Pamela Lujan y Vigil at 827-6865.

Sincerely,

Francie Cordova
Director

FC/plv

Enclosure

HUMAN RIGHTS COMMISSION
COMMISSION COMPLAINT

DATE: *November 28, 2007* *HRD #06-12-20-0685*

A. Complaint to the Commission:

Vanessa Willock *3039 Prenda de Plata NW* *Albuquerque, New Mexico*
(Address) (City & State

Pursuant to Section 28-1-10 (F) NMSA, 1978 Compilation, the Human Rights Commission issues this written complaint in its own name against the following

B. Respondent(s):

Elaine Photography *2912 Cuervo dr. NE* *Albuquerque, New Mexico*

C. Section (s) of the Human Rights Act alleged to have been violated:
1. *28-1-7 A Retaliation* 1983 Comp.

Description of the alleged discriminatory practice (s): *Complainant alleges that she was discriminated against on the basis of Sexual Orientation.*

Date of the alleged discriminatory practice: *November 28, 2006*
Location of the alleged discriminatory practice: *Albuquerque, New Mexico*

E. Relief requested: ALL RELIEF ALLOWED BY LAW

NOTICE OF HEARING

Date: *December 12 & 13, 2007*

Time: *9:00 am*

Location: *Dept. of Workforce Solutions*
TIWA Bldg., Conference Room 4th Floor

Address: *401 Broadway NE*
Albuquerque, New Mexico

Both parties are required to appear at the hearing on the date and time specified above. Failure to appear at the hearing may result in the entry of judgment or order against him or her. In addition, the respondent may file a written answer, which shall become part of the record.

In the name of the Commission

I hereby certify that on the *28th* day of *November 2007*, a copy of this Commission Complaint and Notice of Hearing was serviced on Respondent(s) personally or was mailed by certified mail, return receipt requested.

Director

BEFORE THE HUMAN RIGHTS COMMISSION
FOR THE STATE OF NEW MEXICO

VANESSA WILLOCK
Complainant,

v.

HRD #06-12-20-0685

ELAINE PHOTOGRAPHY
Respondent

ORDER GRANTING CONTINUANCE

THIS MATTER came before the New Mexico Human Rights Commission on the Respondent's request to reschedule the hearing set for December 12 & 13, 2007 in the above captioned matter The Commission finds the motion is well taken and grants the same.

IT IS THEREFORE ORDERED that the December 12 & 13, 2007 hearing in the above captioned matter is continued until January 28 & 29, 2008 at 9:00 am at the Dept. of Workforce Solutions TIWA Bldg , Conference Room 4th Floor 401 Broadway NE Albuquerque, New Mexico.

Dated: *November 28, 2007*

NEW MEXICO HUMAN RIGHTS COMMISSION

By: *Alonzo C. Gonzales*

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF NEW MEXICO

VANESSA WILLOCK
Complainant,

v. **HRD No. 06-12-20-0685**

ELANE PHOTOGRAPHY, LLC,
Respondent.

FINAL ORDER

THIS MATTER came before the New Mexico Human Rights Commission for determination of a discrimination claim based on sexual orientation, brought by the Complainant, Vanessa Willock, against the Respondent, Elane Photography, LLC. The New Mexico Human Rights Commission determines that the Complainant, Vanessa Willock, proved her discrimination claim based on sexual orientation. The Complainant proved by a preponderance of the evidence that the Respondent, Elane Photography, LLC, discriminated against her because of sexual orientation, in violation of Section 28-1-7(F) of the New Mexico Human Rights Act. Having prevailed, the Complainant is entitled to recover reasonable attorney's fees, pursuant to Section 28-1-11(E) of the New Mexico Human Rights Act.

IT IS THEREFORE ORDERED that the Respondent, Elane Photography, LLC, shall pay to the Complainant, Vanessa Willock, an award for attorney's fees and costs, in the amount of **$6,637.94.**

NEW MEXICO HUMAN RIGHTS COMMISSION

By: _____
Commissioner

Date: 4/9/08

For Immediate Release:
November 19, 2008

For Further Information:
Lee Moore
609-292-4791

Office of The Attorney General
- Anne Milgram, *Attorney General*
Division on Civil Rights
- J. Frank Vespa-Papaleo, *Director*

Division on Civil Rights Announces Settlement with eHarmony, Inc. - *Online Relationship Website Agrees to Provide Same-Sex Matching*

View settlement agreement - pdf

TRENTON – Division on Civil Rights Director J. Frank Vespa-Papaleo announced today that the state has entered into a settlement agreement with eHarmony, Inc. under which the compatibility-based relationship Web site will begin providing same-sex matching services in 2009.

Under terms of the settlement between Eric McKinley, a gay match-seeker from New Jersey, and eHarmony, Inc., the relationship Web site agrees to provide a new service for match-seekers identifying themselves as "male seeking a male" or "female seeking a female" by March 31, 2009.

The company also agrees to ensure that same-sex users are matched via the same or equivalent technology as that used for heterosexual match-seekers, agrees to charge same-sex users the same fees, and agrees to offer the same service quality and terms of service as heterosexuals.

"I applaud the decision of eHarmony to settle this case and extend its matching services to those seeking same-sex relationships," said Vespa-Papaleo.

eHarmony, Inc. entered into the settlement agreement after a discrimination complaint was filed by McKinley against the on-line matchmaker in 2005, triggering a Division on Civil Rights Investigation and Finding of Probable Cause in 2007. Under terms of the agreement, the complaint is dismissed, and neither the company nor its founder, Dr. Neil Clark Warren, admits to any liability. Under the settlement agreement, eHarmony, Inc. can create a new or differently-named Web site to provide same-sex matching services, but the new Web site's home page must identify it as an affiliate of, or a site provided by, eHarmony, Inc.

The company does, however, reserve the right to post a disclaimer noting that eHarmony's compatibility-based matching system was developed solely on the basis of research focused on married heterosexual couples.

As part of the settlement, eHarmony, Inc. will provide a free, one-year membership to Eric McKinley, whose sexual-orientation-based discrimination complaint against the company led

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State Police (Division of NJ)
Law (Division of)

to the Division on Civil Rights investigation. In addition, the settlement calls for eHarmony, Inc. to pay McKinley $5,000, and to pay the Division on Civil Rights $50,000 to cover investigation-related administrative costs.

Additional terms of the settlement include:

- eHarmony, Inc. will post photos of same-sex couples in the "Diversity" section of its Web site as successful relationships are created using the company's same-sex matching service. In addition, eHarmony, Inc. will include photos of same-sex couples, as well as individual same-sex users, in advertising materials used to promote its same-sex matching services
- eHarmony, Inc. will revise anti-discrimination statements placed on company Web sites, in company handbooks and other company publications to make plain that it does not discriminate on the basis of "sexual orientation"
- the company has committed to advertising and public relations/ marketing dedicated to its same-sex matching service, and will retain a media consultant experienced in promoting the "fair, accurate and inclusive" representation of gay and lesbian people in the media to determine the most effective way of reaching the gay and lesbian communities.

Deputy Attorney General Charles Cohen and Estelle Bronstein handled the eHarmony, Inc. matter on behalf of the state.

# # #

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STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. PQ27IB-02846

ERIC McKINLEY, **Complainant,** **v.** **eHARMONY.com and** **DR. NEIL CLARK WARREN,** **Respondents.**	**ADMINISTRATIVE ACTION** **SETTLEMENT AGREEMENT, CONSENT ORDER AND GENERAL RELEASE**

APPEARANCES:

Eric McKinley, Complainant, pro se.

Charles S. Cohen, Deputy Attorney General, for the New Jersey Division on Civil Rights (Anne Milgram, Attorney General of New Jersey, attorney).

Robert E. Freitas, Esq., for the respondents (Orrick, Herrington & Sutcliffe, LLP, attorneys).

WHEREAS, on March 14, 2005, a verified complaint was filed with the State of New Jersey, Division on Civil Rights ("the Division") by Complainant, Eric McKinley, against eHarmony.com ("Company") and Dr. Neil Clark Warren (collectively, "Respondents");

WHEREAS, Respondents denied the allegations of the complaint, and continue to deny that they have violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49 ("Law Against Discrimination"), or have otherwise violated the law, or are liable to Complainant in any respect;

WHEREAS, on July 23, 2007, after conducting an investigation, the Director of the Division ("Director") issued a Finding of Probable Cause as to the allegations of the Complaint;

WHEREAS, on October 1, 2007, the Respondents filed a Motion for Reconsideration of the Finding of Probable Cause, which motion has been held in abeyance pending negotiation of the within settlement;

WHEREAS, the Division has the power and authority to enforce the Law Against Discrimination;

WHEREAS, the Division and the parties desire to amicably settle the matter without the necessity and expense of further litigation and commenced settlement discussions;

NOW, THEREFORE, in consideration of the promises and mutual obligations herein set forth, the Division and the parties agree to settle this matter in accordance with the following terms:

1. The parties hereto stipulate that this Agreement shall fully dispose of all issues in controversy between them with regard to this matter;

2. The Director of the Division on Civil Rights affirms that the Division has not made any findings based upon the merits of this matter, having found probable cause but not having made an adjudication on the merits, and having held in abeyance Respondents' motion for reconsideration pending negotiation of the within settlement;

3. In consideration for the dismissal, with prejudice, of the complaint in this matter, Company agrees to pay the amount of $50,000 for the Division's administrative expenses, by check made payable to "Treasurer, State of New Jersey," no later than October 31, 2008;

4. In consideration for the dismissal, with prejudice, of the complaint in this matter, and a General Release by Complainant of any and all statutory or other claims, demands, causes of action, damages, or expenses of any kind or nature whatsoever, against Respondents, and their predecessors, successors, affiliates, officers, directors, agents, and employees, that have accrued up to the date this Agreement is signed, and to reimburse him for time spent and expenses incurred in the prosecution of the complaint in this matter, Company agrees to pay the amount of $5,000 to Complainant Eric McKinley, no later than October 31, 2008;

5. In consideration for the dismissal, with prejudice, of the complaint in this matter, Company agrees to provide same-sex relationship matching services in accordance with the following terms:

a. The eHarmony.com website shall provide options for users to identify themselves as a male seeking a male or a female seeking a female, with accessibility, registration procedures and subscription flow substantially similar to that provided to users seeking opposite-sex matches. The same-sex matching services may be provided through a new or differently-named website operated by Company;

b. If the above same-sex option links users to a new or differently-named website operated by Company, the homepage of that website shall identify it as an affiliate of or provided by Company;

c. Same-sex matching services shall be provided using the same or equivalent technology and service quality, and with the same terms and fees for the consumer, as provided for opposite-sex matching services. Company reserves the right to accompany its offer of same-sex matching services with a statement explaining that Company's Compatibility Matching System™ was developed on the basis of research limited to married heterosexual couples;

d. Company shall provide a free membership for a term of one year to Complainant, and for a term of six months to the first 10,000 users registering for same-sex matching within one year of the initiation of the same-sex matching service provided by Company;

e. Company shall include photos of same-sex couples in the "Diversity" section of the eHarmony-inc.com website as successful same-sex matches are made using the same-sex matching service provided by Company, and Company shall similarly include photos of same-sex couples and individual users of the same-sex matching service in Company's advertising of the same-sex matching service;

f. Within thirty (30) days of the initiation of the same-sex matching service provided by Company, the anti-discrimination statements located on Company's websites, handbooks, and publications shall be amended to specifically indicate that Company does not discriminate, among other things, on the basis of "sexual orientation."

g. Company shall implement (a) through (d) above by March 31, 2009;

h. Company shall initiate the offer of same-sex matching services in good faith, and attempt in good faith to maintain a successful same-sex matching service. In no event shall Company discontinue the offer of same-sex matching services within two years.

i. Company shall make a good faith commitment to advertise and/or employ public relations and/or marketing dedicated to its same-sex matching service, and shall enlist the assistance of a media consultant experienced in promoting and ensuring fair, accurate and inclusive representation of gay and lesbian people in the media, to determine the most effective way of reaching the gay and lesbian communities;

6. Upon execution by the Division and the parties, this Settlement Agreement, General Release and Consent Order shall operate as a complete and final disposition and General Release of the charges contained in the verified complaint in this matter;

7. Nothing in this Agreement shall be deemed to be an admission of liability on behalf of Respondents;

8. The Parties will discuss in good faith the timing and content of any announcement by either of them of the execution of this Settlement Agreement, General Release and Consent Order.

9. Upon execution of this Settlement Agreement, General Release and Consent Order by the Parties, this matter shall be dismissed with prejudice subject to the terms listed above.

JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

FOR THE DIVISION:

Dated: 11/12/08

J. FRANK VESPA PAPALEO, ESQ.
DIRECTOR, DIVISION ON CIVIL RIGHTS

FOR THE COMPLAINANT:

Dated: 111208

Eric McKinley

FOR THE RESPONDENTS:

Dated: November 6, 2008

Robert E. Freitas

Filed 8/18/08

IN THE SUPREME COURT OF CALIFORNIA

NORTH COAST WOMEN'S CARE MEDICAL GROUP, INC., et al., Petitioners, v. SAN DIEGO COUNTY SUPERIOR COURT, Respondent; GUADALUPE T. BENITEZ, Real Party in Interest.	S142892 Ct.App. 4/1 D045438 San Diego County Super. Ct. No. GIC770165

Do the rights of religious freedom and free speech, as guaranteed in both the federal and the California Constitutions, *exempt* a medical clinic's physicians from complying with the California Unruh Civil Rights Act's prohibition against discrimination based on a person's sexual orientation? Our answer is no.

I

This case comes to us after the trial court granted plaintiff's motion for summary adjudication of one affirmative defense, thereby determining that no triable issue of material fact existed as to the defense and that plaintiff was entitled to judgment on the defense as a matter of law. (See Code Civ. Proc., § 437c, subds. (c), (f)(1).) The Court of Appeal issued a writ of mandate setting aside that ruling on the ground that it failed to completely dispose of the affirmative defense

and thus was contrary to the statutory requirements for summary adjudication. (See Code Civ. Proc., § 437c, subd. (f)(1).) Because this case reached us pretrial, after the trial court granted plaintiff's motion for summary adjudication, our factual description comes primarily from the parties' statements of undisputed facts filed in connection with that motion.

Plaintiff Guadalupe T. Benitez is a lesbian who lives with her partner, Joanne Clark, in San Diego County. They wanted Benitez to become pregnant, and they decided on intravaginal self-insemination, a nonmedical process in which a woman inserts sperm into her own vagina. Benitez and Clark used sperm from a sperm bank. In 1999, after several unsuccessful efforts at pregnancy through this method, Benitez was diagnosed with polycystic ovarian syndrome, a disorder characterized by irregular ovulation, and she was referred to defendant North Coast Women's Care Medical Group, Inc. (North Coast) for fertility treatment.

In August 1999, Benitez and Clark first met with defendant Christine Brody, an obstetrician and gynecologist employed by defendant North Coast. Benitez mentioned that she was a lesbian. Dr. Brody explained that at some point intrauterine insemination (IUI) might have to be considered. In that medical procedure, a physician threads a catheter through the patient's cervix and inserts semen through the catheter into the patient's uterus. Dr. Brody said that if IUI became necessary, her religious beliefs would preclude her from performing the procedure for Benitez.[1] According to Dr. Brody, she told Benitez and Clark at

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1 The parties dispute the factual basis for Dr. Brody's religious objection to performing IUI for plaintiff. Dr. Brody claims that her religious beliefs preclude her from active participation in medically causing the pregnancy of *any unmarried* woman, and therefore her refusal to perform IUI for Benitez was based on Benitez's marital status, not her sexual orientation. But Benitez, whose complaint does not allege marital status discrimination, asserts that Dr. Brody objected to performing IUI for *a lesbian*, and consequently the alleged denial of the medical

(footnote continued on next page)

that initial meeting that her North Coast colleague, Dr. Douglas Fenton, shared her religious objection to performing IUI for an unmarried woman, but that either of two other North Coast physicians, Dr. Charles Stoopack and Dr. Ross Langley, could do the procedure for Benitez. According to Benitez, however, Dr. Brody said that she was the only North Coast physician with a religious objection to performing IUI for Benitez, and that "all other members of her practice — whom she believed lacked her bias — would be available" to do this medical procedure.

From August 1999 through June 2000, Dr. Brody treated Benitez for infertility. The treatment consisted chiefly of prescribing Clomid, an ovulation-inducing medication, followed by Benitez's use of intravaginal self-insemination with sperm obtained from a sperm bank. To determine whether Benitez's fallopian tubes were blocked, Dr. Brody had her take a medical test (hysterosalpingiogram), which was negative. After performing a surgical procedure (diagnostic laparoscopy), Dr. Brody determined that Benitez's infertility was not the result of endometriosis.[2]

(footnote continued from previous page)

treatment at issue constituted sexual orientation discrimination. The trial court ruled that the factual basis for Dr. Brody's objection presented a disputed issue of material fact to be resolved at trial.

In so ruling, the trial court apparently concluded that, at the times relevant here, California's Unruh Civil Rights Act did not prohibit discrimination based on marital status. The Court of Appeal in this case expressly so held. Because Benitez's claim for relief under the Unruh Civil Rights Act is not based on marital status discrimination, we do not address that issue.

2 "Endometriosis is a condition in which tissue similar to the lining of the uterus" occurs on the ovaries, the fallopian tubes, or elsewhere in the body. Between 30 and 40 percent of women with this condition may suffer from infertility. (See <http://www.endometriosis.org/endometriosis.html> [as of Aug. 18, 2008].)

According to Benitez, when in April 2000 she still had not become pregnant, she decided "with the advice and consent of Dr. Brody," to try IUI, which, as explained earlier, is a medical procedure in which a physician uses a catheter to insert sperm directly into the patient's uterus. Instead, in May 2000, Benitez resorted to the nonmedical procedure of intravaginal self-insemination that she had used before; but this time, rather than using sperm from a sperm bank as she had done earlier, she used fresh sperm donated by a male friend. When Benitez thereafter missed a menstrual period, she thought she was pregnant. But a home pregnancy test was negative, and a pregnancy test done at defendant North Coast's facilities on July 5, 2000, confirmed that she was not pregnant. Benitez then decided to try IUI, using her friend's fresh sperm.

The parties agree that when Benitez told Dr. Brody she wanted to use her friend's donated fresh sperm for the IUI, Brody replied that this would pose a problem for North Coast. Its physicians had performed IUI either with fresh sperm provided by a patient's husband or sperm from a sperm bank, but never with fresh sperm donated by a patient's friend. To do the latter, Dr. Brody said, might delay the procedure as North Coast would first have to confirm that its protocols pertaining to donated fresh sperm would satisfy the requirements of North Coast's state tissue bank license and the federal Clinical Laboratory Improvement Amendment (42 U.S.C. § 263). After hearing this, Benitez opted to have the IUI with sperm from a sperm bank. Dr. Brody so noted in Benitez's medical records and then left for an out-of-state vacation.

During Dr. Brody's absence, her colleague, Dr. Douglas Fenton, took over Benitez's medical care. Dr. Fenton contends that he was unaware of Dr. Brody's record notation of Benitez's decision *not* to use her friend's fresh sperm for the IUI, because the secretary who had typed that notation in Benitez's file left it in Dr. Brody's in box awaiting her return from vacation. Therefore, according to

Dr. Fenton, he mistakenly believed that Benitez intended to have IUI with fresh sperm donated by a friend. The parties agree that unlike sperm from a sperm bank, fresh sperm (even when provided by a patient's husband) requires "certain preparation" before it can be used for IUI, and that "[c]ertain licensure" is necessary to do the requisite sperm preparation. Of North Coast's physicians, only Dr. Fenton was licensed to perform these tasks. But he refused to prepare donated fresh sperm for Benitez because of his religious objection. Two of his colleagues, Drs. Charles Stoopack and Ross Langley, had no such religious objection, but unlike Dr. Fenton, they were not licensed to prepare fresh sperm. Dr. Fenton then referred Benitez to a physician outside North Coast's medical practice, Dr. Michael Kettle.

The IUI performed by Dr. Kettle did not result in a pregnancy. Benitez was unable to conceive until June 2001, when Dr. Kettle performed in vitro fertilization.[3]

In August 2001, Benitez sued North Coast and its physicians, Brody and Fenton, seeking damages and injunctive relief on several theories, notably sexual orientation discrimination in violation of California's Unruh Civil Rights Act. Defendants' answer to the complaint asserted a variety of affirmative defenses. Pertinent here is affirmative defense No. 32 stating that defendants' "alleged misconduct, if any" was protected by the rights of free speech and freedom of religion set forth in the federal and state Constitutions.

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3 In vitro fertilization is a medical procedure of assisted reproduction in which eggs and sperm are combined in a laboratory dish. When fertilization results, the embryo is transferred to the woman's uterus for development. (See <http://www.americanpregnancy.org/infertility/ivf.html> [as of Aug. 18, 2008].)

Benitez moved for summary adjudication of that defense. The trial court granted the motion, ruling that neither the federal nor the state Constitution provides a religious defense to a claim of sexual orientation discrimination under California's Unruh Civil Rights Act. Defendants challenged that ruling through a petition for writ of mandate filed in the Court of Appeal. That court granted the petition with respect to the two physician defendants only, thereby allowing Drs. Brody and Fenton to later assert at trial that their constitutional rights of free speech and religious freedom exempt them from complying with the Unruh Civil Rights Act's prohibition against sexual orientation discrimination. We granted Benitez's petition for review.

II

Benitez's claim of sexual orientation discrimination is based on California's Unruh Civil Rights Act (hereafter sometimes Act). (Civ. Code, § 51, subd. (a).) At the times relevant here, it provided: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." (Civ. Code, § 51, former subd. (b), as amended by Stats. 2000, ch. 1049.)

The Unruh Civil Rights Act's antidiscrimination provisions apply to business establishments that offer to the public "accommodations, advantages, facilities, privileges, or services." (Civ. Code, § 51, subd. (b); see *Curran v. Mount Diablo Council of the Boy Scouts* (1998) 17 Cal.4th 670, 700; *Warfield v. Peninsula Golf & Country Club* (1995) 10 Cal.4th 594, 622-623.) A medical group providing medical services to the public has been held to be a business establishment for purposes of the Act. (*Leach v. Drummond Medical Group, Inc.* (1983) 144 Cal.App.3d 362.)

In 1999 and 2000, the period relevant here, the Unruh Civil Rights Act did not list sexual orientation as a prohibited basis for discrimination. But before 1999, California's reviewing courts had, in a variety of contexts, described the Act as prohibiting sexual orientation discrimination. (See *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1155; *Curran v. Mount Diablo Council of the Boy Scouts, supra*, 17 Cal.4th 670, 703 (conc. opn. of Mosk, J.); *Hubert v. Williams* (1982) 133 Cal.App.3d Supp. 1, 5; see also *Stoumen v. Reilly* (1951) 37 Cal.2d 713, 716; *Rolon v. Kulwitzky* (1984) 153 Cal.App.3d 289, 292.) Through an amendment to the Act in 2005, the Legislature expressly prohibited sexual orientation discrimination. (Stats. 2005, ch. 420, § 2.)

The Unruh Civil Rights Act subjects to liability "[w]hoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to [the Act]." (Civ. Code, § 52, subd. (a).) Thus, liability under the Act for denying a person the "full and equal accommodations, advantages, facilities, privileges, or services" of a business establishment (Civ. Code, § 51, subd. (b)) extends beyond the business establishment itself to the business establishment's employees responsible for the discriminatory conduct.

Below, we discuss defendant physicians' claims, first under the federal Constitution, and then under the California Constitution.

III

The First Amendment to the federal Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . . ." (U.S. Const., 1st Amend.) This provision applies not only to Congress but also to the states because of its incorporation into the Fourteenth Amendment. (See *Employment Div., Ore. Dept. of Human Res. v. Smith* (1990) 494 U.S. 872, 876-877 (*Smith*).) With respect to the free exercise of religion, the First Amendment "first and

foremost" protects "the right to believe and profess whatever religious doctrine one desires." (*Smith, supra*, at p. 877.) Thus, it "obviously excludes all 'government regulation of religious *beliefs* as such.' " (*Ibid.*) Below, we discuss pertinent decisions of the high court construing the First Amendment's guarantee of the free exercise of religion.

Sherbert v. Verner (1963) 374 U.S. 398 (*Sherbert*) involved South Carolina's denial of unemployment benefits to a Seventh-day Adventist who refused on religious grounds to work on Saturdays. The high court held that restricting unemployment benefit eligibility to those who could work on Saturdays was a "substantial infringement" of the claimant's First Amendment rights, and it declared the state law unconstitutional because it lacked a "compelling [governmental] interest." (*Id.* at pp. 406-407.)

Nine years later, the United States Supreme Court reiterated that test in *Wisconsin v. Yoder* (1972) 406 U.S. 205 (*Yoder*). At issue there was a Wisconsin law that required all children ages seven to 16 to attend school. Members of the Old Order Amish religion and the Conservative Amish Mennonite Church, however, kept their children out of school once they completed the eighth grade. (*Id.* at pp. 208-209.) *Yoder* held that under the First Amendment's clause guaranteeing the free exercise of religion, the Amish were exempt from obeying the state law in question because their "objection to formal education beyond the eighth grade [was] firmly grounded" in their religious beliefs, and the State of Wisconsin lacked a compelling interest in applying the compulsory education law to Amish children. (*Id.* at p. 210; see *id.* at pp. 214, 219, 234.)

But then in 1990, in *Smith, supra*, 494 U.S 872, the high court repudiated the compelling state interest test it had used in *Sherbert, supra*, 374 U.S. 398, and in *Yoder, supra*, 406 U.S. 205. Instead, it announced that the First Amendment's right to the free exercise of religion "does not relieve an individual of the

obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).' " (*Smith, supra*, at p. 879.) Three years later, the court reiterated that holding in *Church of Lukumi Babalu Aye, Inc. v. Hialeah* (1993) 508 U.S. 520, 531 (*Lukumi*), stating that "a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice."

Thus, under the United States Supreme Court's most recent holdings, a religious objector has *no federal constitutional right* to an exemption from a neutral and valid law of general applicability on the ground that compliance with that law is contrary to the objector's religious beliefs.

Just four years ago, in *Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527 (*Catholic Charities*), we considered the claim of a nonprofit entity affiliated with the Roman Catholic Church (Catholic Charities) that the First Amendment's guarantee of free exercise of religion exempted it from complying with a California law, the Women's Contraception Equity Act (WCEA), which required employers that provide prescription drug insurance coverage for their employees to include coverage for prescription contraceptives. In rejecting that claim, we applied the test the United States Supreme Court had adopted in its 1990 decision in *Smith, supra*, 494 U.S. 872. We explained: "The WCEA's requirements apply neutrally and generally to all employers, regardless of religious affiliation, except to those few who satisfy the statute's strict requirements for exemption on religious grounds. The act also addresses a matter the state is free to regulate; it regulates the content of insurance policies for the purpose of eliminating a form of gender discrimination in health benefits. The act conflicts with Catholic Charities' religious beliefs only incidentally, because those

beliefs happen to make prescription contraceptives sinful." (*Catholic Charities*, *supra*, at p. 549.)

In this case, too, with respect to defendants' reliance on the First Amendment, we apply the high court's *Smith* test. California's Unruh Civil Rights Act, from which defendant physicians seek religious exemption, is "a valid and neutral law of general applicability" (*Smith*, *supra*, 494 U.S. at p. 879). As relevant in this case, it requires business establishments to provide "full and equal accommodations, advantages, facilities, privileges, or services" to all persons notwithstanding their sexual orientation. (Civ. Code, § 51, subds. (a) & (b).) Accordingly, the First Amendment's right to the free exercise of religion does not exempt defendant physicians here from conforming their conduct to the Act's antidiscrimination requirements even if compliance poses an incidental conflict with defendants' religious beliefs. (*Lukumi*, *supra*, 508 U.S. at p. 531; *Smith*, *supra*, at p. 879.)

Defendant physicians, however, insist that the high court's decision in *Smith*, *supra*, 494 U.S. 872, has language on "hybrid rights" that lends support to their argument that under the First Amendment they are exempt from complying with the antidiscrimination provisions of California's Unruh Civil Rights Act. The pertinent passage in *Smith* states: "The only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections . . . ." (*Smith*, at p. 881.) But the facts in *Smith*, the court explained, did "not present such a hybrid situation." (*Id.* at p. 882.) Defendants here contend that they do have a hybrid claim, because compliance on their part with the state's Act interferes with a combination of their First Amendment rights to free speech and

to freely exercise their religion. We rejected a similar hybrid claim in *Catholic Charities, supra*, 32 Cal.4th 527.

In that case, we explained that "[t]he high court has not, since the decision in *Smith, supra*, 494 U.S. 872, determined whether the hybrid rights theory is valid or invoked it to justify applying strict scrutiny to a free exercise claim." (*Catholic Charities, supra*, 32 Cal.4th at p. 557.) We added, however, that Justice Souter's concurring opinion in *Lukumi, supra*, 508 U.S. 520, 567, was critical of the idea that hybrid rights would give rise to a stricter level of scrutiny: " '[I]f a hybrid claim is simply one in which another constitutional right is implicated, then the hybrid exception would probably be so vast as to swallow the *Smith* rule . . . .' " (*Catholic Charities, supra*, at pp. 557-558, quoting *Lukumi, supra*, at p. 567 (conc. opn. of Souter, J.).) We also noted that the federal Court of Appeals for the Sixth Circuit had rejected as " 'completely illogical' the proposition that 'the legal standard [of review] under the Free Exercise Clause depends on whether a free-exercise claim is coupled with other constitutional rights.' (*Kissinger v. Board of Trustees* [(1993)] 5 F.3d 177, 180 & fn. 1.)" (*Catholic Charities, supra*, at p. 558.) Nonetheless, after assuming for argument's sake that "the hybrid rights theory is not merely a misreading of *Smith, supra*, 494 U.S. 872," we concluded that Catholic Charities had "not alleged a meritorious" claim under that theory. (*Ibid.*) We also rejected the contention by Catholic Charities that requiring it to provide prescription contraceptive coverage to its employees would violate its First Amendment right to free speech "by requiring the organization to engage in symbolic speech it finds objectionable." (*Ibid.*) As we explained, "compliance with a law regulating health care benefits is not speech." (*Ibid.*)

Here, defendant physicians contend that exposing them to liability for refusing to perform the IUI medical procedure for plaintiff infringes upon their First Amendment rights to free speech and free exercise of religion. Not so. As

we noted earlier, California's Unruh Civil Rights Act imposes on business establishments certain antidiscrimination obligations, thus precluding any such establishment or its agents from telling patrons that it will not comply with the Act. Notwithstanding these statutory obligations, defendant physicians remain free to voice their objections, religious or otherwise, to the Act's prohibition against sexual orientation discrimination. "For purposes of the free speech clause, simple obedience to a law that does not require one to convey a verbal or symbolic message cannot reasonably be seen as a statement of support for the law or its purpose. Such a rule would, in effect, permit each individual to choose which laws he would obey merely by declaring his agreement or opposition." (*Catholic Charities, supra*, 32 Cal.4th at pp. 558-559.)

Defendant physicians also perceive a form of free speech infringement flowing from plaintiff's purported efforts "to silence the doctors at trial." But the First Amendment prohibits *government* abridgment of free speech. Here, plaintiff is a private citizen. Therefore, her conduct as complained of by defendants does not fall within the ambit of the First Amendment.

Plaintiff's motion in the trial court for summary adjudication of defendant physicians' affirmative defense claiming a religious exemption from liability under California's Unruh Civil Rights Act merely sought to preclude the presentation at trial of a defense lacking any constitutional basis. In ruling on the motion, the trial court granted summary adjudication of the defense only insofar as it applied to plaintiff's claim of sexual orientation discrimination as prohibited by the Act. (See p. 17, *post*.) Nothing in that ruling precludes defendants from later at trial offering evidence, if relevant, that their denial of the medical treatment at issue was prompted by their religious beliefs for reasons *other* than plaintiff's sexual orientation.

IV

We now turn to the California Constitution. As here relevant, it provides: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed." (Cal. Const., art. I, § 4.)

Part III, *ante*, dealt with defendant physicians' First Amendment claim. To that federal constitutional issue, we applied the high court's test articulated in *Smith*, *supra*, 494 U.S. 872. That test's main inquiry is whether the law being challenged is a " 'valid and neutral law of general applicability.' " (*Id.* at p. 879.) If it is, it "need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." (*Lukumi*, *supra*, 508 U.S. at p. 531.) That test, we noted, was a departure from the compelling state interest test that the high court had applied in *Sherbert*, *supra*, 374 U.S. 398, and in *Yoder*, *supra*, 406 U.S. 205. (See p. 9, *ante*.)

Here, defendant physicians seek a religious exemption from a state law that is " 'a valid and neutral law of general applicability' " (*Smith*, *supra*, 494 U.S. at p. 879; see p. 10, *ante*.) To date, this court has not determined the appropriate standard of review for such a challenge under the *state* Constitution's guarantee of free exercise of religion. (See *Catholic Charities*, *supra*, 32 Cal.4th at pp. 561-562.) Because construing a state constitution is a matter left exclusively to the states, the high court's *Smith* test is not controlling here. (*Catholic Charities*, *supra*, at pp. 559-561.) As in *Catholic Charities*, however, this case presents no need for us to determine the appropriate test. For even under a strict scrutiny standard, defendants' claim fails.

Under strict scrutiny, "a law could not be applied in a manner that substantially burden[s] a religious belief or practice unless the state show[s] that the law represent[s] the least restrictive means of achieving a compelling interest." (*Catholic Charities*, *supra*, 32 Cal.4th at p. 562.) Presumably, for defendants to

comply with the Unruh Civil Rights Act's prohibition against sexual orientation discrimination would substantially burden their religious beliefs. Yet that burden is insufficient to allow them to engage in such discrimination. The Act furthers California's compelling interest in ensuring full and equal access to medical treatment irrespective of sexual orientation, and there are no less restrictive means for the state to achieve that goal.

To avoid any conflict between their religious beliefs and the state Unruh Civil Rights Act's antidiscrimination provisions, defendant physicians can simply refuse to perform the IUI medical procedure at issue here for any patient of North Coast, the physicians' employer. Or, because they incur liability under the Act if they infringe upon the right to the "full and equal" services of North Coast's medical practice (Civ. Code, § 51, subd. (b); see *id.* §§ 51, subd. (a), 52, subd. (a)), defendant physicians can avoid such a conflict by ensuring that every patient requiring IUI receives "full and equal" access to that medical procedure though a North Coast physician lacking defendants' religious objections.

Both defendant physicians urge this court to adopt and apply here a standard that is significantly different than strict scrutiny. They rely on this language from our state Constitution, article I, section 4: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed. *This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State.*" (Italics added.) According to defendants, the italicized language indicates that religious objectors are free to disregard a particular state law unless doing so compromises the peace or safety of the state or is licentious — situations that are not present here. Defendants also assert that our decision in *Catholic Charities* has language, italicized here, that left open the possibility of the test proposed by defendants: "A future case might lead us to choose the rule of *Sherbert, supra,* 374 U.S. 398 [requiring that a state law

adversely affecting religious rights satisfy strict scrutiny], the rule of *Smith, supra,* 494 U.S. 872 [recognizing no religious exemption to valid and neutral laws of general applicability], *or an as-yet unidentified rule that more precisely reflects the language and history of the California Constitution and our own understanding of its import.*" (*Catholic Charities, supra,* 32 Cal.4th at p. 562, italics added.) We reject defendants' contention.

Our statement in *Catholic Charities, supra,* 32 Cal.4th at page 562, that this court in the future might adopt some "as-yet unidentified rule" governing free exercise of religion claims under the *state* Constitution contemplated only three possible tests: (1) The strict scrutiny standard the United States Supreme Court established in *Sherbert, supra,* 374 U.S. 398, and later used in *Yoder, supra,* 406 U.S. 205; (2) the high court's subsequent test established in *Smith, supra,* 494 U.S. 872, and in *Lukumi, supra,* 508 U.S. 520, under which religious objectors' challenges to valid and neutral laws of general applicability are rejected out of hand; or (3) an *intermediate standard,* less exacting than the rigorous first option but more so than the second. Because the standard that defendants propose would exempt a religious objector from complying with a valid and neutral law of general applicability regardless of a compelling state interest supporting the law, and regardless of the absence of lesser restrictive means for furthering that compelling state interest, their proposed standard is not an intermediate standard but rather a standard that is more stringent than strict scrutiny. Nothing in *Catholic Charities* suggests that the appropriate test for free exercise of religion claims under article I, section 4 of the California Constitution would be stricter than strict scrutiny, and we decline to adopt such a standard here.

V

The Court of Appeal set aside the trial court's order granting plaintiff's motion for summary adjudication of affirmative defense No. 32. According to the

Court of Appeal, the trial court's ruling was inconsistent with the purpose of Code of Civil Procedure section 437c, which governs motions for summary adjudication. Relevant here is that statute's subdivision (f)(1), which states: "A party may move for summary adjudication as to one or more causes of action within an action, *one or more affirmative defenses*, one or more claims for damages, or one or more issues of duty, if that party contends that the cause of action has no merit or that there is no affirmative defense thereto, or both, or that there is no merit to a claim for damages, . . . or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. *A motion for summary adjudication shall be granted only if it completely disposes* of a cause of action, *an affirmative defense*, a claim for damages, or an issue of duty." (§ 437c, subd. (f)(1), italics added.) As the italicized language in the last sentence indicates, a grant of summary adjudication of an affirmative defense is proper if it "completely disposes" of that defense.

Here, in reversing the trial court's grant of plaintiff's motion for summary adjudication of affirmative defense No. 32 with respect to plaintiff's Unruh Civil Rights Act claim, the Court of Appeal noted that section 437c was added to the Code of Civil Procedure at the request of the California Judges Association, and that the statute was intended to "save court time," to "reduce the cost of litigation" and to "stop the practice of . . . adjudication of issues that do not completely dispose of a cause of action or defense."

The Court of Appeal then concluded that summary adjudication of affirmative defense No. 32 was "improper as to Dr. Brody and Dr. Fenton because it effectively preclude[d] them from presenting any evidence at trial that their refusal to perform IUI for Benitez was based on their religious beliefs regarding the propriety of performing the procedure for unmarried women," conduct that the Court of Appeal further concluded was not prohibited by the Act in 2000, the time

of that refusal. The court added: "Because there is a triable issue of fact as to whether Dr. Brody and Dr. Fenton refused to perform the procedure for Benitez based on her marital status and not her sexual orientation, . . . Dr. Brody and Dr. Fenton are entitled to present evidence that their religious beliefs prohibited them from performing IUI on *any* unmarried woman, regardless of the woman's sexual orientation."

But in granting plaintiff's motion for summary adjudication of affirmative defense No. 32, the trial court did not at all preclude defendant physicians from later offering evidence at trial of their religious grounds for refusing to perform the IUI medical procedure for plaintiff because of her marital status as an unmarried woman rather than her sexual orientation as a lesbian. In granting Benitez's motion, the trial court stated that it had merely determined that affirmative defense No. 32 lacked any basis in law as a defense to plaintiff's Unruh Civil Rights Act claim of *sexual orientation discrimination*, but that it was not precluding defendant physicians from "tell[ing] the jury what happened in this case," that is, presenting evidence that their religious beliefs prohibited them from medically inseminating an unmarried woman. This is clear from the following colloquy between the trial court and plaintiff's counsel.

Counsel for plaintiff asked the trial court: "What basis would there be for [defendant physicians to] present[] their motive to the jury if not to say it was okay that you violated Unruh because you had this religious belief?" The trial court responded that the jurors "are still going to know what the motive [was]," and that defendants "have to tell the jury what happened in this case." Plaintiff's counsel then argued that testimony about defendant physicians' religious motivation for refusing to perform the IUI medical procedure for plaintiff would be "legally irrelevant." The trial court replied: "Facts are the facts, and the jury is instructed on the law and . . . is going to follow the law." Ultimately, the trial court agreed to

allow plaintiff to reassert at trial her objection to defendants presenting any evidence of religious motive to support their claim that their refusal to perform the IUI medical procedure was based on plaintiff's marital status as a single woman rather than her sexual orientation as a lesbian. Although the trial court reserved any final ruling on the matter, it added that plaintiff's position would make "an interesting argument," and that it had "a hard time envisioning how this case would be presented without telling the jury what happened."

Thus, the trial court's ruling left defendant physicians free to later offer evidence at trial that their religious objections were to participating in the medical insemination of an unmarried woman and were not based on plaintiff's sexual orientation, as her complaint alleged. The trial court's ruling simply narrowed the issues in this case by disposing of defendants' contention that their constitutional rights to free speech and the free exercise of religion exempt them from complying with the Unruh Civil Rights Act's prohibition against sexual orientation discrimination. In concluding to the contrary, the Court of Appeal erred.

DISPOSITION

The judgment of the Court of Appeal is reversed.

KENNARD, J.

WE CONCUR:

GEORGE, C. J.
BAXTER, J.
WERDEGAR, J.
CHIN, J.
MORENO, J.
CORRIGAN, J.

CONCURRING OPINION BY BAXTER, J.

I join the majority's narrow conclusion that, on the facts of this case, defendants have no affirmative defense, based on the free exercise of religion clauses of the federal and state Constitutions, against plaintiffs' Unruh Civil Rights Act claims of discrimination on the basis of sexual orientation. With respect to the application of article I, section 4 of the California Constitution to this issue, I do not necessarily believe the state has a compelling interest in eradicating every difference in treatment based on sexual orientation (cf. *In re Marriage Cases* (2008) 43 Cal.4th 757, 875-877 (conc. & dis. opn. of Baxter, J.) [sexual orientation is not suspect classification; statutory definition of marriage as between man and woman satisfies rational basis test]). However, I agree that California has a compelling interest, furthered by the Unruh Civil Rights Act, "in ensuring *full and equal access to medical treatment* irrespective of sexual orientation" (maj. opn., *ante*, at p. ___ [p. 14], italics added), including a right to full medical assistance in establishing a pregnancy.

Of course, assuming that a strict scrutiny standard applies under the California Constitution, the state's interest —here represented in a statute — must be balanced, in appropriate cases, against the fundamental *constitutional* right to the free exercise of religion. I am persuaded that, in the circumstances before us, the burden imposed on this constitutional right was not sufficient to overcome the state's interest. As the majority indicates, defendants in this case, who are

members of a group medical practice, can avoid any conflict between their religious beliefs and the Unruh Civil Rights Act's requirements "by ensuring that every patient requiring [intrauterine insemination] receives 'full and equal' access to that medical procedure *through a North Coast physician lacking defendants' religious objections*." (Maj. opn., *ante*, at p. ___ [p. 14], italics added.)

I am not so certain this balance of competing interests would produce the same result in the case of a sole practitioner, who arguably is a "business establishment[ ]" for purposes of the Unruh Civil Rights Act (Civ. Code, § 51, subd. (b); see *Washington v. Blampin* (1964) 226 Cal.App.2d 604, 606-607), but who lacks the opportunity to ensure the patient's treatment by another member of the same establishment. At least where the patient could be referred with relative ease and convenience to another practice, I question whether the state's interest in full and equal medical treatment would compel a physician in sole practice to provide a treatment to which he or she has sincere religious objections. One might well conclude that, in that situation, application of the Unruh Civil Rights Act against the doctor would not be the means " 'least restrictive' " on religion of furthering the state's legitimate interest. (Maj. opn., *ante*, at p. ___ [p. 14]; *Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 562.)

These issues are not before us here, however, and the majority does not express any views on them. On that basis, and with that understanding, I concur in the majority's reasoning, and in its result.

BAXTER, J.

See last page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion North Coast Women's Care Medical Group, Inc. v. Superior Court

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Unpublished Opinion
Original Appeal
Original Proceeding
Review Granted XXX 137 Cal.App.4th 781
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Opinion No. S142892
Date Filed: August 18, 2008

Court: Superior
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Judge: Ronald S. Prager

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DAVID PARKER, ET AL., Plaintiffs,	)	
v.	)	C.A. No. 06-10751-MLW
WILLIAM HURLEY, ET AL., Defendants.	)	

MEMORANDUM AND ORDER

WOLF, D.J. February 23, 2007

I. SUMMARY

Plaintiffs David and Tonia Parker, and Robert and Robin Wirthlin, brought this action in 2006, individually and on behalf of their respective minor children, Jacob and Joshua Parker, and Joseph Wirthlin, Jr. ("Joey"). They are suing various employees of the Lexington, Massachusetts public schools and members of the Lexington School Committee in both their individual and official capacities.[1]

Massachusetts law prohibits discrimination in public schools

[1] The plaintiffs charge the following defendants in both their individual and official capacities: the Superintendents of the Town of Lexington Public Schools, William Hurley and Paul B. Ash, Ph.D.; the members of the Town of Lexington School Committee Helen L. Cohen, Thomas R. Diaz, Olga Guttag, Scott Burson, and Thomas Griffith; the director of education in the Town of Lexington, Andre Ravenelle; the principal of the Estabrook Elementary School, Joni Jay; the coordinator of Health Education, Jennifer Wolfrum; and a teacher of the Estabrook Elementary School, Heather Kramer. In addition, the plaintiffs name as a defendant the Town of Lexington.

based on sex or sexual orientation. It also requires that public school curricula encourage respect for all individuals regardless of, among other things, sexual orientation. Pursuant to these directives, the Massachusetts Department of Education has issued standards which encourage instruction for pre-kindergarten through fifth grade students concerning different types of people and families.

Jacob Parker and Joey Wirthlin are students in a Lexington elementary school. When he was in kindergarten, Jacob was given a book that depicts various forms of families, including one that includes parents of the same gender. When he was in first grade, Joey was read a book about a prince who married another prince. Both books were part of the Lexington school system's effort to educate its students to understand and respect gays, lesbians, and the families they sometimes form in Massachusetts, which recognizes same-sex marriage.

Jacob and Joey's parents each have sincerely held religious beliefs that homosexuality is immoral and that marriage is necessarily only a holy union between a man and a woman. They do not wish to have their young children exposed to views that contradict these beliefs and their teaching of them. The Parkers and Wirthlins allege that the defendants are attempting to "indoctrinate" their children with the belief that homosexuality and same-sex marriages are moral, and to "denigrate" the contrary

view that they wish to instill in their children.

The Parkers and Wirthlins assert that the defendants' conduct violates their rights under the United States Constitution to raise their children and to the free exercise of their religion. They also contend that the defendants have violated the laws of the Commonwealth of Massachusetts, including the statute that requires that parents be given notice and an opportunity to exempt their children from any curriculum that "primarily involves human sexual education or human sexuality issues." M.G.L. c. 71, §32A.

The defendants have moved to dismiss this case. As explained in detail in this Memorandum, plaintiffs have not alleged facts which constitute a violation of the Constitution or any law of the United States. Therefore, their federal claims are being dismissed with prejudice. Plaintiffs' state law claims are also being dismissed, but without prejudice to their being reinstituted in the courts of the Commonwealth of Massachusetts.

In summary, the court must dismiss plaintiffs' federal claims because this case is not distinguishable in any material respect from Brown v. Hot, Sexy and Safer Productions, 68 F.3d 525 (1st Cir. 1995). In Brown, the First Circuit held that the constitutional right of parents to raise their children does not include the right to restrict what a public school may teach their children and that teachings which contradict a parent's religious beliefs do not violate their First Amendment right to exercise

their religion. Id. at 534, 539. The reasoning and holding of Brown have been reaffirmed by the First Circuit, have been found to be persuasive by many other Courts of Appeals in comparable cases, and have not been undermined by any decision of the Supreme Court. Therefore, Brown constitutes binding precedent which dictates the decision to dismiss plaintiffs' federal claims in this case.

In essence, under the Constitution public schools are entitled to teach anything that is reasonably related to the goals of preparing students to become engaged and productive citizens in our democracy. Diversity is a hallmark of our nation. It is increasingly evident that our diversity includes differences in sexual orientation. Our nation's history includes a fundamental commitment to promoting mutual respect among citizens in our diverse nation that is manifest in the First Amendment's prohibitions on establishing an official religion and restricting the free exercise of religious beliefs on which plaintiffs base some of their federal claims. Our history also includes instances of individual and official discrimination against gays and lesbians, among others. It is reasonable for public educators to teach elementary school students about individuals with different sexual orientations and about various forms of families, including those with same-sex parents, in an effort to eradicate the effects of past discrimination, to reduce the risk of future discrimination and, in the process, to reaffirm our nation's constitutional

commitment to promoting mutual respect among members of our diverse society. In addition, it is reasonable for those educators to find that teaching young children to understand and respect differences in sexual orientation will contribute to an academic environment in which students who are gay, lesbian, or the children of same-sex parents will be comfortable and, therefore, better able to learn.

When, as here, federal claims are dismissed at the outset of a case, the related state law claims should usually be dismissed as well, without prejudice to their being pursued in state court. It is particularly appropriate that the state law claims in this case now be dismissed.

As indicated earlier, those claims include plaintiffs' contention that the defendants have violated the Massachusetts statute which requires that parents be given notice and an opportunity to exempt their children from any curriculum that "primarily involves human sexual education or human sexuality." M.G.L. c. 71, §32A. The defendants contend that the statute does not provide private individuals the power to sue to enforce it. They also argue that the conduct in question in this case is not covered by the statute. The courts of the Commonwealth of Massachusetts have not decided these issues. It is most appropriate to allow those courts to decide authoritatively the meaning of the Massachusetts statute.

Therefore, all of plaintiffs' claims are being dismissed.

However, the limits of what is now being decided should be recognized.

Parents do have a fundamental right to raise their children. They are not required to abandon that responsibility to the state. The Parkers and Wirthlins may send their children to a private school that does not seek to foster understandings of homosexuality or same-sex marriage that conflict with their religious beliefs. They may also educate their children at home. In addition, the plaintiffs may attempt to persuade others to join them in electing a Lexington School Committee that will implement a curriculum that is more compatible with their beliefs. However, the Parkers and Wirthlins have chosen to send their children to the Lexington public schools with its current curriculum. The Constitution does not permit them to prescribe what those children will be taught.

It should also be recognized that while the Constitution does not compel the defendants to revise the Lexington elementary school curriculum, or to permit the Parkers and Wirthlins to exempt their children from teaching about homosexuality or same-sex marriage, it also does not prohibit the defendants from voluntarily accommodating the parents' concerns if there is a reasonable way to do so. Finding a reasonable accommodation may be a challenging task. Allowing parents to exempt their children from classes primarily involving human sexual education may not injure the value of those classes for the students who remain. However, as Ralph

Waldo Emerson wrote in his journal, "'I pay the school master, but 'tis the school boys that educate my son.'" James O. Freedman, Idealism and Liberal Education 63 (1999). An exodus from class when issues of homosexuality or same-sex marriage are to be discussed could send the message that gays, lesbians, and the children of same-sex parents are inferior and, therefore, have a damaging effect on those students. Cf. Brown v. Board of Education, 347 U.S. 483, 494 (1954).[2] It might also undermine the defendants' efforts to educate the remaining other students to understand and respect differences in sexual orientation.

Nevertheless, it is evident to the court that this dispute involves parents who are passionately devoted to their children, many people who support them, and committed educators and their many supporters as well. Profound differences in religious beliefs are also a hallmark of our diverse nation. It is often in a community's interest to try to find a reasonable way to accommodate those differences. Litigation of the remaining state law claims in state court will result in a judicial decision of the issues presented. It is not likely to end the intense disagreement

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[2]The Supreme Court wrote in Brown, 347 U.S. at 494:

> Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of law, for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn.

between the parties or the divisive impact of it on their community. Therefore, the parties may wish to attempt to mediate their dispute before resuming their legal battle in state court.

II. FACTS

The following facts are alleged in the complaint, derived from documents central to plaintiffs' allegations or specifically referenced in the complaint, or describe established laws and policies of the Commonwealth of Massachusetts as reflected in its official records. See Watterson v. Page, 987 F.2d 1, 3 (1st Cir. 1993); Beddal v. State Street Bank and Trust Co., 137 F.3d 12, 16-17 (1st Cir. 1998).

Since at least 1993, Massachusetts has by statute required that public schools not discriminate based on sex or sexual orientation. See M.G.L. c. 76, §5. Moreover, Massachusetts law has since 1993 required that the Board of Education and the Commissioner of Education develop standards for curricula for all public elementary and secondary schools "to inculcate respect for the cultural, ethnic and racial diversity of the commonwealth . . . and to avoid perpetuating gender, cultural, ethnic or racial stereotypes." M.G.L. c. 69, §1D.

Accordingly, the Massachusetts Department of Education promulgated regulations which require that "[a]ll public school systems shall, through their curricula, encourage respect for the

human and civil rights of all individuals regardless of race, color, sex, religion, national origin or sexual orientation." 603 C.M.R. §26.06(1). Pursuant to these directives, the Commissioner of the Department of Education issued curricula frameworks for pre-kindergarten through fifth grade that encourage instruction that describes "different types of families" and "the concepts of prejudice and discrimination." Massachusetts Comprehensive Health Curriculum Framework (1999) at 30, 33. These lessons are intended to contribute to the creation of "a safe and supportive environment where individual similarities and differences are acknowledged." Id. at 5.

In 2003, the Supreme Judicial Court of Massachusetts held that the state's ban on same-sex marriages violated the Commonwealth's constitution. See Goodridge v. Department of Public Health, 440 Mass. 309 (2003). This decision was based, in part, on the finding that the "ban work[ed] a deep and scarring hardship on a very real segment of the community for no rational reason." Id. at 341.

Jacob Parker is a student in the Lexington, Massachusetts Estabrook Elementary School. In 2005, when he was a six year-old kindergarten student, Jacob brought home from school the book Who's in a Family as part of a Diversity Book Bag program. The Lexington school system uses the Diversity Book Bag program to strengthen the connections among its schoolchildren, and to build an atmosphere of tolerance and respect for different cultures,

races, and family structures. Who's in a Family includes illustrations of different forms of families, including children with parents of different genders, children with parents of the same gender, children with parents of different races, and a single parent family. In 2006, this book was in Jacob's first grade reading center. Molly's Family was also in that reading center. Molly's Family teaches about different kinds of families, focusing on a student whose parents are a same-sex couple.

Joey Wirthlin also attends the Estabrook Elementary School. In 2006, when he was seven years-old, his first grade teacher read King and King aloud to his class. King and King is a fairytale about a prince ordered by his mother, the queen, to find a princess to marry. The prince rejects each of the princesses he meets. Ultimately, the prince meets another prince. The two fall in love, marry, and live happily ever after. The book concludes with a cartoon kiss between the young couple.

David and Tonia Parker are Jacob's parents. Joseph and Robin Wirthlin are Joey's parents. The Parkers and Wirthlins have sincerely held religious beliefs that homosexuality is immoral and that marriage necessarily means a holy union between a man and a woman. They do not wish to have their young children exposed to views that contradict these beliefs. The Parkers and Wirthlins contend that the defendants used Who's in a Family and King and King to "indoctrinate" their young children with the beliefs that

homosexuality and same-sex marriages are moral and acceptable, and that the Parkers' and Wirthlins' beliefs and teachings to the contrary are incorrect. Plaintiffs also assert that the defendants acted intentionally to "denigrate" their sincere and deeply held religious beliefs.

The Parkers and Wirthlins informed the defendants that the books and lessons in dispute are contrary to their religious beliefs, and asserted that the use of those books violated their parental rights to raise their children. They requested that the Lexington schools not expose Jacob, his younger brother Josh Parker, or Joey to any material or discussion concerning homosexuality or same-sex unions without providing notification to their respective parents and an opportunity for the parents to opt out of those lessons on behalf of their children.

Pursuant to M.G.L. c. 71, §32A, Lexington has a policy which allows students to opt out of curriculum that "primarily involves human sexual education or human sexuality issues." However, the defendants did not construe this policy to require offering this option to teaching concerning homosexuality or same-sex marriages. Asserting that the Parkers' and Wirthlins' requests were not practical, the defendants denied them.

The Superintendent of Schools for Lexington, defendant Paul Ash, explained this decision in several public statements. The plaintiffs assert that these statements were inaccurate and

intentionally demeaning to them.

In 2006, the Parkers and the Wirthlins filed this suit individually and on behalf of their children. They allege violations of both federal and state law. More specifically, the plaintiffs assert that their federal constitutional rights to privacy, to raise their children, and to the free exercise of their religion are being violated by the defendants individually and in conspiracy with each other. They also contend that defendants' conduct violates the Massachusetts Civil Rights Act, M.G.L. c. 12, §11, and the statute which requires that parents be given notice and an opportunity to exempt their children from curriculum which "primarily involves human sexual education or human sexuality issues," M.G.L. c. 71, §32A.

Plaintiffs seek compensatory damages and punitive damages. They also request injunctive relief that would require the defendants to: notify the plaintiff parents of any adult initiated classroom discussion of sexuality, gender identity, or forms of marriage until their children are in the seventh grade; allow the plaintiff parents to exempt their children from any such discussion; permit the plaintiff parents to observe silently and record any such discussion; and prohibit "materials graphically depicting homosexual physical contact," evidently including King and King, from being submitted to the students until seventh grade. Complaint at 23.

Defendants moved to dismiss this case, pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim on which relief may be granted. With the agreement of the plaintiffs, the court received a brief in support of the motion to dismiss from several amici curiae. Plaintiffs opposed the motion to dismiss. A hearing was held on February 7, 2007.

III. ANALYSIS

A. The Applicable Standard

In considering a motion to dismiss under Rule 12(b)(6) a court "must take the allegations of the complaint as true and must make all reasonable inferences in favor of the plaintiffs." Watterson v. Page, 987 F.2d 1, 3 (1st Cir. 1993). "'A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Miranda v. Ponce Fed'l Bank, 948 F.2d 41, 44 (1st Cir. 1991) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

This "highly deferential" standard of review "does not mean, however, that a court must (or should) accept every allegation made by the complainant, no matter how conclusory or generalized." United States v. AVX Corp., 962 F.2d 108, 115 (1st Cir. 1992). Rather, a court should "eschew any reliance on bald assertions, unsupportable conclusions, and 'opprobrious epithets.'" Chongris v.

Board of Appeals of Town of Andover, 811 F.2d 36, 37 (1st Cir. 1987) (quoting Snowden v. Hughes, 321 U.S. 1, 10 (1944)).

B. The Federal Claims Must Be Dismissed With Prejudice

The defendants assert that even accepting the allegations in the complaint as true, the plaintiffs have failed to state a violation of their federal constitutional rights. They also contend that, at a minimum, the individual defendants have qualified immunity with regard to the claims against them and, therefore, cannot be held personally liable to plaintiffs.

"Before reaching the issue of qualified immunity the court must ascertain whether the plaintiffs have asserted a violation of a constitutional right at all." Brown, 68 F.3d at 531; see also Watterson, 987 F.2d at 7; Singer v. Maine, 49 F.3d 837, 844 (1st Cir. 1995). As indicated earlier and described below, even if proven, the allegations in the complaint would not establish a violation of plaintiffs' federal constitutional rights. Therefore, defendants' motion to dismiss the federal claims is meritorious.

It is axiomatic that "[u]ntil a court of appeals revokes a binding precedent, a district court within the circuit is hard put to ignore that precedent unless it has unmistakably been cast into disrepute by supervening authority. See Sarzen v. Gaughan, 489 F.2d 1076, 1082 (1st Cir. 1973) (explaining that stare decisis requires lower courts to take binding precedents 'at face value until formally altered.')." Eulitt v. Maine Department of

Education, 386 F.3d 344, 349 (1st Cir. 2004). The instant case is in all material respects analogous to Brown, supra, in which the First Circuit affirmed the dismissal of plaintiffs' federal claims. The reasoning of Brown has not been cast into question by either subsequent decisions of the First Circuit or the Supreme Court. Therefore, this court must follow Brown and dismiss the federal claims in this case.

1. The Privacy and Substantive Due Process Claim

In Brown, 68 F.3d at 529, two fifteen year-old high school students were required to attend a program to teach AIDS awareness. Although school policy contemplated obtaining prior parental permission to attend, those students' parents "were not given advance notice of the content of the Program or an opportunity to excuse their children from attendance at the assembly." Id. at 530. See also id. at 535 ("the parents were not given advance notice of the contents of the Program or an opportunity to opt out.").

In Brown, the First Circuit recognized that the "Fourteenth Amendment provides that '[n]o state shall . . . deprive any person of life, liberty, or property without due process of law. U.S. Const. amend. XIV." Id. at 531. The First Circuit explained that a plaintiff can assert a viable substantive due process claim by alleging a "deprivation of an identified liberty or property interest protected by the Fourteenth Amendment." Id.

In Brown, the plaintiff parents alleged that their right to substantive due process was infringed because "the defendants violated their privacy right to direct the upbringing of their children and educate them in accord with their own views." Id. at 532. The Parkers and the Wirthlins make the same claim in this case, asserting that "the defendants intruded upon and impaired the adult plaintiffs' clearly established substantive Due Process rights under the Fifth and Fourteenth Amendments, as parents and guardians to direct the moral upbringing of their children and the clearly established rights of the minor children to such upbringing." Complaint, ¶71.

In Brown, the First Circuit assumed for the purpose of its analysis that "the right to rear one's children is fundamental." 68 F.3d at 533. Interpreting and applying the Supreme Court precedents of Meyer v. Nebraska, 262 U.S. 390 (1923) and Pierce v. Society of Sisters, 268 U.S. 510 (1925), the First Circuit wrote that:

> The Meyer and Pierce cases, we think, evince the principle that the state cannot prevent parents from choosing a specific educational program-whether it be religious instruction at a private school or instruction in a foreign language. That is, the state does not have the power to standardize its children or "foster a homogenous people" by completely foreclosing the opportunity of individuals and groups to choose a different path of education. Meyer, 262 U.S. at 402, 43 S.Ct. at 627-28, discussed in, [Laurence H. Tribe, American Constitutional Law, §15-6 at 1319-20 (1988)]. We do not think, however, that this freedom encompasses a fundamental constitutional right to dictate the curriculum at the public school to which they have chosen

> to send their children. See [Rotunda & Nowak, Treatise on Constitutional Law: Substance and Procedure, (2d ed. 1992)]. We think it is fundamentally different for the state to say to a parent, "You can't teach your child German or send him to a parochial school," than for the parent to say to the state, "You can't teach my child subjects that are morally offensive to me." The first instance involves the state proscribing parents from educating their children, while the second involves parents prescribing what the state shall teach their children. If all parents had a fundamental constitutional right to dictate individually what the schools teach their children, the schools would be forced to cater a curriculum for each student whose parents had genuine moral disagreements with the school's choice of subject matter. We cannot see that the Constitution imposes such a burden on state educational systems, and accordingly find that the rights of parents as described by Meyer and Pierce do not encompass a broad-based right to restrict the flow of information in the public schools.

Id. at 533-34. Therefore, the First Circuit found that plaintiffs' substantive due process claim had been properly dismissed.

The First Circuit's reasoning and decision in Brown requires dismissal of the substantive due process claim in the instant case as well. The holding that parents do not have a constitutionally protected liberty interest that permits them to prescribe what the state may teach their children has not been "cast into disrepute by supervening authority." Eulitt, 386 F.3d at 349. To the contrary, in 2004 the First Circuit reiterated that while parents have a general liberty interest that permits them to direct the upbringing and education of their children, "this constitutional right is limited in scope." Pisacane v. Desjardins, No. 02-1694, 2004 WL 2339204 **3 (1st Cir. Oct. 18, 2004). Pisacane involved a school's alleged "refusal to let [a parent] dictate to the school about [a]

science text book." Id. In affirming the granting of the defendants' motion for summary judgment, the First Circuit wrote concerning a parent's right to raise his children:

> In Brown we ruled that the right embraces the principle that the state cannot prevent parents from choosing for their child a specific education program but did not include the right to dictate the curriculum at the public school to which parents have chosen to send their children. 68 F.3d at 533-34.
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> * * *
>
> The appellees asserted refusal to let Pisacane dictate to the school about the science book . . . would not violate the parental due process right. As said, the right does not include parental control over a public school's curriculum . . . . . Brown, 68 F.3d at 533-34.

Id.

Brown not only remains the law of the First Circuit, it has also been found to be persuasive in every other circuit that has discussed it in defining the scope of a parent's right to raise his or her children. See Leebaert v. Harrington, 332 F.3d 134, 141 (2d Cir. 2003) (upholding refusal to exempt student from mandatory health education course and stating, "we agree [with Brown] that Meyer, Pierce, and their progeny do not begin to suggest the existence of a fundamental right of every parent to tell a public school what his or her child will and will not be taught"); C.N. v. Ridgewood Board of Education, 430 F.3d 159, 182 (3rd Cir. 2005) (affirming finding that administration of a questionnaire to students did not violate parents' liberty interest and noting that Brown, among other decisions, "held that in certain circumstances

the parental right to control the upbringing of a child must give way to a school's ability to control curriculum"); Littlefield v. Forney, 268 F.3d 275, 291 (5th Cir. 2001) (citing Brown in support of the holding that "[w]hile Parents may have a fundamental right in the upbringing and education of their children, this right does not cover the Parents' objection to the school uniform policy"); Blau v. Fort Thomas Public School District, 401 F.3d 381, 395-96 (6th Cir. 2005) (citing Brown in holding that parent does not have a right to exempt his child from a school dress code); Swanson v. Guthrie Independent School District No. 1-L., 135 F.3d 694, 700 (10th Cir. 1998) (citing Brown in holding that a school's refusal to allow a student to attend classes part-time presented "no colorable claim of infringement on the constitutional right to direct a child's education"); see also Herndon v. Chapel Hill-Carrboro City Board of Education, 89 F.3d 174, 176 (4th Cir. 1996) (holding, without citing Brown, that requiring high school students to perform public service does not violate parents' right to control the education of their children).

Contrary to plaintiffs' contention, the Supreme Court's decision in Troxel v. Greenville, 530 U.S. 57 (2000), does not undermine the authority of Brown. In Troxel, the plurality stated that Meyers and Pierce established that there is a fundamental liberty "interest of parents in the care, custody, and control of their children." 530 U.S. at 65. It then held that as applied to

the facts of Troxel, a state statute allowing a court to grant visitation rights to any person violated that fundamental right. Id. at 73.

In Troxel, the plurality identified a fundamental liberty interest of "parents, but left the scope of that right undefined." Leebaert, 332 F.3d at 142. The Second Circuit explained that while the plurality in Troxel discussed Meyer and Pierce:

> [T]here is nothing in Troxel that would lead us to conclude from the Court's recognition of a parental right in what the plurality called "the care, custody, and control" of a child with respect to visitation rights that parents have a fundamental right to the upbringing and education of the child that includes the right to tell public schools what to teach or what not to teach him or her.

Id. See also Littlefield, 268 F.3d at 291 ("Troxel does not change [our] reasoning in the context of parental rights concerning public education.").

In Brown the First Circuit essentially anticipated Troxel. The First Circuit wrote in Brown that "[w]e need not decide here whether the right to rear one's children is fundamental because we find that, even if it were, the plaintiffs have failed to demonstrate an intrusion of constitutional magnitude." 68 F.3d at 533. After thus assuming, without finding, that the right to raise one's children is fundamental, the First Circuit held that this right does not "encompass [] a fundamental constitutional right to dictate the curriculum at the public school to which they have chosen to send their children." Id. In view of the foregoing,

this court concludes that Troxel has not unmistakably undermined the authority of Brown. See Eulitt, 385 F.3d at 349. Therefore, Brown remains precedent that establishes the law which this court must apply in this case.

Plaintiffs' efforts to distinguish Brown factually are also not persuasive. Plaintiffs assert that "it appears that the parents in Brown were in fact given some sort of prior notice and an opt out option." Plaintiffs' Memorandum in Opposition to Amicus Brief at 7. This contention is based on a misreading of Brown. In Brown, the First Circuit noted that the School Committee's policy provided for notice and an opportunity for parents to exempt their children from the presentation on human sexuality. 68 F.3d at 530. It twice expressly stated, however, that the required notice and opportunity to opt out were not given. Id. at 530, 534.

Nor does the young age of the students in the instant case distinguish Brown. In the different context of deciding whether government conduct violates the Establishment Clause of the First Amendment by sending a message that the government is endorsing religion, the Supreme Court has found both the school setting and the young age of the children to be relevant. As the Seventh Circuit has summarized it:

> [A]lleged Establishment Clause violations in grade-school settings present heightened concerns for courts. These concerns were voiced in School District of Grand Rapids v. Ball, 473 U.S. 373, 390, 105 S.Ct. 3216, 3226, 87 L.Ed.2d 267 (1985): "The symbolism of a union between church and state is most likely to influence children of

> tender years, whose experience is limited and whose beliefs consequently are the function of environment as much as of free and voluntary choice." This concern for the age of the audience is of particular importance when the setting for the alleged violation is a public school. In this setting, "[t]he State exerts great authority and coercive power through mandatory attendance requirements, and because of students' emulation of teachers as role models and the children's susceptibility to peer pressure." Edwards v. Aguillard, 482 U.S. 578, 584, 107 S.Ct. 2573, 2578, 96 L.Ed.2d 510 (1987).

Sherman v. Community Consolidated School District 31 of Wheeley Township, 8 F.3d 1160, 1163 (7th Cir. 1993). See also Spacco v. Bridgewater School Department, 722 F. Supp. 834, 841 (D. Mass. 1989) (Wolf, J.) (plaintiffs made a strong showing that holding public elementary school classes in a church violates the Establishment Clause in part because "many of those affected . . . are impressionable, young children."). However, plaintiffs have repeatedly confirmed that they are not asserting an Establishment Clause claim in this case.

The reason for the constitutional concern regarding young school children for Establishment Clause purposes does not apply to plaintiffs' substantive due process and Free Exercise Clause claims in this case. The Establishment Clause prohibits government conduct that has the effect of endorsing religion. See County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter, 492 U.S. 573, 592 (1989). However, the very purpose of schools is the "'preparation of individuals for participation as citizens' [and, therefore,] local education officials may attempt

'to promote civic virtues' . . . 'that awake[n] the child to cultural values.'" Board of Education v. Pico, 457 U.S. 853, 876 (1982) (Blackmun, J., concurring) (quoting Ambach v. Norwalk, 441 U.S. 68, 80 (1979), and Brown v. Board of Education, 347 U.S. 483, 493 (1954)). Schools are expected to transmit civic values. See Plyer v. Doe, 457 U.S. 220, 221 (1982); Ambach, 441 U.S. at 76 . In essence, the Supreme Court has made clear that while the state may not expressly or indirectly endorse a particular religion or suggest that religious beliefs are officially preferred over other beliefs, the state is expected to teach civic values as part of its preparation of students for citizenship.

Neither the Supreme Court nor the First Circuit have suggested that parents have constitutional rights concerning public elementary school students that are different or greater than their rights concerning older students. Rather, in Runyon v. McCrary, 427 U.S. 160, 165, 177 (1976), the Supreme Court held that prohibiting racial discrimination in admissions to private nursery schools, among others, did not violate parents' rights to direct the upbringing and education of their children. In Brown, the First Circuit did not write anything that suggests that it would have found a parental right to restrict what could be taught to elementary school students when it held that parents had no such right with regard to high school students. See 68 F.3d at 532-34.

In Fields, the Ninth Circuit held that the rights of parents

were not infringed by the distribution of a survey containing questions about sex to elementary school students. The Ninth Circuit relied on Brown in reaching its conclusion, writing:

> We agree with and adopt the First Circuit's analysis. Meyer, Pierce, and their progeny "evince the principle that the state cannot prevent parents from choosing a specific educational program," but they do not afford parents a right to compel public schools to follow their own idiosyncratic views as to what information the schools may dispense. Parents have a right to inform their children when and as they wish on the subject of sex; they have no constitutional right, however, to prevent a public school from providing its students with whatever information it wishes to provide, sexual or otherwise, when and as the school determines that it is appropriate to do so.

427 F.3d at 1205-06. See also Littlefield, 268 F.3d at 279, 290 (relying on Brown in finding that district-wide, mandatory uniform policy, evidently covering elementary school students, did not violate parental rights).

In C.N., the Third Circuit relied in part on Brown in finding in connection with a motion for summary judgment that the use of a questionnaire seeking details of middle and high school students' personal lives did not violate their parents' rights to direct their upbringing. 430 F.3d at 182-83, 1985. As plaintiffs here emphasize, in doing so the Third Circuit wrote:

> [W]hile it is true that parents, not schools, have the primary responsibility "to inculcate moral standards, religious beliefs, and elements of good citizenship," [Gruenke v. Seip, 225 F.3d 307 (3d Cir. 2000)], a myriad of influences surround middle and high school students everyday, many of which are beyond the strict control of the parent or even abhorrent to the parent. We recognize

> that introducing a child to sensitive topics before a parent might have done so herself can complicate and even undermine parental authority, but conclude that the survey in this case did not intrude on parental decision-making authority in the same sense as occurred in Gruenke. A parent whose middle or high school age child is exposed to sensitive topics or information in a survey remains free to discuss these matters and to place them in the family's moral or religious context, or to supplement the information with more appropriate materials. School Defendants in no way indoctrinated the students in any particular outlook on these sensitive topics; at most, they may have introduced a few topics unknown to certain individuals. We thus conclude that the survey's interference with parental decision-making authority did not amount to a constitutional violation.

Id. at 185 (emphasis added). In reaching this conclusion, the Third Circuit noted that it was not holding, "as did the panel in Fields v. Palmdale School District, 427 F.3d 1197 (9th Cir. 2005), that the right of parents under the Meyer-Pierce rubric does not extend beyond the threshold of the school door.'" Id. at n.26.

The Third Circuit's rejection of what is characterized as the "categorical approach" of Fields, id., and its repeated references to the children as middle or high school students suggest that it has left open the possibility that the age of the students at issue might in some case make a difference. However, this suggestion does not persuade this court either that the instant case is factually different than Brown in any material respect or that Brown has "unmistakably been cast into disrepute by supervening authority." Eulitt, 386 F.3d at 349.

This conclusion is not qualified by the fact that in C.N., the Third Circuit stated that the students were not being

"indoctrinated" and in the instant case plaintiffs allege that their children are being "indoctrinated." As explained earlier, in deciding a motion to dismiss, a court must not rely on, among other things, "'opprobrious epithets.'" Chongris, 811 F.2d at 37 (quoting Snowden, 321 U.S. at 10). "Indoctrination" is a pejorative term for "teaching." Among other things, "indoctrination" is defined as "to teach to accept a system of thought uncritically." Websters New Riverside Dictionary (1984 ed) at 624. It is, obviously, the duty of schools to teach. The complaint, even when read in the light most favorable to plaintiffs, indicates that "[a] parent whose . . . child is exposed to sensitive topics or information . . . remains free to discuss these matters and place them in the family's moral or religious context . . ." C.N., 430 F.3d at 185.[3] Therefore, the characterization of the use of the books at issue as "indoctrination" does not distinguish the instant case from Brown.[4]

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[3]Although not material to the analysis of the motion to dismiss, the court notes that the devoted plaintiff parents in this case have demonstrated their capacity to inform their children of views that contradict those to which the students are being introduced at school.

[4]At the February 7, 2007 hearing the parties submitted the books at issue, which may be considered in deciding the motion to dismiss because they are central to the complaint. See Watterson, 987 F.2d at 3; Beddal, 137 F.3d at 16-17. The court has reviewed them. Who's in a Family and Molly's Family each describe many different types of families and do not suggest the superiority of any paradigm, let alone families headed by members of the same-sex. The premise of King and King is that men usually marry women, but that some men are happier marrying another man.

In view of the foregoing, Brown's holding that parents do not have a fundamental liberty interest that permits them to prescribe the curriculum for their children means that the defendants' use of the books at issue and related teaching is constitutionally permissible if there is a rational basis for the instruction. See Immediato v. Rye Neck Sch. Dist., 73 F.3d 454, 461 (2d Cir. 1996) (rational basis review for secular objections); Leebaert, 332 F.3d at 142-143 (extending Immediato to cases in which plaintiff's objections are religiously motivated); Herndon, 89 F.3d 179 (explaining that under Runyon, curricular choices are subject to reasonable regulation); Littlefield, 268 F.3d at 291 (same); Blau, 401 F.3d at 393, 396 (all governmental action that does not impinge on fundamental rights is subject to rational basis review); Fields, 427 F.3d at 1208 ("government actions that do not affect fundamental rights or liberty interests and do not involve suspect classifications will be upheld if it they are rationally related to a legitimate state interest"); Swanson v. Guthrie Indep. Sch. Dist. No. I-L, 135 F.3d 694, 703 (10th Cir. 1998) (with regard to a neutral rule of general applicability defendants must prove only a reasonable relationship to a legitimate purpose).

"In cases involving rationality review, a court must apply substantially the same analysis to both substantive due process and equal protection challenges." Eastern Enterprise, v. Chater, 110

F.3d 150, 159 (1st Cir. 1997) overturned on other grounds at Eastern. Enterprise, v. Apfel, 524 U.S. 498, 537 (1998). Rational basis review requires that government action correlate to a legitimate governmental interest. See PFZ Properties, Inc. v. Rodriquez, 928 F.2d 28, 31-32 (1st Cir. 1991). The fit between means and ends need not be tight - it need only be "plausible." FCC v. Beach Communications, 508 U.S. 307, 313-314 (1993). Moreover, the constitution demands only that the legitimate governmental purpose be conceivable, not actual. Id. at 315. In essence, rational basis review "is a paradigm of judicial restraint." Id. at 313-314 (1993).

Plaintiffs argue that defendants' alleged conduct violates their fundamental liberty interest in raising their children and, therefore, heightened scrutiny is required concerning the constitutionality of that conduct. They have not asserted that there is not a rational basis for the defendants' decisions about what to teach.

In any event, such a rational basis exists. "[A]s Thomas Jefferson pointed out early in our history . . . education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence." Yoder v. Wisconsin, 406 U.S. 205, 221 (1972). As indicated earlier, the Supreme Court has recognized "'the public schools as a most vital civic institution for the

preservation of a democratic system of government,' Abington v. School District v. Schemp, 374 U.S. 203, 230 (1963) (Brennan, J., concurring), and as the primary vehicle for transmitting the 'values on which our society rests.' Ambach v. Norwich, 441 U.S. 68, 76 (1979)." Plyer, 457 U.S. at 221.

One of the most fundamental of those values is mutual respect. Indeed, our nation's devotion to such respect is manifest in the First Amendment itself, which prohibits the majority from establishing an official religion or prohibiting the exercise of any sincere religious belief, no matter how abhorrent it may be to many or most people.[5]

Students today must be prepared for citizenship in a diverse society. See Grutter v. Bollinger, 539 U.S. 306, 330 (2003) ("the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints"). As increasingly recognized, one dimension of our nation's diversity is differences in sexual orientation. In Massachusetts, at least, those differences may result in same-sex marriages.

In addition, as described earlier, Massachusetts law prohibits discrimination based on sexual orientation. M.G.L. c. 76, §5.

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[5]The First Amendment states, in pertinent part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. These requirements also apply to the states. See McCreary County v. ACLU, 545 U.S. 844, 853 (2005).

Consistent with this, the Department of Education requires that all public schools teach respect for all individuals regardless of, among other things, sexual orientation. 603 C.M.R. §26.06(1). It also encourages instruction concerning different types of families. Massachusetts Comprehensive Health Curriculum Framework at 30, 33. Some families are headed by same-sex couples.

The alleged conduct of the defendants at issue in this case was responsive to these requirements and standards. In view of the value to the community of preparing students to respect differences in their personal interactions with others and in their future participation in the political process, the conduct at issue in this case is rationally related to the goal of preparing them for citizenship. It is also rationally related to the goal of eradicating what the Massachusetts Supreme Judicial Court characterized as the "deep and scarring hardship" that the ban on same-sex marriages imposed "on a very real segment of the community for no rational reason." Goodridge, 440 Mass. at 341.

Moreover, attempting to teach young, elementary school students to respect gays and lesbians is also rationally related to the legitimate pedagogical purpose of fostering an educational environment in which gays, lesbians, and the children of same-sex parents will be able to learn well. As the Ninth Circuit has explained:

The demeaning of young gay and lesbian students in a

> school environment is detrimental not only to their psychological health and well-being, but also to their educational development. Indeed, studies demonstrate that "academic underachievement, truancy, and dropout are prevalent among homosexual youth and are the probable consequences of violence and verbal and physical abuse at school." One study has found that among teenage victims of anti-gay discrimination, 75% experienced a decline in academic performance, 39% had truancy problems and 28% dropped out of school. Another study confirmed that gay students had difficulty concentrating in school and feared for their safety as a result of peer harassment, and that verbal abuse led some gay students to skip school and others to drop out altogether. Indeed, gay teens suffer a school dropout rate over three times the national average. In short, it is well established that attacks on students on the basis of their sexual orientation are harmful not only to the students' health and welfare, but also to their educational performance and their ultimate potential for success in life.

Harper v. Poway Unified School District, 445 F.3d 1166, 1178-79 (9th Cir. 2006) (internal citations and references omitted).

"Minds, of course, are hard to change." Howard Gardner, Changing Minds: The Art and Science of Changing our Own and Other People's Minds 1 (2004). "[A] key to changing a mind is to produce a shift in the individual's 'mental representations[.]'" Id. at 5. As it is difficult to change attitudes and stereotypes after they have developed, it is reasonable for public schools to attempt to teach understanding and respect for gays and lesbians to young students in order to minimize the risk of damaging abuse in school of those who may be perceived to be different.

2. The Free Exercise Clause Claim

Plaintiffs also assert that the defendants' alleged conduct

violates their First Amendment rights to exercise their religion freely as well as their parental rights to raise their children. They contend that this presents a "hybrid" claim that must be decided under the strict scrutiny standard, which requires that challenged conduct have more than a mere rational basis. However, in Brown, the First Circuit rejected the same claim. See 68 F.3d at 538-39. Brown is binding precedent on this issue too. Therefore, the rational basis standard applies to plaintiffs' Free Exercise Clause claim. See Leebaert, 332 F.3d at 143-44; Swanson, 135 F.3d at 700.

More specifically, government conduct that "is neutral and of general applicability need not be justified by a compelling state interest even if [it] has the incidental effect of burdening a particular practice." Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 531 (1993). See also Employment Division, Oregon Department of Human Resources v. Smith, 494 U.S. 872, 881 & n.1 (1990); Brown, 68 F.3d at 538-39. Plaintiffs do not allege that the conduct at issue is not neutral or not of general applicability. Rather, they argue that this case is covered by a hybrid exception to the general rule.

In Smith, the Supreme Court described such a hybrid exception, requiring heightened scrutiny for cases that involve "'the Free Exercise Clause in conjunction with other constitutional protections.'" Brown, 68 F.3d at 539 (quoting Smith, 494 U.S. at

881 & n.1). In Smith, the Court stated that a hybrid claim requiring heightened scrutiny could exist in a case involving conduct that violated the Free Exercise Clause and a parental right. 494 U.S. 881, 882.[6]

The parent plaintiffs in Brown asserted that they had alleged such a hybrid claim. The First Circuit rejected this contention,

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[6]As the Second Circuit has noted "no circuit has yet actually applied strict scrutiny based on [the hybrid] theory." Leebaert, 332 F.3d at 142. In contrast to the First Circuit in Brown, the Second Circuit understands the discussion in Smith concerning hybrid claims to be only dicta and, therefore, not binding. Id. at 143. It has decided not to apply heightened scrutiny to hybrid claims, writing:

> In Kissinger v. Board of Trustees of the Ohio State University, College of Veterinary Medicine, 5 F.3d 177 (6th Cir.1993), a case involving free exercise and various other First Amendment claims, the court explicitly rejected a more stringent legal standard for hybrid claims. Id. at 180. The court explained that it did "not see how a state regulation would violate the [F]ree Exercise Clause if it implicates other constitutional rights but would not violate the Free Exercise Clause if it did not implicate other constitutional rights." Id. We too can think of no good reason for the standard of review to vary simply with the number of constitutional rights that the plaintiff asserts have been violated. "[T]herefore, at least until the Supreme Court holds that legal standards under the Free Exercise Clause vary depending on whether other constitutional rights are implicated, we will not use a stricter legal standard" to evaluate hybrid claims. Id.

Id.

This discussion might cause the First Circuit to reconsider its suggestion in Brown that heightened scrutiny is required for hybrid claims. 68 F.3d at 539.

writing:

> The most relevant of the so-called hybrid cases is Wisconsin v. Yoder, 406 U.S. 205, 232-33, 92 S.Ct. 1526, 1541-42, 32 L.Ed.2d 15 (1972), in which the Court invalidated a compulsory school attendance law as applied to Amish parents who refused on religious grounds to send their children to school. In so holding, the Court explained that
>
> > Pierce stands as a charter of the rights of parents to direct the religious upbringing of their children. And, when combined with a free exercise claim of the nature revealed by this record, more than merely a "reasonable relation to some purpose within the competency of the State" is required to sustain the validity of the State's requirement under the First Amendment.
>
> Id. at 232-33, 92 S.Ct. at 1542 (discussing Pierce, 268 U.S. 510, 45 S.Ct. 571). We find that the plaintiffs allegations do not bring them within the sweep of Yoder for two distinct reasons.
>
> First, as we explained, the plaintiffs' allegations of interference with family relations and parental prerogatives do not state a privacy or substantive due process claim. Their free exercise challenge is thus not conjoined with an independently protected constitutional protection. Second, their free exercise claim is qualitatively distinguishable from that alleged in Yoder. As the Court in Yoder emphasized:
>
> > the Amish in this case have convincingly demonstrated the sincerity of their religious beliefs, the interrelationship of belief with their mode of life, the vital role that belief and daily conduct play in the continued survival of Old Order Amish communities and their religious organization, and the hazards presented by the State's enforcement of a Statute generally valid as to others.
>
> Id. at 235, 92 S.Ct. at 1543. Here, the plaintiffs do not allege that the one-time compulsory attendance at the Program threatened their entire way of life. Accordingly, the plaintiffs' free exercise claim for damages was

properly dismissed.

68 F.3d at 539 (emphasis added).

This discussion and conclusion is equally applicable to the instant case. As explained earlier, as in Brown, "the plaintiffs' allegations do not state a privacy or substantive due process claim." Id. Rather, as the First Circuit also wrote in Brown, "the rights of parents as described by Meyer and Pierce do not encompass a broad-based right to restrict the flow of information in the public schools." Id. at 534.

Once again, Brown is not factually distinguishable from the instant case in any material respect. Nor has its authority on the hybrid claim issue "unmistakably been cast into disrepute by supervening authority." Eulitt, 386 F.3d at 349. Although the First Circuit has not had occasion to address the hybrid claim issue after Brown, the only comparable cases in other Circuits have reached the same result. See Swanson, 135 F.3d at 699-700 (relying in part on Brown in finding that a hybrid free exercise-parental rights claim was not alleged concerning a refusal to allow plaintiff's child to attend public school part-time); Leebaert, 332 F.3d at 143-44 (noting Brown in finding that heightened scrutiny was not required when a parent alleged that a school's refusal to excuse his son from a mandatory health education course violated his free exercise and parental rights). Therefore, the defendants' conduct does not violate plaintiffs' free exercise rights if there

is a rational basis for it. As explained earlier, such a justification amply exists in this case.[7]

3. Conspiracy

Plaintiffs have also failed to allege a conspiracy for which §1983 provides a remedy. Such a conspiracy requires an agreement between two or more people, an overt act, and an actual deprivation of a right secured by the Constitution or laws of the United States. See Earle v. Benoit, 850 F.2d 836, 844 (1st Cir. 1988).

As described earlier, the alleged conduct of the defendants in this case does not violate any right of the plaintiffs protected by the Constitution. No violation of any federal statutory duty is alleged. Therefore, any agreement among the defendants is not an unlawful conspiracy for which §1983 would provide a remedy.

C. The State Law Claims Are Being Dismissed Without Prejudice

Because all of plaintiffs' federal claims are being dismissed, the court must decide whether to exercise its discretion to retain jurisdiction over their state law claims. In this case is not appropriate to do so.

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[7]The second reason relied upon by the First Circuit to reject the plaintiff parents' hybrid right claim in Brown also applies here. As in Brown, "the plaintiffs do not allege that [the conduct at issue] threatened their entire way of life." Brown, 68 F.3d at 539. Therefore, this case is distinguishable from Yoder. Moreover, it appears that even if the complaint were amended to make such an allegation, the First Circuit would again find that plaintiff's "free exercise claim is qualitatively distinguishable from that alleged in Yoder." Id.

"As a general principle, the unfavorable disposition of a plaintiff's federal claims at the early stages of a suit, well before the commencement of trial, will trigger the dismissal without prejudice of any supplemental state-law claims." Rodriguez v. Doral Mortgage Corp., 57 F.3d 1168, 1177 (1st Cir. 1995). The Supreme Court has explained that:

> It has consistently been recognized that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right. Its justification lies in considerations of judicial economy, convenience and fairness to litigants; if these are not present a federal court should hesitate to exercise jurisdiction over state claims, even though bound to apply state law to them, Erie R. Co. v. Tompkins, 304 U.S. 64. Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. Certainly, if the federal claims are dismissed before trial . . . the state claims should be dismissed as well.

United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966).

It is particularly appropriate that this guidance be followed in the instant case. Among other things, plaintiffs allege a violation of the statute that requires parents be given notice and an opportunity to exempt their children from any "curriculum which primarily involves human sexual education or human sexuality," M.G.L. c. 71, §32A. The parties dispute whether there is a private right of action to enforce this statute. Moreover, defendants contend that the conduct at issue in this case does not "primarily involve[] human sexual education or human sexuality."

The courts of the Commonwealth of Massachusetts have not

decided either of these issues. General considerations of comity, and the particular value of providing the Massachusetts courts an opportunity to decide authoritatively the meaning of the Massachusetts statute, persuade this court that plaintiffs' pendent state claims should now be dismissed without prejudice.

IV. ORDER

In view of the foregoing, it is hereby ORDERED that:

1. Defendants' motion to dismiss (Docket No. 18) as to Count I, which includes all of plaintiffs' federal claims, is ALLOWED.

2. Plaintiffs' remaining state law claims are DISMISSED without prejudice to being reinstituted in the courts of the Commonwealth of Massachusetts.

/s/ Mark L. Wolf
UNITED STATES DISTRICT COURT

Gay & Lesbian Advocates & Defenders

Celebrating 30 years as New England's leading legal rights organization dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression.

GLAD Challenges DOMA Section 3 →

Case Overview

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Mary is a state trooper and Kathy a stay-at-home mom to our two boys. Discrimination against our marriage threatens our family and financial security.

Mary Ritchie & Kathy Bush

"DOMA" Means Federal Discrimination Against Married Same-Sex Couples

GLAD CHALLENGES DOMA § 3

On March 3, 2009, GLAD filed a lawsuit in Federal District Court in Boston on behalf of eight married couples and three surviving spouses from Massachusetts who have been denied federal legal protections available to spouses. Two of these couples will be filing suit after receiving rejections of their amended tax returns from the IRS. Each plaintiff is currently eligible for a particular program or benefit, applied for it, and was denied that legal protection because of Section 3 of the Defense of Marriage Act ("DOMA"). **You can view the Complaint here.**

DOMA was enacted in 1996 before any state began issuing marriage licenses to qualified same-sex couples. It has two substantive parts. Section 2 authorizes states to establish policies with respect to marriages of same-sex couples. Section 3 deals with federal discrimination and is the only portion of DOMA challenged in GLAD's lawsuit. (Section 1 merely names the act.)

Section 3 of DOMA applies to the federal government only. It overrides a state's determination that a same-sex couple is married and says that they are not married for purposes of all federal laws and programs, even though the federal government has always deferred to state determinations of marital status. Under this law, "the word 'marriage' means only the legal union of a man and a woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." This law requires all federal departments and agencies to disrespect the valid state-licensed marriages of same-sex couples

but not other married couples. As a result, only married same-sex couples are denied all rights, protections and responsibilities associated with marriage at the federal level.

Download this Overview as a PDF

What is this lawsuit about?

This lawsuit challenges the federal government's denial of marriage-related protections and benefits to legally married Massachusetts same-sex couples, protections and benefits that are available to all other legally married couples.

The law in question, the "Defense of Marriage Act" deprives families of federally-created economic safety nets, to the detriment of those couples and their children or other dependents. It creates a system of first and second class marriages, where the former receive all federal legal protections, and the latter are deniec them, even while taking on the responsibilities of legal marriage.

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What is DOMA § 3 and Why Is It a Problem?

When people marry, as over 10,000 same-sex couples have now done in Massachusetts since 2004, and as couples have been doing in Connecticut since November 2008, they take on legal responsibilities for one another and their families.

The federal government does not license marriages – only states do – but many federal programs take state-granted marital status into account in determining eligibility and the extent of coverage. Due to this unprecedented law, the federal government denies rights, protections and responsibilities to married couples of the same sex in every federal program that takes account of marital status. There are at least 1,138 federal laws in which marital status is a factor according to government studies conducted in 1997 and 2004. In another 2004 report, the Congressional Budget Office estimated the federal government woulc save $1 billion each year through 2014 if same-sex couples could marry nation-wide. You can see these reports and a GLAD overview of the GAO Reports here.

The federal programs to which same-sex married couples are denied access represent some of the critical legal safety nets that couples count on when they marry, as they plan their lives and futures together, as they raise children and deal with hard times, and for which they contribute their American tax dollars. These include:

Social Security spousal protections that ground a family's economic security while living in old age, and upon disability and death;

protections for one spouse's essential monetary resources and the ability to stay in the family home when the other spouse needs Medicaid for nursing home care;

the ability to be included in a family policy of health insurance, and if receiving that family health insurance, to be free of income tax on the value of that insurance;

the ability to use the "Married Filing Jointly" status for federal income tax purposes that can save families money;

family medical leave from a job to care for a seriously ill spouse;

disability, dependency or death benefits for the spouses of veterans and public safety officers;

employment benefits for federal employees, including access to family health insurance benefits, as well as retirement and death benefits for surviving spouses;

estate/death protections that allow a spouse to leave assets to the other spouse – including the family home – without incurring any taxes; and

the ability of a citizen to obtain a visa for a non-citizen spouse and sponsor that spouse for purposes of citizenship.

There are two sides of the marital contract – with rights also come responsibilities – including under federal law. For example:

Eligibility for federal student financial aid requires, for married students, an assessment of the income of both the student and his/her spouse because the married couple is rightly consolidated as a legal economic unit. Ignoring the marriage of a same-sex couple can unfairly allow a married student greater aid than would be available if his/her marriage were recognized by the federal government. Married same -sex couples would welcome having this responsibility for the recognition of their marriage.

Public officials with hiring or supervisory authority are barred from appointing, employing, promoting or advancing their own relatives to positions within governmental agencies, whether related by blood or marriage.

Overall, DOMA Section 3 deprives tax-paying American families of the federally-created economic safety nets for married families, to the detriment of those couples and their children or other dependents. In addition, it creates a system of first and second class marriages, where some married persons receive all federal legal protections, but gay and lesbian married couples are denied them across the board, even while taking on the commitment and duties of their legal marriage vow.

People joined in civil union or in a domestic partnership are also denied these federal rights and protections but for the reason that they are not married. The federal programs at issue were created for, and are currently available to, married families, so it is only married same-sex couples who are eligible for, but are denied these rights and protections because of DOMA Section 3.

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Why Is DOMA Legally Invalid?

In GLAD's view, DOMA Section 3 is unconstitutional and should be struck down by the courts or repealed by Congress.

GLAD believes Section 3 of the law violates the federal government's promise of equal protection of the laws contained in the 5th Amendment of the United States Constitution. DOMA takes married couples and divides them into two groups – those who are respected and those who are effectively "unmarried" by operation of DOMA and are denied all federal legal protections and responsibilities. In GLAD's view, there is no adequate justification for the federal government's non-recognition of valid state marriages of same-sex couples.

DOMA Section 3 is also unprecedented because determinations of marital status are made by states and not the federal government. For the first time in our nation's history, this law requires the federal government to override a state's decision about who is married as to an entire class of marriages. DOMA Section 3 is a radical and unjustifiable departure from the division of power between the states and federal government.

Those favoring DOMA Section 3 argue that the federal government should be able to define terms for its own programs. But DOMA Section 3 is so broad that it defies any legitimate concern with implementation of any particular federal law. It also ignores that the federal government has no business making national marriage laws. That is why for over 200 years the federal government has relied on states to tell them whether a person is married or not. When a state makes a determination of a person's marital status, the Congress cannot undo that by simply claiming, as DOMA Section 3 does, that the person is unmarried. The Congress stepped out of its role and ignored its precedent and practice of deferring to states for one reason: to disrespect the marriages of same-sex couples.

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What Does GLAD's Case Address?

GLAD's is filing suit on behalf of individuals and couples who, because of DOMA Section 3, have been denied legal protections for which they are currently eligible and for which they have applied.

Federal Employees, Federal Retirees, Surviving Spouse of Federal Employee

Several of the plaintiffs seek spousal protections based on their employment with, or their spouse's employment with, the United States government. One plaintiff, a 21+ year employee of the United States Post Office, already receives "Self and Family" health insurance coverage for herself and the couple's two children through her job. Yet, she is unable to add her spouse to that plan, or to her vision plan, or to use her flexible spending account for her spouse's medical expenses, as other married postal workers are entitled to. Another plaintiff, a retiree from the Social Security Administration, has been denied health insurance coverage for his spouse although other retired employees may add their spouses to such coverage. Another plaintiff is the surviving spouse of a retired Member of Congress. He has been denied both health insurance and the survivor annuity (pension) normally available to surviving spouses. In each instance, the government has cited DOMA Section 3 in denying spousal benefits to the postal employee, to the retiree, and to the surviving spouse.

Taxpayers

Several of the plaintiffs have been denied spousal protections available under the Internal Revenue Code and thus pay more in federal income taxes than other similarly situated married couples in Massachusetts. In filing their federal income tax returns, each of these plaintiffs seeks to file as "married filing jointly" rather than as "single" or "head of household." One plaintiff also seeks to establish a "spousal IRA" for her spouse who cares for their children at home, as other working married people may establish such retirement accounts to provide for the well-being of their spouse. Another plaintiff seeks relief from having to pay federal income taxes on the value of the health insurance her employer (the Commonwealth of Massachusetts) provides for her spouse, just as other spouses are not required to pay income tax on such employer-provided health benefits. Each plaintiff filed an amended return with the IRS, asking to be recategorized as a married taxpayer, and requesting a refund. Each amended tax return and accompanying request for refund has been rejected by the Internal Revenue Service ("IRS") based on DOMA Section 3.

Social Security Protections

Several of the plaintiffs seek spousal protections afforded by the Social Security program. Three widowers, already distressed by the death of their spouses, seek the lump-sum death benefit normally available upon the death of a spouse to help pay for funeral costs. One of the widowers also seeks the survivor benefit, namely to substitute his deceased spouse's higher benefit for his own lower benefit, as is standard for spouses. Another retiree seeks to increase her monthly payment to the standard one-half of her higher-earning spouse's payment, as other spouses are entitled to do. Each of these plaintiffs has been denied Social Security benefits based on DOMA Section 3.

Passports

Another plaintiff seeks a passport to be issued in his correct name, which he lawfully changed as a consequence of his marriage in 2004. Invoking DOMA, the State Department has denied a request for a passport in his married name because he changed his name through his marriage, even though it accepts name changes effectuated through marriage for other married persons.

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What Legal Remedy Does GLAD's Case Seek?

GLAD seeks a ruling that DOMA Section 3 is unconstitutional as a matter of equal protection as applied to the plaintiffs in Federal Income Tax, Social Security, federal employment benefits, and the issuance of passports. The case seeks a determination that DOMA Section 3, codified in law as 1 U.S.C. section 7, violates the United States Constitution and an injunction to stop the Office of Personnel Management, IRS, Social Security Administration and the State Department from applying the law as declared. It is GLAD's hope that a favorable ruling in these areas can be applied to other areas of federal law, and/or that such a ruling would encourage Congress to consider repealing the law.

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Why Didn't GLAD Take On Other Benefits Like Family Medical Leave or Immediate Relative Visas for Non-Citizen Spouses?

The battle to end federal discrimination against married same-sex couples has to begin somewhere, and for reasons discussed below (see "What This case Does and Does Not Do"), GLAD believes that the battle must begin with programs where it is painfully obvious that Congress could not have been thinking of the true purposes of the programs when it blithely excluded gay and lesbian married couples. These programs show clearly that Congress was quite simply showing disdain for and disapproval of gay people.

GLAD recognizes that, as a consequence, this lawsuit is not highlighting some other harsh and heart-rending effects of Congress' callous behavior in enacting DOMA Section 3 – such as the denial of family medical leave to care for a seriously ill spouse or the right of a citizen to sponsor a non-citizen spouse for an immediate relative spousal visa. These wrongs must end, and GLAD believes that a victory in the curren lawsuit will hasten the day when every aspect of DOMA Section 3 will be history. However, some claims against the federal government are simply more difficult to prepare for litigation or to prevail upon.

Particularly with respect to the hardship caused by the current unjust immigration laws, there are vibrant efforts underway in Congress that have gained traction and could pass sooner than GLAD's lawsuit could see the demise of DOMA Section 3 in the program areas being challenged. The Uniting American Families Act has more sponsors and supporters than ever, and it behooves all of us to do all we can to see that Congress passes such legislation as quickly as possible.

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Why A Court Case? Why Not the Congress?

While President Obama supports the repeal of DOMA, given the current wars, economic conditions, and a host of other issues, including other LGBT issues, many political experts believe that repeal of DOMA Section 3 is unlikely to happen in the next four years. Repealing DOMA Section 3 will take time and investment in public education and lobbying, something this lawsuit will prompt regardless of its ultimate outcome. As yet, Congress does not grasp that Section 3 mandates denial of all federal legal protections to married couples of the same sex. After all, Congress passed the law eight years before there were any married same-sex couples to actually be harmed by their actions. Likewise, the public in most states has not had to grapple with the real-life consequences of DOMA Section 3. Moreover, the public also needs to understand that ending federal discrimination will not change the marriage laws in any state. It is all of our jobs to explain the harms that discrimination causes to married same-sex couples and their children and create a climate in which repeal is possible.

There are many priorities for the LGBT community that likely rank ahead of a DOMA Section 3 repeal, including the passage of the Employment Non-Discrimination Act (ENDA), a hate crimes bill, the Uniting American Families Act (UAFA), and repeal of Don't Ask, Don't Tell (DADT). Congressional Representative Barney Frank has confirmed that these are the top legislative priorities for the LGBT community. Representative Frank was a forceful critic of DOMA when he served on the House Judiciary Committee in

1996, and has continued to lead on this issue by sponsoring a number of bills to repeal DOMA Section 3 in the Congress. Representative Frank readily acknowledges that repeal of DOMA Section 3 remains a greater challenge than these other bills.

Likewise, leaders of the two national LGBT advocacy organizations, Human Rights Campaign and The Task Force, have stated that the repeal of DOMA Section 3 presents a tougher challenge that is best addressed only after hate crimes and ENDA pass first.

Of course it is important that we apply pressure to all branches of government simultaneously – and that includes Congress – to correct the injustices that DOMA, and specifically Section 3, imposes on same-sex married couples and their families and children. At the same time, the federal courts have an independent obligation to uphold the constitutional promises of equal treatment and to say when a law draws the wrong lines, as GLAD believes DOMA Section 3 does. Enforcing the equal protection guarantee means ensuring fairness for all Americans – and that includes the federal government treating all married couples the same regardless of sexual orientation. That is what this lawsuit aims to demonstrate to the courts, Congress and the general public – that the denial of valuable federal rights and benefits to validly married same-sex couples and their children is just wrong and unfair.

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What This Case Does and Does Not Do.

This case only addresses DOMA Section 3. It seeks to end discrimination by the federal government against people who are validly married and ensure they are not denied rights, protections and responsibilities afforded to other married persons.

If GLAD's lawsuit is successful, then DOMA Section 3 could not be applied to federal tax laws, Social Security laws, benefits programs for federal employees, retirees and their surviving spouses, and the regulations and practices governing issuance of passports in states where people can marry. It would establish an important principle that could be used in other cases and in advocating repeal.

If a non-resident couple were married in Massachusetts or Connecticut and their home state did not recognize their marriage, then, as a general matter, a favorable result in this case will not allow them to seek federal legal protections.

By design, this lawsuit is limited to particular programs and does not seek to invalidate DOMA Section 3 in its entirety. The U.S. Supreme Court has made clear that it strongly disfavors attempts to strike a federal law in its entirety and prefers to evaluate cases with concrete examples of how a federal law as applied violates constitutional rights.

This case is only about the relationship between the federal government and a class of people who are married by their states. While the federal government must follow state determinations of marital status, states remain free to establish their own marriage policies and recognition laws. This lawsuit has no impact on any state's marriage licensing or recognition laws – whether those laws allow same-sex couples to marry or not.

This is not a case seeking a federal constitutional right to marry that would override any state's marriage law or amendment.

This case does not address Section 2 of DOMA and its "permission slip" to states to establish public policies regarding marriages of same-sex couples.

In short, if DOMA Section 3 is declared unconstitutional in GLAD's lawsuit, no state would, as a result, be required to issue marriage licenses to same-sex couples and no state would be required to recognize and respect a Massachusetts marriage of a same-sex couple.

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What can I do to help defeat DOMA?

There are things you can do to help, including supporting organizations like GLAD that are fighting to end this federal discrimination.

You can lobby your Member of Congress and Senators for enactment of ENDA, hate crimes protection, UAFA, repeal of DADT, and the repeal of DOMA.

If you live in a state that does not allow same-sex couples to marry, you can support your local marriage equality organization. The availability of federal rights and protections to same-sex couples should be a powerful incentive for states to reconsider restrictive amendment and laws. As the number of states that offer same-sex couples the protection of marriage and the number of married same-sex couples increase so will the pressure to end the federal discrimination against same-sex married couples.

GLAD believes that there are sound and unsound legal strategies to challenge this federal discrimination, and that putting together a winning case will take substantial resources and expertise. GLAD strongly encourages people not to file an individual lawsuit challenging DOMA Section 3 at this time, since a loss would make it more difficult to mount a successful challenge, and to contact GLAD, Lambda Legal, the ACLU Lesbian and Gay Rights Project, and the National Center for Lesbian Rights about any legal concerns. Any lawsuit requires doing the right work at the right time.

GLAD is seeking to collect as much information as possible about the federal discrimination same-sex married couples face. If your marriage is not respected, we encourage you to call GLAD's Legal InfoLine at 800-455-GLAD (4523) to discuss your options. We encourage all married same-sex couples to fill out the "Married Couples Survey" at https://www.glad.org/marriage/federal_discrimination_survey.php.

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Overview

- Frequently Asked Questions
- Background on DOMA
- Publications
- Our Legal Team

Our Plaintiffs

News & Updates

Donate

Acknowledgement

GLAD thanks its co-counsel in this matter, including attorneys from the law firms of Foley Hoag LLP (Boston), Sullivan & Worcester LLP (Boston), Jenner & Block LLP (Washington, D.C.), and

Kator, Parks & Weiser, PLLC
(Washington, D.C.)

Legal InfoLine

If you have any questions about this document or have questions about LGBT or HIV legal issues, call GLAD's Legal InfoLine at 800-455-GLAD (4523). This is a free service.

Contact GLAD: 30 Winter Street, STE 800Boston, MA 02108 Phone: (617) 426-1350 Fax: (617) 426-3594
Email GLAD

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

CIVIL ACTION
NO.

NANCY GILL & MARCELLE LETOURNEAU,
MARTIN KOSKI & JAMES FITZGERALD,
DEAN HARA,
MARY RITCHIE & KATHLEEN BUSH,
MELBA ABREU & BEATRICE HERNANDEZ,
JO ANN WHITEHEAD & BETTE JO GREEN,
RANDELL LEWIS-KENDELL,
HERBERT BURTIS, and
KEITH TONEY & ALBERT TONEY III,
Plaintiffs,

v.

OFFICE OF PERSONNEL MANAGEMENT,
UNITED STATES POSTAL SERVICE,
JOHN E. POTTER, in his official capacity as the Postmaster General of the United States of America,
MICHAEL J. ASTRUE, in his official capacity as the Commissioner of the Social Security Administration,
HILLARY RODHAM CLINTON, in her official capacity as United States Secretary of State,
ERIC H. HOLDER JR., in his official capacity as the United States Attorney General, and
THE UNITED STATES OF AMERICA,
Defendants.

COMPLAINT FOR DECLARATORY, INJUNCTIVE, OR OTHER RELIEF
AND FOR REVIEW OF AGENCY ACTION

Introduction/Nature of the Action

1. This is a case about federal discrimination against gay and lesbian individuals married to someone of the same sex, and the harm that discrimination has caused each plaintiff.

2. Plaintiffs in this action are citizens of the Commonwealth of Massachusetts and the United States of America. Each of the plaintiffs is, or was until becoming a widower, legally married to a person of the same sex in accordance with the requirements of Massachusetts state law.

3. Although the federal government does not license marriages, a large number of its programs take marital status into account in determining eligibility for federal protections, benefits and responsibilities. Statute, precedent, and practice establish state law as the touchstone for determining a couple's marital status for purposes of determining eligibility for federal programs.

4. Each plaintiff, or his or her spouse, has made one or more requests to the appropriate agencies or authorities within the federal government for treatment as a married couple, a spouse, or a widower with respect to particular programs or benefits. Yet each of the plaintiffs has been denied and is still being denied legal protections and benefits under federal law that are available to a similarly situated person married to an individual of a different sex under Massachusetts law.

5. With each denial of specific protections or benefits, the defendants or their agents have invoked the "Defense of Marriage Act," P.L. 104-199, codified in part as 1 U.S.C. § 7 ("DOMA, 1 U.S.C. § 7") and have stated that the federal government will only respect marriages between a man and a woman.

6. Several of the plaintiffs, as set forth below, seek spousal protections based on their employment with, or their spouse's employment with, the United States government. Plaintiff Nancy Gill, a 21-year employee of the United States Post Office, already receives "Self and Family" health insurance coverage for herself and the two children she has with her spouse, plaintiff Marcelle Letourneau, through her job at the Post Office. Yet, unlike postal workers married to spouses of the opposite sex (see below at Paragraphs 59-97), she is unable to add her spouse, Marcelle, to that plan or to the vision benefit plan, nor can she use her flexible spending account for Marcelle's medical expenses. Plaintiff Martin Koski, a retiree from the Social Security Administration, has been denied health insurance coverage for his spouse, plaintiff James Fitzgerald, although retired employees who are married to someone of a different sex may add their spouses to such coverage, as described below at Paragraphs 98-123. Plaintiff Dean Hara is the surviving spouse of Gerry Studds, a retired Member of the United States Congress. Dean has been denied both health insurance and the survivor annuity normally available to surviving spouses, which is described below at Paragraphs 124-169. In each instance, DOMA, 1 U.S.C. § 7, has barred the plaintiffs' access to benefits routinely granted to others in similar circumstances.

7. Several of the plaintiffs, as set forth below, have been denied their correct spousal status by the Internal Revenue Service ("IRS") on the basis of DOMA, 1 U.S.C. § 7, and thus have been required to pay more in federal income taxes than other similarly situated people married to someone of a different sex. Plaintiffs Melba Abreu and Beatrice Hernandez, as described below at Paragraphs 204-234, and plaintiffs Mary Ritchie and Kathleen Bush, as described below at Paragraphs 170-203, seek to file their

federal income tax returns as "Married Filing Jointly" rather than as "Single" or "Head of Household." Plaintiff Mary Ritchie also seeks to contribute funds to a "spousal IRA" for her spouse Kathleen Bush, to contribute to her retirement security, as an income-earning person who is married to someone of a different sex may do (see below at Paragraph 187). Plaintiffs Abreu and Hernandez and plaintiffs Ritchie and Bush filed amended federal income tax returns with the IRS, asking to be re-categorized as married taxpayers and requesting refunds. The IRS rejected each amended federal income tax return and accompanying refund claim on the basis of DOMA, 1 U.S.C. § 7.

8. Several of the plaintiffs, as set forth below, seek spousal protections afforded by the Social Security program. Three different widowers, plaintiff Randell Lewis-Kendell, as described below at Paragraphs 258-286, plaintiff Herbert Burtis, as described below at Paragraphs 287-310, and plaintiff Dean Hara, as described below at Paragraphs 124-169, seek the "One-Time Lump-Sum Death Benefit" normally available upon the death of a spouse. Plaintiff Burtis, relying on the long work record of his spouse, also seeks the survivor benefit normally available to a widower married to someone of the opposite sex, as described below at Paragraphs 300-310. This benefit would increase his monthly Social Security payment by approximately $700 per month, to the level of the monthly payment that his deceased spouse John Ferris received before his death. As a person married to a spouse of a different sex is entitled to do (see below at Paragraph 246), plaintiff Jo Ann Whitehead, as described below at Paragraphs 235-57, seeks to increase her monthly Social Security payment based on the work record of her spouse, plaintiff Bette Jo Green, who has had higher earnings during their long

relationship. Each of these plaintiffs has been denied these benefits by the Social Security Administration because of DOMA, 1 U.S.C. § 7.

9. Plaintiff Keith Toney seeks a passport bearing his correct name, which he lawfully changed as a consequence of his 2004 marriage to plaintiff Albert Toney III, as described below at Paragraphs 311-328. Invoking DOMA, 1 U.S.C. § 7, the State Department denied plaintiff Keith Toney's request for a passport in his married name despite submission of his marriage certificate and other government-issued identification, although it accepts name changes effectuated through marriage for a person married to an individual of a different sex who submits the same documentation.

10. This is an action for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202 and Fed. R. Civ. P. Rule 57 and for review of agency action pursuant to 5 U.S.C. §§ 701-706. It seeks a determination that DOMA, 1 U.S.C. § 7, as applied to plaintiffs, violates the United States Constitution by refusing to recognize lawful marriages for purposes of the laws governing benefits for federal employees and retirees, the Internal Revenue Code, the Social Security laws and the laws and regulations governing issuance of passports. The result of these violations of the Constitution is that each of the plaintiffs has been denied, and will continue to be denied, legal protections and benefits under federal law that would be available to them if their spouses were of the opposite sex.

Jurisdiction and Venue

11. This action arises under the Constitution of the United States and the laws of the United States, including 26 U.S.C. § 7422. The jurisdiction of this Court is

Submission B

HB73: This amendment should be rejected.

As shown in other states and venues, the kind of text in this amendment only gives the appearance of recognizing all sides of an issue, and still leaves many holes to invite law suits and unrest in the state. Religion gives a citizen who participates in it a core set of principles – not just rhetoric used inside church walls – principles that a citizen carries throughout his daily life. Citizens demand that if bill and amendment acknowledges religious viewpoints, it acknowledge it consistently throughout school, job or home where the citizen lives those principles.

The amendment also does not change the parent bill's core insanity of stating an elimination of gender [redacted] in state matters. Do the members of this legislative body think that male is identical to female? That Daddy is exactly the same as Mommy? That's what the bill and its amendment actually address: Look at the legislation, not the philosophical rhetoric: Do you really want to vote this into law? I hope not. Address any rights issues another way. This bill and its amendment define male and female as indistinguishable in the law, with all its chaotic consequences.

19 May 08

Richard Pietravalle

Nashua, NH

Senator Letourneau
Submission C

Amendment to HB73, relative to HB436

The purpose of this amendment is to ensure religious liberty for all New Hampshire residents and business owners regardless of their affiliation with religious institutions or organizations.

I. Notwithstanding any other provision of law, a religious organization, association, or society, or any individual who is managed, directed, or supervised by or in conjunction with a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, **or any form or type of business or individual person acting according to their conscience or sincerely held religious beliefs,** shall not be required to provide services, accommodations, advantages, facilities, goods or privileges to an individual if such request for such services, accommodations, advantages, facilities, goods or privileges is related to the solemnization of a marriage, the celebration of a marriage, or the promotion of marriage through religious counseling, programs, courses, retreats, or housing designated for married individuals, and such solemnization, celebration, or promotion of marriage is in violation of their religious beliefs and faith. Any refusal to provide services, accommodations, advantages, facilities, goods or privileges in accordance with this section shall not create any civil claim or cause of action or result in any state action to penalize or withhold benefits from such religious organization, association or society, or any individual who is managed, directed, or supervised by or in conjunction with a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, **or any for or type of business or individual person acting according to their conscience or sincerely held religious beliefs.**

II. The marriage laws of this state shall not be construed to affect the ability of **any society, organization, or association** ~~a fraternal benefit society~~ to determine the admission of members ~~pursuant to RSA 418:5~~, and shall not require **any society, organization, or association** a ~~fraternal benefit society that has been established and is operating for charitable and educational purposes and which is operated, supervised or controlled by or in connection with a religious organization~~ to provide insurance benefits to any person if to do so would violate **its** ~~the fraternal benefit society's~~ free exercise of religion as guaranteed by the first amendment of the Constitution of the United States and part 1, article 5 of the Constitution of New Hampshire.

Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION

Bill # HB 73

Hearing date: 5/19/09

Executive session date: 5/19/09

Motion of: OTP bill VOTE:

Made by Senator:	Reynolds	☐	Seconded by Senator:	Reynolds	☐	Reported by Senator:	Reynolds	☐
	Lasky	☑		Lasky	☐		Lasky	☐
	Houde	☐		Houde	☑		Houde	☐
	Letourneau	☐		Letourneau	☐		Letourneau	☐
	Roberge	☐		Roberge	☐		Roberge	☐

Lasky

amendment 3-2 Dems Reps

Motion of: OTP/A VOTE: 3-2

Made by Senator:	Reynolds	☐	Seconded by Senator:	Reynolds	☐	Reported by Senator:	Reynolds	☑
	Lasky	☑		Lasky	☐		Lasky	☐
	Houde	☐		Houde	☑		Houde	☐
	Letourneau	☐		Letourneau	☐		Letourneau	☐
	Roberge	☐		Roberge	☐		Roberge	☐

Committee Member	*Present*	Yes	No	*Reported out by*
Senator Reynolds, Chairman	☑	☐	☐	☐
Senator Lasky, Vice-Chair	☑	☐	☐	☐
Senator Houde	☑	☐	☐	☐
Senator Letourneau	☑	☐	☐	☐
Senator Roberge	☑	☐	☐	☐

*Amendments: Reps Dems

Let's do Roberge 2-3

Notes:

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: May 19, 2009

THE COMMITTEE ON Judiciary

to which was referred House Bill 73

AN ACT relative to the solemnization of marriage.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 3 - 2

AMENDMENT # 1714s

Senator Deborah R. Reynolds
For the Committee

L. Gail Brown 271-3076

New Hampshire General Court - Bill Status System

Docket of HB73

Docket Abbreviations

Bill Title: (New Title) affirming religious freedom protections with regard to marriage and prohibiting the establishment of civil unions on or after January 1, 2010.

Official Docket of **HB73**:

Date	Body	Description
01/07/2009	H	Introduced 1/7/2009 and Referred to Judiciary; **HJ 8**, PG. 121
01/22/2009	H	===CANCELLED=== Public Hearing: 2/4/2009 2:30 PM LOB 208
02/03/2009	H	Public Hearing: 3/3/2009 11:00 AM LOB 208
03/09/2009	H	Subcommittee Work Session: 3/12/2009 9:00 AM LOB 208
03/10/2009	H	Executive Session: 3/17/2009 11:00 AM LOB 208 (Contined 3/18&19/09 11:00 AM LOB 208 If Needed)
03/19/2009	H	Majority Committee Report: Ought to Pass for Mar 24 **RC** (vote 12-8); **HC 22A**, PG.762
03/19/2009	H	Minority Committee Report: Inexpedient to Legislate; **HC 22**, PG.684
03/25/2009	H	Special Ordered to Mar 25 Without Objection; **HJ 25**, PG.914
03/25/2009	H	Motion to Lay on the Table (Rep Rodeschin): MF **RC** 145-208; **HJ 27**, PG.1110-1113
03/25/2009	H	Ought to Pass: MA **RC** 236-120; **HJ 27**, PG.1113-1115
03/25/2009	H	Print Debate in Permanent Journal (Rep N.Elliott): MF DIV 144-211; **HJ 27**, PG.1115
04/08/2009	S	Introduced and Referred to Judiciary; **SJ 11**, Pg.231
05/14/2009	S	Hearing; May 19, 2009, Room 103, State House, 1:45 p.m.; **SC24**
05/19/2009	S	Committee Report; Ought to Pass with Amendment {1714s}(New Title) [05/20/09]; **SC24A**
05/20/2009	S	Without objection, President Larsen moved to Special-Order HB 73 to the
05/20/2009	S	beginning of today's Calendar
05/20/2009	S	Committee Amendment (1714s),(New Title) **RC** 14Y-10N, AA; **SJ 16**, Pg.351
05/20/2009	S	Ought to Pass with Amendment (1714s) (New Title), **RC** 14Y-10N, MA,; OT3rdg; **SJ 16**, Pg.351
05/20/2009	S	Sen. Hassan Moved Reconsideration; MF,VV
05/20/2009	S	Passed by Third Reading Resolution;
05/20/2009	H	Concur (Rep L.Weber): MF **RC** 186-188; **HJ 42**, PG.1640-1642
05/20/2009	H	Indefinitely Postpone (Rep Jasper): MF **RC** 173-202; **HJ 42**, PG.1642-1644
05/20/2009	H	Non-Concur Request Committee of Conference (Rep Eaton): MA **RC** 207-168; **HJ 42**, PG.1644-1646
05/27/2009	H	Speaker Appoints: Representatives G.Richardson, Thompson, L.Weber, DiFruscia; **HJ 42**, PG.1648
05/27/2009	S	Sen. Reynolds accedes to House Request for Committee of Conference, **RC** 14Y-10N, MA
05/27/2009	S	President Appoints Senators Reynolds, Lasky and Roberge

05/27/2009	H	==ROOM CHANGE== Committee of Conference Meeting: 5/29/2009 1:30 PM LOB 206-208 (Orig LOB 104)
05/27/2009	S	Conferee Change; Senator Houde Replaces Senator Roberge;
05/29/2009	S	Conference Committee Report; Senate Amendment + New Amendment {1995}, Filed
06/03/2009	S	Conference Committee Report {1995}; **RC** 14Y - 10N, Adopted;
06/03/2009	H	Conference Committee Report #1995 (Rep G.Richardson): MA **RC** 198-176; **HJ 45**, PG.1723-1725
06/03/2009	H	Reconsideration (Rep Eaton): MF **RC** 159-214; **HJ 45**, PG.1726-1728
06/03/2009	H	Enrolled; **HJ 45**, PG.1729
06/03/2009	S	Enrolled
06/04/2009	H	Signed by the Governor 06/03/2009; Chapter 0061
06/04/2009	H	I. Section 1-3 Effective as Provided in Section 4
06/04/2009	H	II. Remainder Effective 06/03/2009

Other Referrals

COMMITTEE REPORT FILE INVENTORY

HB 73 ORIGINAL REFERRAL _____ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

✓ **DOCKET (Submit only the latest docket found in Bill Status)**

✓ **COMMITTEE REPORT**

✓ **CALENDAR NOTICE on which you have taken attendance**

✓ **HEARING REPORT (written summary of hearing testimony)**

✓ **HEARING TRANSCRIPT (verbatim transcript of hearing)**
List attachments (testimony and submissions which are part of the transcript) by number |1 thru 4 or 1, 2, 3, 4| here: 1-6

✓ **SIGN-UP SHEET**

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

✓ - AMENDMENT # 1714 ____ - AMENDMENT # _____

____ - AMENDMENT # _____ ____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

✓ AS INTRODUCED ____ AS AMENDED BY THE HOUSE

____ FINAL VERSION ____ AS AMENDED BY THE SENATE

✓ **PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)**
List by letter | a thru g or a, b, c, d| here: A, B, C

✓ **EXECUTIVE SESSION REPORT**

____ **OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):**

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK 7/7/09 Gail Brown
COMMITTEE SECRETARY