
SUPREME COURT OF NEW JERSEY

MARK LEWIS, et al.,)	APPELLATE DIVISION
)	
Plaintiffs-Appellants,)	DOCKET NO.: A-002244-03T5
)	
vs.)	CIVIL ACTION
)	
)	ON APPEAL FROM
GWENDOLYN L. HARRIS, et al.,)	THE SUPERIOR COURT OF NEW JERSEY
)	LAW DIVISION: MERCER COUNTY
Defendants-Respondents.)	DOCKET NO. BELOW MER-L-15-03
)	
)	SAT BELOW:
)	HONORABLE LINDA R. FEINBERG, A.J.S.C.
)	
)	

BRIEF AMICUS CURIAE OF CLERGY MEMBERS IN SUPPORT OF MARRIAGE

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SUPREME COURT OF NEW JERSEY
DOCKET NO.: 58,389

MARK LEWIS, et al.,

Plaintiffs-Appellants,

vs.

GWENDOLYN L. HARRIS, et al.,

Defendants-Respondents.

ON APPEAL FROM THE SUPERIOR COURT
OF NEW JERSEY
APPELLATE DIVISION

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**BRIEF AMICI CURIAE OF NEW JERSEY RELIGIOUS LEADERS AND OF NATIONAL
AND REGIONAL RELIGIOUS ORGANIZATIONS**

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Maynard v. Hill, 125 U.S. 190 (1888)6

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N.J.S.A. § 37:1-135,8

N.J.S.A. § 37:1-25

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available at <http://www.uua.org/info/origins.html>.....15

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INTRODUCTION

More than 150 *amici curiae* New Jersey religious leaders, and a number of national and regional religious organizations, both groups representing many denominations, respectfully submit this brief in support of the appeal by plaintiffs-appellants from the decision of the Superior Court, Appellate Division, holding that New Jersey's exclusion of same-sex couples from the institution of civil marriage does not violate the New Jersey State Constitution.

As representatives of a wide variety of religious faiths, traditions and other religious organizations in the State of New Jersey and across the country, and as supporters of the right of persons to enter into marriage with persons of the same sex, *amici* believe that the Appellate Division's invocation of "tradition" to support its position in this case raises grave concerns for religious freedom.

Amici submit this brief to urge recognition of the following principles in this Court's analysis: (1) marriage equality for same-sex couples is an issue of civil rights, not religious rights, because there is a fundamental distinction between civil marriage and the religious rites of matrimony; (2) the free exercise of religion is not constrained, but enhanced, by recognizing the civil right of marriage between same-sex partners; (3) given the diversity of religious thought and practice, the separation of church and state requires an interpretation of New Jersey law without reference to any single conception by any particular religious tradition of what is "moral" from a religious

standpoint; and (4) a broad and diverse spectrum of clergy and other people of faith support marriage equality for all committed couples.

Amici urge the Court to uphold the important distinction between state sanctioned civil marriage and the religious rites of matrimony as mandated by any individual religion's beliefs. Our State's constitutional hallmarks of fairness and justice require equal rights of access - without regard to gender or sexual orientation to civil marriage.

STATEMENT OF THE INTEREST OF THE AMICI CURIAE

Amici joining in this brief are religious leaders and organizations that support the right of all committed couples to enter into civil marriage, including same-sex couples. A comprehensive list of the *amici* is set forth at the end of this brief.

Amici represent a wide variety of religious faiths and traditions that mirror the rich diversity of the citizens of the State of New Jersey. Though *amici* represent different faiths and practice in different ways, *amici* stand united in support of the dignity of loving, committed same-sex couples, and believe that same-sex couples should be permitted to enter into civil marriage. *Amici* submit this brief to counter the argument that current marriage laws, to the extent that they discriminate against same-sex couples, must be upheld in deference to the traditions and religious beliefs of only certain groups of citizens. *Amici* urge

this honorable Court to order the State of New Jersey to include same-sex couples under the civil, legal framework of the marriage laws of New Jersey.

STATEMENT OF THE CASE

Plaintiff-Appellants are seven same-sex couples who went to the marriage licensing offices for the county or municipality in which they reside and applied for marriage licenses. After each of the couples was refused a license on the sole basis that the members of the couple are of the same sex, the seven couples sought relief in court. On June 14, 2005, the Superior Court of New Jersey, Appellate Division, rejected the Plaintiff-Appellants' claim that the denial of their applications for marriage violates their due process rights and equal protection of the law protected by the New Jersey Constitution. Plaintiffs timely appealed. *Amici curiae* incorporate the Procedural History and Statement of Facts set forth in the brief of Plaintiff-Appellants.

ARGUMENT

I. **ALTHOUGH "MARRIAGE" HAS BOTH RELIGIOUS AND CIVIL MEANINGS, NEW JERSEY LAW DEFINES AND GOVERNS ONLY CIVIL MARRIAGE**

Our society typically uses the same word, "marriage," to describe both the religious rite and the state-sponsored process for the legal union of two people. The term "marriage," therefore, has been applied both to wedding ceremonies performed within the confines of a religious community ("religious marriage"), and to the licensing and solemnization process set forth in the New Jersey statutes ("civil marriage"). The statutory provisions, however, explicitly define the legal concept

of marriage as a civil institution, and many religious faiths have long held views of religious marriage that diverge greatly from New Jersey's construct of civil marriage. Entitlement to the legal status of civil marriage, therefore, should be unaffected by the varying and divergent concepts of religious marriage.

A. Civil Marriage is a Legal Status Created By The State

Civil marriage is an institution and a status recognized legally, apart from and regardless of religious background. New Jersey statutes recognize marriage as a civil legal status by which the State issues a marriage license and the marriage is solemnized by an appropriate civil or religious official, at the option of the couple. See N.J.S.A. § 37:1-13 (solemnization) and N.J.S.A. § 37:1-2 (issuance of marriage license). New Jersey law does not require that marriages be solemnized by a religious official. To the contrary, a marriage in New Jersey may be performed by judges, mayors and county clerks or, if desired by the particular couple, by religious officials. N.J.S.A. § 37:1-13. Prior to any solemnization, whether or not performed by a religious official, individuals wishing to be recognized as a married couple must obtain a license from the State. N.J.S.A. § 37:1-2. Marriage, even when solemnized by a religious official, is a civil status conferred by the State.

In addition to the recognition of civil marriage by the State of New Jersey, the United States Supreme Court has historically

recognized civil marriages and has stated that they "do[] not require any religious ceremony for [their] solemnization." *Maynard v. Hill*, 125 U.S. 190, 210 (1888). As a result, courts should evaluate whether the New Jersey Constitution requires that same-sex couples could not be denied the freedom to marry on the basis of neutral legal principles and not from any religious viewpoint or perspective.

B. Religious Marriages Involve Diverse Requirements Established by Each Religion, And Are Distinct From Civil Marriage Under New Jersey Statutes

The parameters of religious ceremonies are governed by the belief systems of individual religious faiths, clergy or houses of worship and therefore are separate from the parameters of marriage set forth in the New Jersey statutes. Consistent with the traditions of their faith, religious leaders pass judgment upon the suitability of potential couples and choose whom they will join in religious unions. Communities of faith are not compelled to accept the State's parameters for civil marriage, and indeed, many religious institutions do not accept them. As such, religious conceptions of marriage vary widely.

Some religious marriage criteria are far more restrictive than the civil criteria found in the New Jersey statutes. Conservative Judaism, for example, prohibits interfaith marriages: "Rabbis and cantors affiliated with the Conservative Movement may not officiate at the marriage of a Jew to a non-Jew, may not co-

officiate with any other clergy, and may not officiate or be present at a purely civil ceremony."¹ Other religious faiths, like Roman Catholicism, reject remarriages after legal divorce: "[i]f the divorced are remarried civilly, they find themselves in a situation that objectively contravenes God's law."² Such differences between religious and civil marriage strictures have always existed and demonstrate that if New Jersey were to recognize civil marriages of same-sex couples (as it does interfaith marriages and remarriages after divorce), those unions would confer a legal status wholly separate from any single religious conception of marriage.

New Jersey courts have recognized that religious communities may confer and regulate religious marriage separate from, and more restrictively than, laws governing civil marriage. The New Jersey Family Court has explicitly recognized that:

For a court to compel a plaintiff to submit to the jurisdiction of the Jewish ecclesiastical court, the 'Bet Din,' and initiate the procedure to secure a get, or Jewish bill of divorcement, is within the equity powers of a court to do what ought to be done. The ultimate decision of whether a get is to be granted is that of the 'Bet Din' and not of the court.

¹ See, e.g., Leadership Council on Conservative Judaism, "Statement on Intermarriage" (March 7, 1995), available at <http://www.uscj.org/intmar/statement.html> (last visited November 14, 2005).

² Catechism of the Catholic Church - Part Two, Section Two, Chapter 3, Article 7 - The Sacrament of Matrimony, available at <http://www.vatican.va/archive/ENG0015/P50.HTM> (last visited November 14, 2005) ("In fidelity to the words of Jesus Christ - 'whoever divorces his wife and marries another, commits adultery against her; and if she divorces her husband and marries another, she commits adultery'").

Burns v. Burns, 223 N.J. Super. 219, 226 (N.J. Sup. Ct., Chancery Div. 1987).

In *Burns*, the court recognized that it could force the plaintiff to submit to jurisdiction, without interfering with the Establishment Clause, while still deferring to the Jewish communities' decision of how to treat the religious divorce.

On the other hand, some religions confer religious marriage in a far more expansive and inclusive manner than New Jersey's current restrictions on access to civil marriage. For example, many religious faiths and communities of worship officiate and celebrate the religious marriages of gay and lesbian couples.³ These examples also demonstrate that the religious and civil institutions of marriage can and do vary greatly without doing harm to either.

II. ALLOWING SAME-SEX COUPLES TO ENTER INTO CIVIL MARRIAGES WILL NOT INFRINGE RELIGIOUS GROUPS' FREE EXERCISE RIGHTS

The State of New Jersey allows for "every religious society, institution or organization in th[e] State [to] join together in marriage such persons according to the rules and customs of the society, institution or organization", N.J.S.A. § 37:1-13, and therefore the requirements concerning civil marriage do not interfere with or otherwise affect any particular religion's requirements for religious recognition of the union.

The separation of church and state as guaranteed by the

United States Constitution, see U.S. Const. amend. I., and the laws of New Jersey, see N.J. Stat. Ann. § 18:14-78, protect the free exercise of religion. The United States Supreme Court has held that "freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law." *Cantwell v. Connecticut*, 310 U.S. 296, 303-304(1940). In the same vein, New Jersey courts have applied the guarantee of free exercise to protect the rights of religious citizens. In *McKelvey v. Price*, this Court stated in dicta that the autonomy of the church has derived from "a long line of Supreme Court cases that affirms the fundamental right of churches to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." See 173 N.J. 26 (2002) (quoting *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1952)).

The State of New Jersey has had a long history of recognizing the importance of religious autonomy and choice. In fact, the New Jersey Constitution of 1776, Article XVIII, stated that:

No person shall ever within this colony be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatsoever, compelled to attend any place of worship, contrary to his own faith and judgment; nor shall any person within this colony, ever be obliged to pay tithes, taxes or any other rates, for the purpose of building or repairing any church or churches, place or places of worship, or for the maintenance of any

³ See discussion *infra* at 9-13.

minister or ministry, contrary to what he believes to be right, or has deliberately or voluntarily engaged himself to perform.

In addition, New Jersey also recognizes the independence of religions to regulate religious marriages according to their own concepts and beliefs.⁴

Given New Jersey's long-standing commitment to the free exercise of religion, if same-sex couples were allowed to marry in the State, religious institutions' authority to regulate their marriages would be unaffected.

III. CIVIL MARRIAGE BETWEEN SAME-SEX COUPLES IS SOLELY A MATTER OF CIVIL LAW, WITHOUT REFERENCE TO ANY PARTICULAR RELIGIOUS BELIEFS OR TRADITIONS

In this case, the defendant and some other *amicus curiae* may invoke "traditional values" as a basis for upholding the current laws that restrict same-sex couples from civil marriage. However, as Justice Scalia recognized, "'preserving the traditional institution of marriage' is just a kinder way of describing the State's moral disapproval of same-sex couples." *Lawrence v. Texas*, 539 U.S. 558, 602 (2003) (Scalia, J., dissenting). The arguments based on "tradition" are nothing more than thinly veiled appeals to the moral and religious disapproval that some individuals hold against gay and lesbian people.

The Appellate Division's invocation of "history" and "tradition" of marriage is over-reaching. See. e.g. *Lewis v.*

⁴ See *infra* discussion in Section I.B.

Harris, 378 N.J. Super. 168, 184 (2005) (stating that “[a]lthough there has been a substantial liberalization of public attitudes towards the rights of homosexuals in the intervening fifty-eight years, there is no current public consensus favoring recognition of marriages between members of the same sex”). Indeed, State and Federal courts have acknowledged certain civil rights in the face of “historical foundation” that would tend to abrogate those rights. In *Immer v. Simonsen*, 56 N.J. 482 (1970), the New Jersey Supreme Court overturned the interspousal immunity doctrine precluding one spouse from suing another because the tradition of viewing a married couple as one financial and contractual unit was outdated. The United States Supreme Court, in *Loving v. Virginia*, 388 U.S. 1 (1967), rejected the state of Virginia’s argument that there was no fundamental right to interracial marriage because the “historic tradition of marriage” did not contemplate it.

The United States Supreme Court very recently elaborated on the principle that a religious or “moral” rationale cannot justify discrimination. In *Lawrence v. Texas*, the Court noted that, “for centuries there have been powerful voices to condemn homosexual conduct as immoral. The condemnation has been shaped by religious beliefs, conceptions of right and acceptable behavior, and respect for the traditional family.” *Lawrence*, 539 U.S. at 570. But the Court concluded that these rationales give rise to “no legitimate state interest.” *Id.* at 578. See also *Moore v. City of E. Cleveland*, 431 U.S. 494, 506 (1977) (plurality opinion) (striking

down a housing ordinance that limited occupancy of a unit to a narrowly defined family); *Lawrence v. Texas*, 539 U.S. at 583 (Justice O'Connor, concurring) ("Moral disapproval of this group, like a bare desire to harm the group, is an interest that is insufficient to satisfy rational basis review under the Equal Protection Clause. . . . Indeed, we have never held that moral disapproval, without any other asserted state interest, is a sufficient rationale under the Equal Protection Clause to justify a law that discriminates among groups of persons").

Thus, as this Court considers the fundamental right of same-sex couples to join in the civil institution of marriage, it should not be swayed by a claim by some individuals that their particular religious values demand that the State discriminate within the institution of civil marriage. To do so would run counter to New Jersey's long adherence to the separation of Church and State by endorsing one particular view of marriage held by one or more religious groups but not all religious groups or citizens.

In each case, the deviation from the views historically embraced by the law of spousal immunity, interracial marriage and sodomy did not discourage the courts from protecting the rights of individuals. Social dynamics constantly change and historically-held views do not always account for the need to meet the changes. In considering the fundamental right of same-sex couples to exercise the same right to enter a civil marriage, the rhetoric of moral and religious positions is not a valid basis for denying

constitutionally protected rights.

**IV. IN ADDITION TO SUPPORTING FULL CIVIL MARRIAGE EQUALITY,
MANY RELIGIOUS TRADITIONS ALREADY CELEBRATE THE
MARRIAGES OF SAME-SEX COUPLES IN THEIR RELIGIOUS
COMMUNITIES**

The restrictive notion of marriage as a union only between a man and a woman would be a fundamentally flawed basis upon which to deny marriage equality to same-sex couples, particularly when this antiquated belief has been rejected by many diverse religious traditions and faiths. A growing number of religious traditions and faith organizations support equal civil marriage rights and regularly perform religious marriages for same-sex couples.

For example, the Reform Jewish movement, the largest Jewish movement in North America with more than 900 congregations and 1.5 million members, supports the rights of same-sex couples to obtain civil marriage and allows its rabbis to perform religious wedding ceremonies for same-sex couples.⁵ Within the Reform movement, the Central Conference of American Rabbis (the "CCAR") constitutes by far the largest association of religious leaders. The rabbis of the CCAR recognize that civil marriage is a question of civil law, completely distinct from rabbinic officiating at religious

⁵The Union for Reform Judaism (formerly the Union of American Hebrew Congregations) has consistently affirmed its commitment to welcoming gay and lesbian couples into its congregations and in 1993 expanded that support with a resolution supporting full equality under the law, including legal recognition of same-sex relationships. UARC 1977 Biennial Convention, Civil Marriage for Gay and Lesbian Jewish Couples (1977), available at <http://www.rcfrn.org/positions/refjudaism.htm> (last visited November 14, 2005).

marriages.⁶ Similarly, the Jewish Reconstructionist movement, with over 100 congregations across North America, recently adopted a resolution in favor of full civil marriage equality for same-sex couples and has allowed rabbis to officiate at gay and lesbian religious marriages since 1993.⁷

Several Christian denominations also recognize the validity and dignity of same-sex relationships within their communities. The United Church of Christ, with 1.3 million members, expressly allows its ministers to perform religious marriage ceremonies between individuals of the same sex.⁸ The Unitarian Universalists, with more than 1,000 congregations across the country, expressly provides that its clergy and congregations may celebrate the religious marriages of same-sex couples.⁹ That

⁶Outline for Informational CCAR Weblink on Same Gender Marriage, available at http://ccamet.org/Articles/index.cfm?id=213&page_id=1606 (last visited November 14, 2005).

⁷ "Resolution in Support of Civil Marriage for Same-Sex Couples" (March 16, 2004), available at <http://www.therra.org/resolution-Mar2004.htm>.

⁸Leaders of the United Church of Christ (UCC), with 6,000 local congregations in the United States and Puerto Rico, have consistently and again recently affirmed the importance of "equal rights for all couples who seek to have their" relationships recognized by the State. See "United Church of Christ Leaders denounce Federal Marriage Amendment; call for action and dialogue on marriage" (April 28, 2004), available at <http://www.ucc.org/news/u042804.htm> (last visited November 14, 2005). The UCC will be voting on a proposed resolution in support of full civil marriage equality at its General Synod this summer. See J. Bennett Guess, "UCC Could Become First Mainline Christian Denomination To Endorse Civil and Religious Marriage Equality" (April 21, 2005), available at <http://www.ucc.org/news/r042105me.htm> (last visited November 14, 2005).

⁹In 1996, the Unitarian Universalist Association's Board of Trustees adopted a resolution in support of both civil and religious marriage for same-sex couples. See "History of Unitarian Universalist Involvement in and Support of Bisexual, Gay, Lesbian and Transgender Issues" (1996), available at <http://www.uua.org/obgltc/resource/history.html> (last visited November

these two traditions explicitly support religious marriage for gay and lesbian couples is particularly noteworthy because each traces its history directly to the Puritans of New England.¹⁰ In addition, the Episcopal Church, with 2.4 million members nationwide, permits priests, as a matter of pastoral care, to perform liturgies and blessings at weddings between couples of the same sex.¹¹

The American Friends Service Committee ("AFSC") and many individual Quaker institutions have also long supported civil marriage rights for same-sex couples.¹² In its statement in support of equal civil marriage rights, the AFSC noted that:

We are aware that many are calling for civil unions for lesbian, gay, bisexual, and transgender people and some people wish to reserve civil marriage for heterosexual couples alone. It is our belief that government sanction should be applied equally. All couples should be granted civil union licenses or all should be granted marriage licenses.

14, 2005).

¹⁰Our Historic Faith (October 2002), available at <http://www.uua.org/info/origins.html> (last visited November 14, 2005); United Church of Christ, About the UCC, available at <http://www.ucc.org/aboutus/shortcourse/> (last visited November 14, 2005).

¹¹ See Resolution C051 of the 76th General Convention (2003), "Rites: Blessings of Committed Same-Gender Relationships," available at <http://www.integrityusa.org/gc2003/FinalResolutions/C051%20Rites%20Blessing%20of%20Committed%20Same-Gender%20Relationships.htm> (last visited November 14, 2005).

¹²The Executive Committee of the AFSC Board of Directors, acting at the direction of the full board, approved a statement supporting marriage equality in January 2004. "It is our belief that government sanction should be applied equally. All couples should be granted civil union licenses or all should be granted marriage licenses." Minute on Civil Marriage (January 9-10, 2004), available at <http://www.afsc.org/build-peace/equal-marriage.htm> (last visited November 14, 2005).

The Universal Fellowship of Metropolitan Community Churches ("UFMCC") has specifically ministered to the needs of gay, lesbian, bisexual and transgender Christian communities since its inception over thirty-five years ago, in 1968. UFMCC allows its members to obtain, and authorizes clergy to perform, holy unions or the Rite of Holy Matrimony for same-sex couples.¹³

In addition to these religious denominations, many faith organizations are working within their respective traditions for the full inclusion of gays and lesbians and the recognition of both civil and religious marriages between same-sex partners. For example, the Al-Fatiha Foundation, an organization dedicated to lesbian, gay, bisexual, transgender and intersex Muslims, "promotes the progressive Islamic notions of peace, equality and justice" while envisioning "a world that is free from prejudice, injustice and discrimination, where all people are fully embraced and accepted into their faith, their families and their communities."¹⁴

The Executive Director of Lutherans Concerned/North America, a Christian Ministry comprised of individuals who assert God's love for all people of all sexual orientations and gender identities, recently stated that:

¹³ Bylaws of the Universal Fellowship of Metropolitan Community Churches, Article III, Section C pertaining to rites of the Church, effective July 2005, available at [http://www.mcccchurch.org/Bylaws 2005.doc](http://www.mcccchurch.org/Bylaws%202005.doc) (last visited November 14, 2005).

¹⁴ Al-Fatiha Foundation Homepage, available at <http://www.al-fatiha.org> (last visited November 14, 2005).

As members of the Body of Christ and practicing Lutherans, we [lesbian and gay members of the Lutheran Church] are secure in our God-given faith despite the long years of exclusion by our church. We believe that the Good News of the Gospel will ultimately prevail. We remain committed to the removal of discriminatory policies that violate our calls to ministry and marginalize our relationships.¹⁵

Similarly, in August of 2003, the board of directors of DignityUSA, a national organization of gay, lesbian, bisexual and transgender ("GLBT") Catholics and GLBT-supportive Catholics, adopted a resolution saying:

Consistent with the pursuit of liberty and justice for all, same-sex couples should have full and equal access to the rights and responsibilities bestowed by civil marriage.... As Catholics, we remind our Church of a foundational conviction of our faith: God is love and all who abide in love abide in God and God abides in them. The love that brings and binds two people of the same, or opposite sex, together has a divine source.¹⁶

Finally, the Alliance of Baptists "supports the rights of all citizens to full marriage equality, and . . . affirm[s] anew that the Alliance will 'create places of refuge and renewal for those who are ignored by the church.'" ¹⁷

¹⁵ Press Release, Lutherans Concerned/North America, "Lutheran Alliance remains focused on the full participation of gays and lesbians in the life of the Lutheran Church" (January 13, 2005), available at http://www.lcna.org/lcna_news/2005-01-13.shtm (last visited November 14, 2005).

¹⁶ Press Release, DignityUSA, "DignityUSA Urges Washington State Supreme Court to Uphold Lower Court Rulings Affirming Marriage Equality" (March 1, 2005) available at <http://www.dignityusa.org/news/050301seattle.html> (last visited November 14, 2005).

¹⁷ Alliance of Baptists Statement on Same Sex Marriage (April 17,

Therefore, this court should not uphold the State of New Jersey's current, discriminatory application of marriage laws based on the argument that religious tradition would require such an outcome. Different religious faiths will continue to come to various conclusions on the issue of religious marriage for same-sex couples, but this has no bearing on the issue of the right to civil marriage for these couples. Given the diversity of religious thought on the issue of marriage between same-sex partners, any invocation of "traditional values" to justify the exclusion of loving same-sex couples from the right of civil marriage is wholly inappropriate and without rational basis, and, therefore, should not form the basis for a decision by this Court.

2004), available at <http://www.allianceofbaptists.org/sssm-2004.htm> (last visited November 14, 2005). The Alliance of Baptists is a national coalition of individuals and churches "dedicated to the preservation of historic Baptist principles, freedoms, and traditions." *Id.*

CONCLUSION

The issue before this Court is a civil, not a religious or moral, issue. Communities of faith must retain their freedom to develop their own views on religious solemnization of marriage. Protection of religious freedoms does not, however, mean that the views of some religions and faiths can or should be used to deny same-sex couples the legal rights granted to, and responsibilities imposed upon, married couples by the State.

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