LAMBDA on the web
About Us Submit Work Contact Us Archives Home
UNC-Chapel Hill's LGBTIQ-Affirming Magazine Since 1976

LAMBDA Volume 27: Issue 1

A Look at The Court Battles From Hawaii to San Francisco

by Trevor Hoppe

When the Massachusetts Supreme Court issued its notorious same-gender marriage ruling this past November, the justices knew that they were in for a maelstrom of criticism. In his State of the Union address in January, President Bush criticized the court for opening the doors to so-called ?gay marriage,? calling the justices ?activist judges? for enforcing their ?arbitrary will.? Scores of other political and fundamentalist Religious leaders have begun mobilizing their homophobic armies to use same-gender marriage as a divisive issue in the approaching 2004 Presidential election.

Photo by Michael Jerch

Last March, Marcie (left) and Chantelle Fisher-Borne were married in every sense of the word except legally in a commitment ceremony that is pictured on the cover. Both fight alongside in the Triangle Freedom to Marry Coalition for same-gender marriage equality

The fact that a state court has taken this step comes as no surprise to many LGBTIQ activists. Same-gender couples have been knocking at the doors of justice and demanding marriage equality since the often-cited Hawaii marriage ruling of 1993. In that case, the court ruled that by not allowing same-gender couples to marry, the state had violated the Hawaii constitution?s provisions outlawing sex discrimination. Unfortunately, the justices remanded the case back to a lower court, giving lawmakers just enough time to pass a law defining marriage as a union between a man and a woman. The plaintiffs? case was then ruled to be moot.

While same-gender marriage never actually materialized in Hawaii, the case instilled fear into the heart of every card-carrying neoconservative in America. Anti-LGBTIQ forces began a massive ?Defense of Marriage? campaign across the nation in hopes of shutting down the ?homosexual agenda? in as many legislatures as possible before other state courts had the chance to review similar cases. The well-funded, well-organized extreme right succeeded in pushing through Defense of Marriage Acts in ultimately 38 states, as well as the infamous Federal Defense of Marriage Act of 1996. For the unaware, President Clinton, who is sometimes referred to as the most LGBTIQ-friendly President, signed the bill into law at midnight to avoid press coverage.

The Federal DOMA not only defined marriage as a union between a man and a woman, but also stated that same-gender marriages performed in one state do not have to be recognized by other states. This is blatantly contradictory to the Constitution?s ?full faith and credit? clause of Article IV, which states that ?Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.? Though the Federal DOMA is in clear violation of this Constitutional provision, a same-gendered couple must be

married in one state and be refused recognition of their union in another before the legislation can be challenged in court.

After the Federal legislation was passed, the issue of same-gender marriage cooled off for a few short years. Though a struggle erupted in 1998 in Alaska in which a lower state court ruled that same-gender couples should be extended the right to marry, the case fizzled when voters approved a Constitutional Amendment defining marriage as between a man and a woman. The next big wave in the push for marriage equality appeared across the country from its two predecessors. Vermont?s struggle with how to grant same-gender couples the benefits of marriage resulted in the then-nouveau idea of civil unions. Civil unions extend the benefits associated with marriage at the state level, but do not afford couples and of the numerous Federal benefits that come with civil marriage. Civil unions are also only valid in Vermont, so any out of state couple that was "civil-unioned" in the Green Mountain state would return home to find their union legally meaningless.

And then Massachusetts happened. The State Supreme Court's 4-3 ruling in the case of *Goodridge v. Department of Public Health* sent shockwaves through mainstream America. The court ruled that the state's refusal to issue marriage licenses to same-gender couples was unconstitutional, and used as judicial precedent the Federal Supreme Court's long-awaited decision in *Lawrence v. Texas*. Indeed, just as the rabidly homophobic Supreme Court Justice Antonin Scalia predicted, the destruction of sodomy laws across the nation proved to be the first step towards paving the long road towards marriage equality. Using *Lawrence v. Texas* to support the extension of marriage law to include same-gender couples may seem incoherent to some people. However, it becomes clear how this is reasonable when it is understood just how potent an effect sodomy laws had on stigmatizing LGBTIQ people. Anti-sodomy statutes deem all sexual interaction between same-gender couples criminal activity; therefore all LGBTIQ people could then be considered potential felons. Using this logic it is easy to imagine why same-gender couples could be categorically deemed unworthy of acceptance into the "sacred" institution of marriage.

The Lawrence decision also paved the way for San Francisco's recent endeavors into the same-gender marriage issue. Mayor Gavin Newsom took the nation by surprise when he ordered the County Clerk's office to begin issuing marriage licenses to same-gender couples on February 12. The Mayor defended his actions, which run contrary to the California's Defense of Marriage Act, by saying that "California's Constitution is clear: discrimination is immoral, it is illegal and it is antithetical to our most cherished values: liberty and freedom."

The on-going battles in San Francisco and Massachusetts have certainly alarmed conservatives, who have kicked up their campaign for the Federal Marriage Amendment, which would constitutionally deny same-gender couples to the right to marry, into high gear. The amendment would need support of two-thirds majority in both houses of Congress before it could be sent to the states for ratification. Whether or not the amendment has the support it needs in Capitol Hill to pass is unclear, but President Bush's recent endorsement of the legislation has undoubtedly added fuel to the fire. If the amendment does manage to leave Washington, it would face a lengthy ratification process by no less than three-fourths of the states. Although exactly three-fourths of the states, or 38, have a form of legislation or a constitutional provision outlawing same-gender marriage, it does not necessarily follow that these same states would be as willing to tamper with the United States Constitution.

However, these numbers are cause for alarm. National and State LGBTIQ interest groups are appropriately rallying members and allies to action. The NGLTF's Executive Director Matt Foreman even went so far as to equate Bush's support for the amendment as "a declaration of war" against LGBTIQ Americans.

Though the future for marriage in America remains murky, it is quickly becoming clear that the battle for marriage equality will dominate the national dialogue on LGBTIQ-related issues for some time. What happens in San Francisco and Massachusetts will not be the end of the story. Whatever the outcome, it is sure to have a tremendous impact on the future of the LGBTIQ socio-political movement for decades to come. ?

LAMBDA Magazine
C/o GLBT-SA
Box 29 Student Union CB #5210
Chapel Hill, NC 27599
lambda@unc.edu

website design by
trevor hoppe