Supreme Court Nos. 75934-1, 75956-1

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**IN THE SUPREME COURT**
**OF THE STATE OF WASHINGTON**

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HEATHER ANDERSEN and LESLIE CHRISTIAN *et al.*, Respondents,

v.

KING COUNTY *et al.*, Appellants.

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Appeal from the Superior Court of King County
The Honorable William L. Downing

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CELIA CASTLE and BRENDA BAUER *et al.*, Respondents,

v.

STATE OF WASHINGTON, Appellant.

---

Appeal from the Superior Court of Thurston County
The Honorable Richard D. Hicks

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# *AMICI CURIAE* BRIEF OF LEGAL MARRIAGE ALLIANCE OF WASHINGTON, GAY AND LESBIAN ADVOCATES AND DEFENDERS, AND VERMONT FREEDOM TO MARRY TASK FORCE

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## STATEMENT OF INTEREST

Amici, the Legal Marriage Alliance of Washington ("LMAW"), Gay and Lesbian Advocates and Defenders ("GLAD"), and the Vermont Freedom to Marry Task Force ("VFMTF"), are civil rights groups and community organizations dedicated to seeking marriage equality for same-sex couples. Based on their extensive experience addressing the legal needs of lesbian and gay couples and their families, Amici believe not only that the prohibition on marriage between same-sex couples is fundamentally wrong and unconstitutional, but also that the creation of "civil unions" is not an equal or constitutionally adequate substitute for civil marriage. Detailed amici statements of interest are attached to this brief as Appendix A.

## INTRODUCTION AND SUMMARY OF ARGUMENT

This Court should hold that same-sex couples are entitled to participate in the same institution of civil marriage as their different-sex counterparts, and that any separate quasi-marital substitute does not satisfy the requirements of the Washington Constitution. Specifically, the Court should reject the State's invitation to allow the legislature to create a quasi-marital "civil union" for same-sex couples, instead of remedying the unconstitutional marriage exclusion by removing the different-sex restriction from the marriage law, as has been done in Massachusetts,

Canada and New York City. The State's argument that the constitutional violation present here could be remedied by a "civil union" statute – a separate system that would attempt to confer many tangible state law "benefits and obligations" of marriage to same-sex couples while reserving the *status* of "marriage" exclusively for different-sex couples – is fundamentally flawed.

In 2000, when the Vermont Supreme Court gave its legislature an opportunity to address the constitutional wrong it had identified (which the legislature used to create an experimental separate "civil union" system), the court merely delayed deciding the constitutionality of excluding same-sex couples from *marriage* until, in its own words, "some future case." The Vermont statute now stands untested by the Vermont courts, and leaves couples united under that statute deprived of their full constitutional rights. The effect of the Vermont statute is that couples who enter into civil unions do not enjoy the same protections as married couples. Their legal relationships have been ignored by other states and there is no assurance that private actors will recognize their relationships outside Vermont.

Since 2000, courts in Massachusetts, multiple Canadian provinces and New York City have recognized the peril in deferring the true constitutional issue, and have held that a separate civil union status, such

as that created in Vermont, is not equal. Nevertheless, the State is now asking this Court to leave the door open for a separate system. The State, however, has not articulated any reason to put off the inevitable constitutional analysis. Even if the state could provide the same benefits to same-sex couples through such a statute, the "dissimilitude between the terms 'civil marriage' and 'civil union' is not innocuous; it is a considered choice of language that reflects a demonstrable assigning of same-sex, largely homosexual-couples to second-class status." *Opinions of the Justices to the Senate*, 440 Mass. 1201, 1207, 802 N.E.2d 565, 570 (2004).

Any allowance by this Court for the creation of some quasi-marital status, such as that created by Vermont, would impermissibly deprive the Respondents, without any compelling or even legitimate state interest, of the equal protections, privileges and rights afforded to all citizens of Washington. Couples relegated to civil unions are denied not only tangible benefits, but intangible benefits which inhere in marriage, including public recognition and celebration of the couple's love and commitment to each other, and validation of their relationship status as "next-of-kin" in the eyes of both public and private actors. In the words of New York County Judge Doris Ling-Cohan:

> As a society, we recognize that the decision of whether and whom to marry is life-transforming. It is a unique expression of a private bond and a profound love between a

> couple, and a life dream shared by many in our culture. It is also society's most significant public proclamation of commitment to another person for life. With marriage comes not only legal and financial benefits, but also the supportive community of family and friends who witness and celebrate a couple's devotion to one another, at the time of their wedding, and through the anniversaries that follow. Simply put, marriage is viewed by society as the utmost expression of a couple's commitment and love.

*Hernandez et al. v. Robles*, No. 103434/2004, slip. op. at 59-60 (N.Y. Sup. Ct. February 4, 2005).

This Court should reject the State's invitation to defer the constitutional questions presented in this case by leaving the door open for the creation of a lesser species of civil contract for gay men and lesbians. Marriage, and not some separate and unequal substitute, is required under Washington's Constitution.

## ARGUMENT

### I. ALLOWING EXPERIMENTATION WITH "CIVIL UNIONS" WOULD MERELY DELAY, NOT DECIDE, THE CONSTITUTIONAL QUESTION IN THIS CASE AND WOULD REJECT THE PRECEPT THAT "SEPARATE IS NOT EQUAL"

In its analysis of the "civil union" bill proposed by the Massachusetts legislature, the Supreme Judicial Court of Massachusetts describes the central concern of the amici submitting this brief:

> We recognize that the pending bill palliates some of the financial and other concrete manifestations of the discrimination at issue in *Goodridge*. But the question the court considered in *Goodridge* was not only whether it was proper to withhold tangible benefits from same-sex

> couples, but also whether it was constitutional to create a separate class of citizens by status discrimination, and withhold from that class the right to participate in the institution of civil marriage, along with its concomitant tangible and intangible protections, benefits, rights, and responsibilities. Maintaining a second-class citizen status for same-sex couples by excluding them from the institution of civil marriage is the constitutional infirmity at issue."

*Opinions of the Justices to the Senate*, 802 N.E.2d at 571.

With the benefit of prior decisions in Vermont, Massachusetts and Canada in mind, Amici urge this Court to avoid the needless interposition of a constitutionally infirm stepping stone to marriage equality, like that now in place in Vermont. Instead, this Court should follow the subsequent decisions of other courts that have recognized the error and disruption caused by the partial remedy of "civil unions."

A. The Vermont Decision and its Lack of Remedy.

In *Baker v. State*, 170 Vt. 194, 744 A.2d 864 (1999), the Vermont Supreme Court concluded that "none of the interests asserted by the State provides a reasonable and just basis for the continued exclusion of same-sex couples from the benefits incident to a civil marriage license under Vermont law." 744 A.2d at 886. Accordingly, that court recognized a "constitutional obligation to extend to plaintiffs the common benefit, protection, and security that Vermont law provides opposite-sex married couples." *Id.*

However, the Vermont Supreme Court stopped short of remedying the violation by requiring that the plaintiffs be issued marriage licenses. *Id.* at 887. Instead, the court gave the Vermont legislature an opportunity to craft a new law to potentially satisfy the constitutional deficiencies it identified. *Id.* at 886–87. The court's failure to address the ultimate constitutional question left the legislature with mixed signals. On the one hand, the court noted that a number of "potentially constitutional" statutory schemes from other jurisdictions delivered benefits to same-sex couples through "an alternative legal status to marriage." *Id.* at 886. On the other hand, the court declined to endorse any one or all of those "potentially constitutional" schemes, and made it clear that same-sex couples were entitled "to obtain the same benefits and protections afforded by Vermont law to *married* opposite-sex couples." *Id.* at 886 (emphasis added). Moreover, the Vermont court explicitly reserved the question of whether a separate status for same-sex couples could be equal to marriage for "some future case." *Id.*

Following *Baker*, the Vermont legislature waded back in our nation's constitutional history and drafted a bill purporting to create a "separate but equal" legal status for same-sex couples. The political compromise that underlay that decision was no secret: the proponents of the bill concluded that a scheme that provided benefits to same-sex

couples, but still excluded them from marriage, would be less likely to upset those Vermonters who had expressed opposition to any legal recognition or protections for same-sex couples. *See, e.g.,* Jack Hoffman, *Panel Backs Domestic Partnership,* Rutland Daily Herald 1, Feb. 10, 2000. The "civil union" bill was signed into law on April 26, 2000. 200 Vt. Acts & Resolves 91.

While the legislature may have been correct that many of their constituents would find a system of "civil unions" more palatable, a system designed to accommodate such considerations invites the constitutional infirmities inherent in systems that seek to accommodate group-based bias by asserting equality while maintaining segregation.[1] Thus, it is the particular purview of the courts to determine when the constitutional rights of any group of citizens have been diminished or ignored impermissibly in order to accommodate the comfort or "moral" views of a vocal minority, or even the majority, within the body politic. *Cf. Lawrence v. Texas,* 539 U.S. 558, 578, 123 S.Ct. 2472, 156 L. Ed. 2d 508 (2003) (moral disapproval of lesbian and gay people is not a legitimate state interest); *Romer v. Evans*, 517 U.S. 620, 634, 116 S.Ct.

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[1] As the United States Supreme Court stressed a generation ago, "Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect." *Palmore v. Sidoti,* 466 U.S. 429, 433, 104 S. Ct. 1879, 80 L. Ed. 2d 421 (1984) (holding that a white mother who married an African American man could not lose custody of her child on the basis that the child would suffer prejudice if she remained with her mother).

1620, 134 L Ed 2d 855 (1996) (striking down a law that "raise[d] the inevitable inference that the disadvantage imposed [was] born of animosity toward [lesbian and gay people]"); *Goodridge v. Department of Pub. Health*, 440 Mass. 309, 339, 798 N.E.2d 941, 966 (2003) ("[I]t is the traditional and settled role of courts to decide constitutional issues.").[2]

B. Courts After the Vermont Decision Have Provided the Standard Remedy for an Unconstitutional Restriction

With the benefit of Vermont's experience available to them, each of the highest courts in Massachusetts and numerous Canadian provinces have recognized that marriage, in and of itself, is a privilege within the meaning of their own constitutions. Each of those courts has concluded that the *status* of marriage itself is a constitutionally protected benefit and that a "civil union" type statute that grants same-sex couples the state-conferred tangible benefits of marriage through a different institution is unconstitutional because it deprives same-sex couples of tangible and intangible benefits that flow from the status of being married.

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[2] This point was recently underscored in *Hernandez et al. v. Robles*, in which the court concluded that New York State's Domestic Relations Law is unconstitutional to the extent it denies the right to marry to same-sex couples. *Hernandez et al. v. Robles*, No. 103434/2004, slip. op. at 58 (N.Y. Sup. Ct. February 4, 2005). Rejecting the City of New York's argument that the decision to allow same-sex couples to enter into civil marriages should be made by the legislature rather than the courts, the court noted the same "legislature deference" argument was "similarly used to urge the United States Supreme Court to uphold racial classifications in marriage in *Loving v. Virginia*." *Id.* at 55-56. The "legislature deference" argument was untenable in *Loving* and is untenable here.

The Supreme Judicial Court of Massachusetts described marriage as "one of our community's most rewarding and cherished institutions," *Goodridge*, 798 N.E.2d at 949, and noted that "[t]angible as well as intangible benefits flow from marriage."

> Marriage . . . bestows enormous private and social advantages on those who choose to marry . . . Without the right to marry—or more properly, the right to choose to marry—[same-sex couples are] excluded from the full range of human experience and denied full protection of the laws . . .

*Goodridge*, 798 N.E.2d at 954–55. The same court held that a proposed "civil union" bill drafted by the Massachusetts legislature in response to *Goodridge* was unconstitutional:

> The same defects of rationality evident in the marriage ban considered in *Goodridge* are evident in, if not exaggerated by, [the proposed bill]. . . . Because the proposed law by its express terms forbids same-sex couples entry into civil marriage, it continues to relegate same-sex couples to a different status. . . . The history of our nation has demonstrated that separate is seldom, if ever, equal.

*Opinions of the Justices to the Senate*, 802 N.E.2d at 569.

Multiple Canadian provincial appellate courts have reached similar conclusions.[3] Those courts considered their marriage equality cases in the

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[3] *See Eagle Canada Inc. v. Canada (Attorney General)*, 13 B.C.L.R.4th 1, *modified* 15 B.C.L.R.4th 226 (British Columbia 2003); *Halpern v. Toronto (City)*, 65 O.R.3d 161, ¶ 61 (Ontario 2003); *Catholic Civil Rights League v. Hendricks* 2004 R.J.Q. 851, 2004 R.D.F. 247 (Quebec 2004). Courts in the Yukon, Manitoba, Nova Scotia, Saskatchewan

shadow of a Canadian federal statute, the Modernization of Benefits and Obligations Act, S.C., ch. 12 (2000) (Can.), that granted unmarried couples, including same-sex couples, many rights and privileges equivalent to those of married couples. The Canadian provincial courts, however, uniformly recognized that the Canadian Charter guaranteed "more than equal access to economic benefits," and that the importance of "public recognition and sanction of marital relationships" meant that the denial of the public institution of marriage was itself a violation of the Canadian Charter. *Halpern, supra*, 65 O.R.3d 161 at ¶ 5, ¶ 106 (2003).

> The societal significance of marriage, and the corresponding benefits that are available only to married persons, cannot be overlooked.... Exclusion perpetuates the view that same-sex relationships are less worthy of recognition than opposite-sex relationships. In doing so, it offends the dignity of persons in same-sex relationships.

*Id.* at ¶ 107; *accord EGALE Canada, Inc.*, 13 B.C.L.R. 4th 1 at ¶ 156. [4]

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and Newfoundland and Labrador have followed suit. *See* http://www.egale.ca/printer.asp?lang=E&menu=55>. These provincial decisions were validated by the recent opinion of the Supreme Court of Canada holding that proposed legislation to include same-sex couples by amending the federal marriage law to define marriage for civil purposes as the lawful union of two persons, was completely consistent with the Canadian Charter of Rights and Freedoms. *See Reference re Same-Sex Marriage,* 2004 S.C.C. 79 (Dec. 9, 2004) (Can.), available on-line at http://www.lexum.umontreal.ca/csc-scc/en/rec/html/2004scc079.wpd.html

[4] The California legislature has crafted a comprehensive domestic partnership law similar to Vermont's civil union law and Canada's "Modernization of Benefits" statute that went into effect on January 1, 2005 (unlike in Vermont, the California statute was not enacted in response to litigation). *See* 2003 Cal Legis. Serv. ch. 421. The California legislature has acknowledged, however, that the new law does not provide equal treatment to same-sex couples under California law, even if it does *"help California move closer to fulfilling*

As these courts have recognized, the "separate but equal" approach reflected in a quasi-marital type of civil union does not further legitimate governmental needs. Instead, it serves only to deny gay and lesbian couples access to the legal status of "marriage," and all of the social significance that status connotes. The message of exclusion implicit in these separate-status laws is constitutionally repugnant.

## II. THE FAILURE OF "CIVIL UNIONS" TO ACHIEVE BOTH "SEPARATENESS" AND "EQUALITY" IS AN UNAVOIDABLE AND PRESENT REALITY, NOT MERE SPECULATION

The Vermont experiment with a "separate" system of rights demonstrates today that a "civil union" remedy would fail to provide benefits to same-sex couples that are equal to those of civil marriage.

While a civil union or domestic partnership law might provide many state law protections, these "less than marriage" systems are unequal and insufficient in at least two tangible respects. First, they pose portability problems for families who travel outside their home state and need to have their relationship status recognized by governments in other jurisdictions. Second, even assuming that such a quasi-marital law could be drafted and enforced in such a way as to ensure that civil union couples would receive equivalent benefits and treatment as married couples by

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*the promises of inalienable rights, liberty, and equality* contained in Sections 1 and 7 of Article 1 of the California Constitution ...." *Id.* (emphasis added).

private actors within Washington, the law would pose problems for private parties across state borders who do not have consistent rules to apply to a "civil union" or "domestic partnership" created in another state, unlike a "marriage" which is recognized everywhere.

A. Civil Unions Face Greater Obstacles To Portability.

In our mobile society, families rarely spend their entire lives in the same town, or even the same state. Even while maintaining a constant residence, couples and individuals frequently travel outside the borders of their own states for business, vacation and to visit relatives.

Heterosexual married couples take for granted the continuing validity of their marriage as they travel from state to state, and beyond.[5] Washington's proximity to Canada, where same-sex spouses are recognized as "married" not as "unions", makes this issue even more important for Washington residents. The reliability and certainty of a couple's marital status as that couple travels or migrates from state to state, or to other countries, is critical. It affects a spouse's right to make

[5] The laws governing marriage and family formation are, in most cases, similar around the country, and in those cases where state marriage laws vary, deeply-rooted common law principles require that a marriage that is valid where celebrated be respected everywhere. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 283(2) (1971); *cf.* Barbara J. Cox, *But Why Not Marriage: An Essay on Vermont's Civil Unions Law, Same-Sex Marriage, and Separate but (Un)equal*, 25 Vt. L. Rev. 113, 138 (2000) ("The general rule preferring validation of marriages, which exists with an 'overwhelming tendency' in this country, leads courts to find opposite-sex marriages to be valid if there is any reasonable basis for doing so.").

medical decisions, to inherit through the laws of intestacy, and to seek legal recourse for wrongful death. It also affects a couple's ability to secure judicial resolution of financial and other disputes in the event their relationship ends. Most heterosexual spouses would find it bizarre to imagine that their ability to act for each other, and their duties to each other, could evaporate if they exit their home state. Our highly mobile modern lifestyles depend on freedom to travel.

To be sure, had Vermont extended the right of marriage to same-sex couples, as Massachusetts has done, married same-sex couples still would face some obstacles to recognition of their legal status as they travel in other states. Many states (including Washington) have enacted DOMA laws expressly purporting to deny legal respect to marriages of same-sex couples from other states, although – as Judge Hicks concluded – these laws are unconstitutional for the same reasons that the exclusion of same-sex couples from marriage within the state is unconstitutional.

At the same time, other states have *not* passed such a law and presumptively do respect the marriages same-sex couples validly enter into in other jurisdictions. New York State is an example. As explained by New York State Comptroller Alan Hevesi, responding to the inquiry of a gay state employee who had married in Canada, the New York State and Local Retirement System "will recognize a same-sex Canadian marriage

in the same manner as an opposite-sex New York marriage, under the principle of comity." *See* Letter from Comptroller Hevesi to Mark Daigneault, dated October 8, 2004 (interpreting an opinion by New York State Attorney General Eliot Spitzer), *available at* http://www.prideagenda.org/pdfs/Hevesi%20Letter_100804.pdf.

When Vermont chose not to open civil marriage to same-sex couples, it created an entirely separate status – a new legal category not readily cognizable under the laws of other states – that elevates the risks faced by "civil union" spouses no matter where they travel. Notwithstanding the legislature's ostensible intent to confer the full complement of state-provided tangible benefits on couples joined in civil union, by withholding the legal status of "married," the Vermont legislature did not create a system that allows same-sex couples to opportunity to be treated equally when they cross Vermont's borders.

Case law already indicates that Vermont civil unions are not fully recognized outside of Vermont. In several cases, the courts of other states have refused to recognize the existence or validity of a civil union for the purpose of benefits or protections under the laws of those states in part, in many cases, because a civil union is not a marriage even under Vermont law. *See, e.g., Rosengarten v. Downes*, 71 Conn. App. 372, 802 A.2d 170 (Conn. App. Ct.), *appeal dismissed as moot*, 261 Conn. 936, 806 A.2d

1066 (2002) (notwithstanding the absence of a state law precluding recognition of a marriage of a same-sex couple, Connecticut courts lack jurisdiction to dissolve a civil union because doing so, as contrasted with dissolving a marriage, does not fall within any of the statutorily prescribed areas that the court is empowered to decide); *Hall v. Beauchamp*, No. 1D02-807 (Fl. Dist. Ct. App., Oct. 10, 2002) (no child visitation allowed while the father had overnight guests to whom he was not married, including his civil union spouse); *Burns v. Burns*, 253 Ga. App. 600, 560 S.E.2d 47 (2002) (no child visitation allowed while mother's civil union spouse is in home where the divorce order only allowed child visitation in the presence of adult overnight guests to whom the mother was married or related); *R.S. and J.A.*, No. F-185.063, Agreed Final Decree of Divorce (Tex. Dist. Ct., Mar. 3, 2003), *vacated* (Mar. 28, 2003) (vacating initial decree dissolving civil union in part because of questions concerning court's jurisdiction to dissolve civil union).

Such decisions have caused tremendous hardships for families headed by same-sex couples. For example, a non-biological mother who relied on Vermont's civil union law to protect her parental relationship with her daughter, borne by her civil union spouse and raised by the couple together in Vermont, now finds herself struggling for visitation rights in Virginia, where her now-ex-partner has taken the child. Thus far,

despite the Vermont court's recognition of her parental rights, including visitation rights, the Virginia courts have refused to recognize her parental relationship or grant her visitation with her child. S. Mitra Kalita, *Vermont Same-Sex Unions Null in Virginia, Judge Rules,* Washington Post, Aug. 25, 2004.

B. Many Private Benefits Are Contingent On The Legal Status of Marriage.

States and local governments are not alone in using the legal status of marriage as a gateway to a vast array of protections and benefits. Many private parties do so as well.

Although private parties within Vermont are precluded from treating couples joined in civil union any differently from married couples, Vermont's anti-discrimination laws do not reach beyond Vermont's borders. That means that private parties in other states – such as businesses ranging from medical clinics to car rental companies, from health clubs to hotels – may not be bound to treat civil union spouses and their children as family to each other. Vermont residents traveling to other states have had difficulties, for example, in getting medical providers to

recognize a civil union partner, including refusal to allow listing the partner as the legal "next-of-kin" on hospital forms.[6]

The concerns of same-sex couples restricted to civil union or domestic partner status about not being recognized as each other's "next-of-kin" are far from unfounded. In one tragic example, California resident Bill Flanigan was made to sit for hours in a Maryland hospital waiting room and denied the chance to say goodbye to his dying life partner. The hospital where Daniel was taken refused to allow Flanigan to sit at Daniel's bedside due to its policy that only "family" members were allowed to visit critical patients, even though Flanigan had explained that he and Daniel were registered domestic partners with the State of California.[7] By the time Daniel's sister and mother arrived and Flanigan was finally allowed to see Daniel, Daniel was no longer conscious. Daniel's mother, Grace, was grief-stricken that her "son Bobby not only suffered in his final hours, but he suffered alone... denied the love and

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[6] Laurie Levinger described her anger when the community hospital she visits regularly in New Hampshire refused to allow her to list her civil union spouse as "next of kin" on the intake form: "[I]t didn't feel right to give someone else's name when I have a legal spouse. Somehow it would've felt like colluding with discrimination, like it was a reasonable request that I not list my spouse." Nancy Remsen, *Civil Unions Come Up Short During Crises*, Burlington Free Press, May 16, 2004.

[7] *See Flanigan v. University of Maryland Medical System,* available at http://www.lambdalegal.org/cgi-bin/iowa/cases/record?record=174 Hospital staff refused to recognize their domestic partner status as "family," leaving Flanigan alone and helpless in the waiting room consciousness for four hours while his partner lost his final moments of consciousness.

comfort of the person he loved the most, Bill." 2/27/02 Statement of Grace Daniel, available at http://www.lambdalegal.org/cgi-bin/iowa/documents/record?record=1021. Had Flanigan and Daniel been home in California, their registration as domestic partners would have entitled them to hospital visitation. But, like the rights and protections that come with entering into a civil union, that right was not understood and respected when they traveled into a state without a similar law.

Even within their home states same-sex couples restricted to civil union status may not have access to the same recognition and benefits as married couples. Married spouses automatically qualify for an array of private benefits conferred by their employers and by public accommodations and other businesses. On the other hand, because the term "civil union" is not tied to a legal status understood by private actors, and unlikely to exist within their benefit plans and other policies, civil union status does not routinely open the door to those same entitlements and protections.

In contrast, the status of *marriage* is instantly recognized by employers and other entities that confer benefits on spouses. As the New York Comptroller acknowledged in discussing the validity of Canadian same-sex couples' marriages in New York, recognition of "marriage" is simply a matter of applying the rules that already exist. By denying gay

and lesbian couples the title "married," a "civil union" scheme such as Vermont's increases the likelihood that same-sex spouses, and their families, will continue to be excluded from the private benefits that many organizations confer upon married couples.

## CONCLUSION

> Marriage is widely understood in our culture as the most compelling and definitive expression of love and commitment that can occur between two adults. It is an expression of profound "emotional support" and "personal dedication."

*Turner v. Safley*, 482 U.S. 78, 95-96 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987). The same profound social and historical significance does not, and will not, attach to a "civil union," or any other novel status that might be invented by the legislature of individual states in the twenty-first century. No status other than "marriage" conveys to the outside world the full dimension of a couple's relationship with one another. No other status can tie same-sex couples fully into the fabric of our community of families—a community in which images of "married" couples and their families surround us in every media; in which people regularly are identified as either "married" or "single," and the length of their marriages included as significant facts in their biographies; and in which the newspapers universally announce marriages as important items of community news.

The "dissimilitude between the terms 'civil marriage' and 'civil union' is not innocuous; it is a considered choice of language that reflects a demonstrable assigning of same-sex, largely homosexual-couples to second-class status." *Opinions of the Justices to the Senate*, 802 N.E.2d at 570. Segregating same-sex couples into a separate "civil union" or "domestic partnership" system offends the dignity and humanity of gay and lesbian couples and places such couple and the children they care for on a dramatically unequal footing relative to their heterosexual counterparts without any legitimate justification. Washington's Constitution requires lifting the marriage exclusion for gay and lesbian families, not relegating them to a newly-created, separate and inherently unequal, status.

RESPECTFULLY SUBMITTED on February 7, 2005.

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## APPENDIX A

Amici, the Legal Marriage Alliance of Washington, Gay and Lesbian Advocates and Defenders, and the Vermont Freedom to Marry Task Force, represent a combination of civil rights groups and community organizations dedicated to seeking marriage equality for same-sex couples.

Legal Marriage Alliance of Washington

LMAW is a non-profit civil rights organization that has been dedicated to achieving the legal right of civil marriage for same-sex couples in Washington State since 1995. LMAW actively pursues full marriage rights for same-sex couples in Washington State through community education and outreach. More than 1,300 people from throughout the state exchange ideas, participate in calls to action, and receive information about same-sex marriage rights for Washington State residents through LMAW.

Gay and Lesbian Advocates and Defenders

GLAD was founded in 1978 and is New England's leading legal rights organization dedicated to ending discrimination based on sexual orientation, HIV status, and gender identity and expression. GLAD has a long history of working to end government discrimination against same-

sex couples. Among its other efforts, GLAD was counsel in *Goodridge v. Department of Public Health* in Massachusetts and co-counsel in *Baker v. State of Vermont.*

Vermont Freedom to Marry Task Force

VFMTF represents a coalition of individuals and organizations in Vermont who support the freedom for same-sex couples to marry. VFMTF advocates full inclusion in marriage for same-sex couples. VFMTF is uniquely positioned to offer insight into the ways in which Vermont's civil union law falls short of the constitutional requirements of full equality and inclusion.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing document were served via U.S. Mail, postage prepaid, or served by legal messenger, on counsel of record as follows:

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DATED this 7th day of February, 2005.

Michael R. Heath