

Subject: *M*: Hawaii on Nov4

Date: Wed, 4 Nov 1998 10:36:59 -1000

From: ramsey@math.hawaii.edu (Tom Ramsey)

To: marriage@abacus.oxy.edu

The Legislature SHALL Have
The Power To Reserve Marriage
To Opposite-Sex Couples

69.2%---Yes
28.6%---No
02.0%---Blank
00.2%---Overvote

Dan Foley, attorney for the three plaintiff couples who sued in Hawaii to get marriage licenses, outlined the salvage operation last night to an enthusiastic crowd that had lead the fight against this amendment.

- A) The amendment does not set aside the equal protection aspects of Baehr v. Miike. Foley will fight in court to have full rights under a term such as "reciprocal beneficiaries" or "domestic partnerships."
- B) A campaign will be mounted to educate people in Hawaii about why marriage should be an option for gays and lesbians. Now that the legislature controls the word "marriage", it is necessary to educate people to take positive action (rather than ask them to simply not interfere with the courts, as in voting "no" on this amendment).

I GUESS THAT DP DOES NOT LOOK SO BAD AFTER ALL!

- A few consolation prizes from this election:
1. The people of Hawaii strongly rejected a call for a Constitutional Convention. This part of our message was really heard (don't mess with the Constitution). The voters heard that; they just didn't include marriage under that umbrella of protection.
 2. The religious right lost several key elections. The state's best chance for a Republican governor (the first in about 40 years) died as a moderate candidate (Linda Lingle) lost by 2% due to her right-wing running mate (Stan Koki) and due to a right-wing congressional candidate (Gene Ward) linking his campaign to Lingle's.
 3. Only a few legislative candidates campaigned for a "no" vote on the Constitutional Amendment. Their districts were blanketed with postcards showing two men embracing and proclaiming that this is what the candidate supported. All but one of these targeted representatives won election. Six weeks ago, a group of "entrenched" politicians, all opponents of same-sex marriage, were defeated in the Democratic Party primaries.
 4. One of the dirtiest campaigners, Sam Aiona of Makiki, who defeated Jim Shon two years ago by

running an anti-same sex campaign, was defeated
by Bryan Schatz.

Equality Under The Law: no other position
will ultimately prevail.

Tom Ramsey

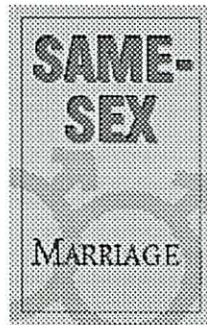
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BOE - 4TH DEPT SCH			CON AMEND: LEG POWER TO RESERVE MARRIAG			HAWAII CTY CODE: IRRADIATION INITIATIVE		
	213 of 213	100.0		333 of 334	99.7		59 of 59	100.0
LYONS, Marilee Y.	109323	37.6	LEG TO RES MARRIAGE	YES 285381	69.2	BAN COMMERCIAL USE	YES 25020	46.6
McMILLEN, Francis	104463	35.9	TO OPP-SEX COUPLES	NO 117827	28.6	RADIOACTIVE MATERIAL	NO 25493	47.5
Blank Votes	77034	26.5	Blank Votes	8422	2.0	Blank Votes	3044	5.7
OverVotes	291	0.1	OverVotes	887	0.2	OverVotes	101	0.2
BOE - 6TH DEPT SCH			CONSTITUTIONAL CONVENTION QUESTION			HAWAII CHARTER: EST DATA SYSTEM DEPT		
	213 of 213	100.0		333 of 334	99.7		59 of 59	100.0
HEUPEL, Jacqueline L.	96576	33.2	CONVENTION TO REVISE	YES 140687	34.1	CREATE NEW CABINET	YES 24861	46.3
SAKURAI, Winston Y.	122288	42.0	OR AMEND CONST	NO 244751	59.3	DEPARTMENT	NO 21804	40.6
Blank Votes	71947	24.7	Blank Votes	26784	6.5	Blank Votes	6970	13.0
OverVotes	300	0.1	OverVotes	295	0.1	OverVotes	23	0.0
OHA - AT LARGE			C&C HON CHARTER: PLANNING DEPT MERGER			HAWAII CHARTER: COUNCIL TERM 2-4 YEARS		
	333 of 334	99.7		213 of 213	100.0		59 of 59	100.0
AIONA, Darrow L.	9226	4.7	COMBINE PLANNING	YES 200311	68.8	AMEND COUNCIL TERM	YES 20830	38.8
AIONA, Leonard (Chief)	5596	2.9	DEPTS INTO ONE DEPT	NO 70865	24.3	FROM 2 TO 4 YEARS	NO 29095	54.2
AKANA, Rowena Noelani	20806	10.7	Blank Votes	19681	6.8	Blank Votes	3688	6.9
CARPENTER, Dante Keala	9839	5.1	OverVotes	254	0.1	OverVotes	45	0.1
CLUNEY, Sam	3835	2.0						
DELA CRUZ, Stewart	2132	1.1	C&C HON CHARTER: BUDGET DEPT MERGER			HAWAII CHARTER: PLANNING APPEAL PROC		
DESOTO, A. Frenchy	20107	10.3		213 of 213	100.0		59 of 59	100.0
KALEIKINI, Lovell F.	5030	2.6						
KALUA, Virginia Halemano	3942	2.0	COMBINE BUDGET	YES 191434	65.8	BOARD'S MEMBERSHIP	YES 38084	71.0
KAMAU, William K., III	3397	1.7	DEPTS INTO ONE DEPT	NO 77453	26.6	JURISDICTION, ETC	NO 9303	17.3
KAMAUU, Mahealani	12346	6.4	Blank Votes	22040	7.6	Blank Votes	6164	11.5
KEALOHA, Gard	2918	1.5	OverVotes	184	0.1	OverVotes	107	0.2
KEALOHA, Samuel L., Jr.	7482	3.8						
KEKAI, Hank (Kupuna)	2716	1.4	C&C HON CHARTER: DEPT OF CUSTOMER SERV			MAUI CHARTER: NON-PARTISAN ELECTIONS		
MEYERS, Willy	1772	0.9		213 of 213	100.0		41 of 41	100.0
MONTGOMERY, Bill	2500	1.3						
NAPEAHI, Kanak	2242	1.2	CREATE NEW DEPT OF	YES 182699	62.8	MAYOR/COUNCIL NON-	YES 20923	48.3
PA, Leimemo Josephine	2694	1.4	CUSTOMER SERVICES	NO 87228	30.0	PARTISAN ELECTIONS	NO 16781	38.7
PRIGGE, Joseph, Jr.	963	0.5	Blank Votes	20969	7.2	Blank Votes	5595	12.9
SABBY, John L. (Kione)	449	0.2	OverVotes	215	0.1	OverVotes	22	0.1
SHIBATA-KAILIANU, Raynette	1645	0.8						
TRASK, Mililani	29656	15.3	C&C HON CHARTER: DEPUTY DIRECTORS			MAUI CHARTER: COUNCIL VACANCY PROVISION		
WATSON, B. Mokihana	7232	3.7		213 of 213	100.0		41 of 41	100.0
WONG, Jimmy	6464	3.3						
WONGHAM, Greg	2563	1.3	EXEMPT DEPUTY	YES 107374	36.9	COUNCIL VACANCY	YES 28927	66.8
Under Votes	25258	13.0	DIRECT FROM CIV SERV	NO 148438	51.0	PROVISIONS	NO 8721	20.1
OverVotes	1608	0.8	Blank Votes	35031	12.0	Blank Votes	5652	13.0
			OverVotes	268	0.1	OverVotes	21	0.0
OHA - MAUI			C&C HON CHARTER: REVISOR OF CHARTER			KAUAI CHARTER: BOARD OF WATER SUPPLY		
	333 of 334	99.7		213 of 213	100.0		19 of 20	95.0
CAMPOS, Herbert Kuualoha	10127	15.6						
HAO, Louis	13502	20.8	CORP COUNCIL REV	YES 139733	48.0	INC NUMBER MEMBERS	YES 8338	34.2
KAHO'OHANOHANO, David E.	10523	16.2	CHARTER FOR REORG	NO 115993	39.8	7 TO 9 : MAYOR APPT 6	NO 13964	57.3
KALALAU, Sam III	7442	11.5	Blank Votes	35146	12.1	Blank Votes	2046	8.4
KAMA, Natalie Tasha	7977	12.3	OverVotes	239	0.1	OverVotes	18	0.1
KIA-KIRLAND, Rose Kaloke	6432	9.9						
Blank Votes	8423	13.0	C&C HON CHARTER: 5-YR TERM POLICE CHIEF			KAUAI CHARTER: BID THRESHOLDS		
OverVotes	380	0.6		213 of 213	100.0		19 of 20	95.0
OHA - OAHU			PROVIDE 5-YEAR TERM			CHGS COMPETITIVE-		
	333 of 334	99.7		222982	76.6	BIDDING THRESHOLDS	YES 13501	55.4
AGARD, Louis K. (Buzzy)	2670	4.1	FOR POLICE CHIEF	NO 46907	16.1	Blank Votes	NO 7811	32.1
AMARAL, Annelie C.	8032	12.4	Blank Votes	21055	7.2	Blank Votes	3038	12.5
AMONG, Les A.	1427	2.2	OverVotes	167	0.1	OverVotes	16	0.1
HAO, Reginald	4992	7.7	C&C HON CHARTER: BUDGET AMENDMENT					
HEE, Clayton	22751	35.1		213 of 213	100.0			
KAMALI'I Kina'u Boyd	15720	24.3	EXTEND DATE COUNCIL	YES 161210	55.4			
KIYOHIRO, Larry Joy	4731	7.3	TO PASS BUDGETS	NO 99378	34.1			
Blank Votes	4075	6.3	Blank Votes	30331	10.4			
OverVotes	408	0.6	OverVotes	192	0.1			
CON AMEND: APPT TAX REVIEW COMMISSION			C&C HON CHARTER: COUNCILMEMBER TERMS					
	333 of 334	99.7		213 of 213	100.0			
APPT OF TAX REVIEW	YES 138672	33.6	STAGGER TERMS OF	YES 191272	65.7			
COMM EVERY TEN YRS	NO 222430	53.9	COUNCIL MEMBERS	NO 73255	25.2			
Blank Votes	51026	12.4	Blank Votes	26387	9.1			
OverVotes	389	0.1	OverVotes	197	0.1			

J



Friday, November 6, 1998



Same-sex marriage debate rages on, now over domestic partnership bill

By Mike Yuen
Star-Bulletin



Anti-gay rights activist Mike Gabbard has attacked Gov. Ben Cayetano, asserting that Cayetano's push for a "domestic partnership" bill to extend marriage-related benefits to same-gender couples smacks of approval of same-sex marriages.

He is astounded, Gabbard said yesterday, that a declaration can be made in the same week that voters overwhelmingly approved a constitutional amendment that, in effect, bans same-sex marriage.

But while Gabbard interpreted passage of the measure that gives the Legislature the authority to limit marriage to opposite-sex couples as also a rejection of domestic partnerships, others who worked with Gabbard to pass the amendment disagree.

Jennifer Diesman, a spokeswoman for Save Traditional Marriage-'98, which was formed solely for the passage of the amendment, said the group has no position on domestic partnerships, which would extend marriage rights but not marital status to gay couples.

The polls done for Save Traditional Marriage revealed that isle residents have no problem

with gay relationships and homosexuality, but they balked at having marriage extended to homosexuals, Diesman said. The group's statewide surveys, Diesman added, pointed to wider acceptance of domestic partnerships than same-sex marriages.

"People are uncomfortable denying rights and benefits to any group of people. A certain segment that voted "yes" (on the constitutional amendment) favors domestic partnerships," she said.

Diesman also noted that Hawaii's Future Today, the group that opposes same-gender marriage, prostitution and gambling and whose leaders interlock with Save Traditional Marriage's, supported a 1997 reciprocal beneficiaries bill that's a limited version of domestic partnerships.

That bill, unmatched anywhere in the nation for what it granted gay couples, was part of the compromise that allowed voters to have their say on same-sex marriage, Diesman added. It extended rights such as hospital visitation, probate and property transfers but not child custody, alimony and spousal privilege.

"Domestic partnership is just another name for same-sex marriage," said Gabbard, who stressed that he wasn't speaking for Save Traditional Marriage, although he is a member of its steering committee.

Gabbard, who founded Stop Promoting Homosexuality International, said he was speaking as chairman of the Alliance for Traditional Marriage.

Gabbard opposed the state law that prohibits discrimination of gays in employment. " 'Special rights' should not be given on the basis of sexual orientation and behavior," he said.

Cayetano, who was among the 69 percent who voted "yes" on the anti-gay marriage amendment, wants the Legislature to approve a comprehensive domestic partnership bill partly to counter assertions that the state is intolerant because of the new constitutional provision that would limit marriage to one man and one woman.

Cayetano's position is not new. As early as 1996, he saw domestic partnerships as the way to end what is now a nearly decade-long debate over same-sex marriage that has divided the isles.

"The institution of marriage should be left to the church. The government needs to explore its role in marriages," Cayetano said back then. "The government should not be in the role of sanctifying marriages."

Gabbard said gays don't need domestic partnerships because the rights they're seeking can be obtained through contracts, wills and trusts.

Civil rights attorney Dan Foley, who represents the three gay couples that sued the state in 1991 for the right to marry, wondered why Gabbard sees the need for a lawyer to have to codify every long-term gay relationship.

"It is disingenuous for him to say that domestic partnerships are the same as same-sex marriages," Foley said.

"Legally and morally, they are very different things. Domestic partnerships have a far lesser status."

Jackie Young, campaign director for the unsuccessful effort to derail the anti-gay marriage amendment, said she fully backs Cayetano's plan to have the Legislature adopt a comprehensive domestic partnership bill for gay couples.

"For some reason, the word 'marriage' has more people hung up than it should," she said.

Same-sex marriage:
Past articles

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Subject: *M*: Article by Dan Foley - For Publication

Date: Tue, 10 Nov 1998 10:02:49 EST

From: EWLLDEF@aol.com

The following is a proposed op-ed by Dan Foley, co-counsel in the Hawaii marriage case, Baehr v. Miike, and a non-gay champion of equality for all. Feel free to print or distribute this op-ed, or to suggest to local press or organizations that they run it.

1001

96813-3403

DANIEL R. FOLEY
Attorney at Law
1330 Pacific Tower,

Bishop Street
Honolulu, HI

(808) 526-9500

A LOSS THAT MOVES US FORWARD, IS IN THE END, A VICTORY

by Dan Foley

After a hard fought battle, on November 3, Hawaii voters approved an amendment to the state constitution that gives the legislature the power to reserve marriage to opposite sex couples. The amendment's passage culminated

a national effort by the Mormon Church and other religious political groups to remove the state constitutional underpinning of the case I initiated and am shepherding through Hawaii's legal system with my co-counsel Evan Wolfson of Lambda Legal Defense and Education Fund.

The passage of the amendment was a setback to our efforts but it in no way marks the end of those efforts. In fact, it opens new chapters in the long

term struggle to achieve equal marriage rights for lesbian and gay people.

The day after the election, Governor Ben Cayetano, who had narrowly

won his reelection bid the night before, announced on a morning interview show that he would be introducing a comprehensive registered partnership proposal in

the next session of the legislature. He said that the campaign to pass the amendment had gotten far too intolerant in the closing days of the campaign.

It is also important to point out that our case Baehr v. Miike, is still

alive and well. Though there will be an attempt by the Attorney General to have

the case dismissed based on the outcome of the vote, Evan and I will argue before the Hawaii Supreme Court that the components of the case are still valid

and are not impacted by the passage of the amendment. In fact, most of the rights and responsibilities of marriage could still be granted to gay people under a different name in Hawaii. This could be accomplished by a combination of the Baehr case and the registered partner bill that the governor has promised.

This was not lost on Mike Gabbard, the principal spokesperson for the group Save Tradition Marriage, the primary group that pushed for the amendment's passage. During the campaign, Mr. Gabbard had claimed he and his group were not anti-gay and only wanted to make sure marriage stayed between one man and one woman. The day after Governor Cayetano's remarks, which he reiterated at an afternoon press conference, Mr. Gabbard stormed the Governor's

office and demanded that he withdraw his registered partnership proposal. The

Subject: *M*: HA 1322: SSM SOUNDLY DEFEATED

Date: Wed, 04 Nov 1998 12:45:57 -1000

From: Martin Rice <lambda@aloha.net>

To: Martin Rice <lambda@aloha.net>

Aloha kakahiaka kakou.

Received a "heads up" from a Honolulu savant that newly-re-elected Gov. Ben Cayetano said this morning in a news interview on Channel 2 (FOX) that he will ask the Legislature to enact a domestic partnership bill this upcoming session.

We'll see what comes of it, after the usual horsetrading, that is.

Also, I'm not real comfortable with giving something and calling it something else. The issue is still about equality before the law Will het couples be allowed to enter into a domestic partnership and will it be the only vehicle to convey the some 340 state-bestowed benefits, rights and obligations to couples? Will marriage become a purely religious ceremony as a result, governed by the dogma of churches rather than the providence of the state?

Stay tuned, as I feel that I will be reporting live from Honolulu on many occassions come January 15th.

The battle continues

HONOLULU ADVERTISER
P.O. Box 3110
Honolulu, Hawai'i 96802
tiser@aloha.net

November 4, 1998

SAME-SEX MARRIAGE SOUNDLY DEFEATED
By Jean Christensen
Advertiser Staff Writer

Voters yesterday sent a strong message to the Legislature to define marriage as exclusively between one man and one woman.

By a wide margin, voters approved a constitutional amendment that allows the Legislature to define marriage as exclusively between one man and one woman.

Opponents of the amendment said it marked the first time the state constitution had been altered to restrict the civil rights of a specific group.

"It's a black mark on our Bill of Rights, and I think the Legislature, taht proposed this will nto be remembered well, as George Wallace was not remembered well standing in the schoolhouse door," said Dan Foley, attorney for three gay couples seeking marriage licenses. "And I think the general public will ultimately come to realize this is a mistake, and it will be corrected."

Supporters said voters had not bought the argument that civil rights were at stake, and saw the amendment as the only way of stopping the Supreme Court from legalizing same-sex marriage.

The vote capped five years of bitter public debate, and in recent days one of the most emotionally charged battles in Hawai'i election

*I will write
to THE GOV
+ legis
leaders on
inclusive
DP -
As we have
Argued ALL
ALONG*

history.

While the vote is expected to head off the legalization of gay marriages for the time being, it probably won't decide the issue once and for all, legal experts say.

"The one thing that is clear is there will be more litigation," said Jon Van Dyke, a University of Hawai'i law professor.

The Rev. Marc Alexander of the group Save Traditional Marriage '98 said the vote sends a message to the Legislature that "the people of Hawai'i don't want same-sex marriage - just protect traditional marriage and move along to other issues ... that require the concerted efforts of our people here, like the economy."

But many voters who express disdain for same-sex marriages yesterday said they were troubled tinkering with the constitution.

"Even though homosexual marriage may be against my religion, the state shouldn't have right to decide who can or cannot get married," said Claudia Vargas, 35, of Kane'ohe.

The battle over the amendment was rivaled only by the governor's race in intensity and cost, with both sides spending more than \$1 million each on advertising that touch such emotional themes as family, patriotism and minority rights.

Mainland donors supplied most of the money. The Utah headquarters of the Mormon Church gave \$600,000 to the "yes" campaign. The "no" side was supported by fund-raising efforts of the Human Rights Campaign, the nation's largest gay rights lobbying group.

The vote allows the Legislature to sidestep a 1993 state Supreme Court ruling that denying marriage licenses to gay couples violated the state constitution's protections against same sex discrimination.

The decision touched off a chain reaction in the legislatures around the country, with 29 states approving laws prohibiting gay marriage or the recognition of gay marriages performed in other states. In 1996, Congress passed the Defense of Marriage Act, which denies federal recognition of gay marriages and allows states to refuse to recognize gay marriages performed elsewhere. President Clinton signed the measure into law.

Hawai'i's 1993 Supreme Court decision did not legalize same-sex marriage in Hawai'i, but said the state had to show a compelling reason to deny marriage licenses to gay couples.

Circuit Judge Kevin Chang in 1996 ruled that the state had failed to show such a compelling reason. The state appealed Chang's decision to the Supreme Court, which has not ruled on the appeal.

Last year the Legislature approved two pieces of legislation aimed at finding a compromise on the issue. One was the proposed constitutional amendment on yesterday's ballot.

The other was a statewide domestic-partnership law that granted many of the benefits of marriage to gay couples and others who registered as "reciprocal beneficiaries."

It is still uncertain whether yesterday's vote guarantees same-sex marriage will not be legal in Hawai'i. The amendment simply gives the power to ban it. Authors of the legislation have pointed to a 1994 state law that restricts marriage to opposite-sex couples in claiming that the amendment, if passed, would automatically put that law into effect.

But attorneys for the three gay couples involved in the landmark lawsuit say the 1994 law was declared unconstitutional in Chang's 1996 ruling.

Van Dyke, who advised lawmakers drafting the proposed amendment, said the 1994 law was put together with the understanding that it would indeed "spring into existence" if the amendment passed.

But he conceded, "You can also argue that some new legislation is required, because the phrasing does seem to anticipate something new happening. So it may be that a court would say there has to be some legislative action that would (be needed) after the amendment is passed."

Subject: Hawaii letter

Date: Tue, 17 Nov 1998 11:03:23 -0400

From: Alternatives to Marriage Project <atmp@netspace.org>

To: tomcoleman@earthlink.net

*Lloyd,
Another good letter
from our friends
at ATM.*

- Tom

Realized I never sent you a copy of this.

November 11, 1998

Governor Benjamin Cayetano
Executive Chambers
Hawaii State Capitol
Honolulu, HI 96813

Dear Governor Cayetano:

We are pleased to hear that you are advocating for an expanded domestic partnership bill for Hawaii, and we thank you for your long-term support of such legislation. We are writing to urge you to include both same and opposite sex couples in such legislation. We understand that Hawaii's current reciprocal beneficiary law excludes male-female couples.

We are the founders of the Alternatives to Marriage Project, a national organization that provides resources, advocacy, and support to people who have chosen not to marry, are unable to marry, or are in the process of deciding whether marriage is right for them. There are over five and a half million unmarried couples in this country, including over 15,000 in Hawaii. Most of these households are opposite-sex couples. Our organization strongly supports the right of gay and lesbian couples to be eligible for the same privileges as married couples. However, we are concerned about the many opposite-sex couples who choose not to marry for a variety of political, financial, philosophical, or religious reasons. Although we are not married, our families have the right to receive the same benefits to which other citizens are entitled.

The precedent for domestic partnership plans has already been set: the vast majority of states and municipalities offering these benefits have made them available to same and opposite-sex couples. A domestic partnership plan for which only gays and lesbians are eligible would violate federal laws prohibiting sex discrimination, such as Title VII and the Equal Pay Act, and its constitutionality would also be in question. Moreover, cost is not an issue: on average, enrollment in non-sexist domestic partner plans goes up by only 1%.

We strongly support your call for an expansion of rights to unmarried citizens through domestic partnership. However, we urge you to make your laws truly equitable by including unmarried couples regardless of their genders. Please let us know if the members of the Alternatives to Marriage Project can be of help to you as you consider these issues.

Sincerely,
Marshall Miller Dorian Solot
Co-Founder Co-Founder

Alternatives to Marriage Project
P.O. Box 991010, Boston, MA 02199
phone/fax (781) 793-9911
atmp@netspace.org
<http://www.netspace.org/atmp>

6 pages

Subject: [Fwd: REDEFINING RELATIONSHIPS]
Date: Sat, 21 Nov 1998 08:17:17 -0800
From: Thomas Coleman <tomcoleman@earthlink.net>
To: Ben Cayetano <gov@gov.state.hi.us>

ARTICLE,
THIS was sent
BY e-mail to

Subject: REDEFINING RELATIONSHIPS
Date: Sat, 21 Nov 1998 08:13:04 -0800
From: Thomas Coleman <tomcoleman@earthlink.net>
To: Avery Chumbley <senchumbley@capitol.hawaii.gov>,
Matt Matsunaga <senmatsunaga@capitol.hawaii.gov>

Governor
+
co-chairs of
Senate
Judiciary
Committee
in
Hawaii.

Dear Colleagues:

I am forwarding an article to you that appeared in the Toronto News. While it deals with Canada, the same problem is facing legislators in Hawaii and will face legislators in other states as well, either this year in California, or in future years in New York, Massachusetts, etc.

This article is very thoughtful and has some good suggestions. I am forwarding it to the Governor of Hawaii (who has said he favors inclusive dp for all, leaving marriage to religions), and to some Hawaii legislators.

The article describes three legislative options. Option #3 is the most inclusive and is what Spectrum Institute would support. Registered DP would be open to any two adults, regardless of sex or blood relationship. It takes away the presumption of sexual conduct, thereby reducing religious opposition. It is the most respectful of family diversity, inasmuch as it does not exclude blood relatives.

The article is wrong on one point. Hawaii has not done this. The current reciprocal beneficiary law excludes unrelated opposite-sex couples. This exclusion is unfair.

Hopefully, when Hawaii Governor Cayetano introduces his comprehensive dp bill, it will be based on model #3. It would take the current reciprocal beneficiary law and expand it in two ways: (1) change from limited rights and obligation to the same rights and obligations under state law as laws confer on marriage and family members and adult dependents; and (2) make it open to any two adults, by removing the same-gender restriction for persons not related by blood.

Hopefully, the co-chairs of the Senate Judiciary Committee in Hawaii will lead the way for passage of a COMPREHENSIVE and INCLUSIVE law governing registered domestic partnerships.

When I testified before that committee in the 1996 legislative session, I advised the committee that the recommendation of the Hawaii Commission on Sexual Orientation and the Law was the way to proceed (comprehensive DP law open to any two adults regardless of sex) but when questioned by Senator Anderson (and in private discussions with Representative Quentin Quananakoa) I agreed that it would be more fair to include blood relatives.

I always thought that the bill introduced by Quentin was the best. It was called "family partnership" rather than "domestic partnership" and it would have conferred ALL state law rights and obligations on registered family partners that the law confers on spouses, family members, and dependents. It did not go anywhere for two reasons: (1)

Quentin is a Republican in a Democratic dominated House; and (2) Speaker Souki did not want any benefits for domestic partners. But the fact that a Republican legislator would introduce a comprehensive family partnership bill showed how moderate such a proposal really is.

I truly hope that the Governor and the Hawaii Legislature do not go down the "gays only" path to domestic partnership. Even gay rights activists, such as Martin Rice in Hawaii, do not want to see dp become a second-class "gay ghetto" institution. Furthermore, such a law would open up the new law to legal challenges under the Hawaii Constitution, e.g., violation of the right of privacy (freedom of choice in highly personal decisions involving marriage and family relationships), and equal protection (discrimination on the basis of sex if opposite-sex couples are excluded), and religious freedom (forcing opposite-sex couples to participate in a marriage ceremony which, even though called "civil" marriage is essentially religious in character, e.g., the Hawaii civil marriage statute speaks of a "rite" of marriage, of "solemnization" of marriage, and requires a ceremony with vows whereas dp can be done by signing a paper and without a forced ceremony).

Anyway, I thought this article has a lot to offer and was worth passing along.

Yours truly,

Thomas F. Coleman
Spectrum Institute

http://www.canoe.ca/TorontoNews/16_n2.html

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THE TORONTO SUN

November 21, 1998

REDEFINING RELATIONSHIPS

LOVERS, FAMILY OR JUST FRIENDS? WE NEED NEW RULES WHEN PEOPLE LIVE TOGETHER

By **MARIANNE MEED WARD** -- Toronto Sun

Does the state have any business in the bedrooms of the nation? We thought Pierre Trudeau settled that question for us a few decades ago when he emphatically proclaimed that it did not.

Most of the time that works, namely when the couple in the bedroom is getting along. But as soon as the relationship sours, it's increasingly common for one of the parties in the relationship to appeal to the state for help in sorting out rights and obligations.

Such sorting out becomes more difficult the less defined in law the relationship happens to be. Enter the highly divisive topic of defining gay and lesbian relationships, which are still in a legal grey area.

Should such relationships be considered the equivalent of heterosexual marriage? Should we redefine spouse to include same-sex partners? Or are gay and lesbian couples in a category by themselves, with different laws governing their establishment and dissolution?

An Ontario court will once again be asked to answer these questions when it hears the palimony suit against figure skater Brian Orser brought by his former boyfriend, Craig Leask.

Palimony is an allowance or property settlement claimed by one member of an unmarried couple who separate after having lived together. Historically, palimony has been understood to apply to heterosexual spouses. In launching his suit Leask is essentially asking the court to treat him as Orser's common law spouse, with the attendant benefits and obligations.

Leask is asking for \$5,000 a month in compensatory support or a lump sum payment of \$300,000, along with ownership of a cottage and half-ownership of a home, speedboat, Porsche, Orser's stock portfolio and Brian Orser Productions Ltd. Leask also wants to be named the beneficiary of Orser's life insurance policy or policies.

HOUSEKEEPER

Leask alleges the two lived together for almost five years in a "common-law, same-sex relationship" during which time Leask assumed responsibility for housekeeping and domestic tasks "at the expense of his own professional development." Leask also contends Orser promised to support him.

Orser acknowledges he had a relationship with Leask but denies he ever promised to support him and further contends

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denies he ever promised to support him and further contends that Leask promised never to make a claim for financial support, as a previous Orser lover did. Orser also contends Leask does not meet the definition of spouse within the meaning of the Family Law Act.

The law is increasingly murky on the question of what constitutes a spouse and family. Some clarity is expected once the Supreme Court rules in *M. v. H.*, involving a middle-aged lesbian couple fighting over spousal support.

M. argued that Ontario's Family Law Act, which defines a common law couple as "a man and a woman" living together continuously for a period of at least three years, is discriminatory under the Charter of Rights and Freedoms and should be changed to include same-sex couples. An Ontario Court of Appeal agreed. The government appealed and the decision is pending.

M. v H. and the Leask suit invite the state into the bedrooms of gay couples and raise the thorny issue of how to treat relationships that are outside heterosexual marriage.

The state has three options.

1) Change the definition of spouse and marriage to include gay and lesbian relationships. This is the "sledgehammer to swat a fly" approach. Such a change would affect hundreds of provincial statutes across the country and 50 federal ones, many of which may be irrelevant to gay and lesbian relationships. Such a change is likely to meet with vigorous resistance, prolong acrimonious debate over definitions of spouse and family and leave a number of relationships in legal limbo.

Remember the battle when the Bob Rae government attempted to change the definition of spouse in provincial law to include same sex couples? A free vote in the Legislature defeated the bill. Opposing the bill, albeit for different reasons, were religious people of a variety of faiths and gays and lesbians who all argued that homosexual relationships are fundamentally different from heterosexual ones and thus don't need identical legal rights and obligations.

Finally, such a change does nothing to recognize non-conjugal same-sex or opposite-sex relationships where mutual support and dependency are nevertheless present.

2) Treat gay and lesbian relationships like heterosexual common law ones. This is the "you have no choice in defining your relationship" approach. In the absence of a voluntarily agreed upon contract, courts are being asked to treat gay couples like common law ones by default. But is it fair to impose obligations on one partner at the request of the other that were neither agreed to nor reasonably foreseen?

SHOULD THEY WAIT?

On the other hand, if gay and lesbian couples wish to confer rights and obligations on each other, should they be required to wait for those to kick in under common law?

3) The third option is to create a separate category of domestic relationships. Such an approach has already been suggested by the Ontario Law Reform Commission in a 1993 document entitled "The rights and responsibilities of cohabitants under the Family Law Act."

The commission suggested creating a legal category called a Registered Domestic Partnership (RDP) that would be available to any two unmarried individuals over the age of 18 regardless of whether their relationship was sexual. A gay couple could register; so could two sisters.

An RDP would allow people to define the nature of their relationship as they saw fit. It would allow benefits and obligations to immediately kick in. It would allow people to provide financial support for each other so taxpayers, under welfare benefits, don't have to.

Furthermore, it would side-step the continued acrimonious debate over definition of family and spouse, avoid offending the sensibilities of religious and other citizens and recognize a variety of relationships, conjugal or otherwise, outside of heterosexual marriage.

READY SUPPORT

Some religious groups have already signalled support for such a category, most notably Citizens for Public Justice, a Christian public policy group based in Toronto.

Hawaii has already passed such legislation, the bill of Reciprocal Beneficiaries, which allows any two adults to sign a formal document spelling out legal rights and responsibilities, independent of sexual activity in the relationship. Elsewhere, Denmark, Iceland, Norway, The Netherlands, Sweden and Hungary have adopted a domestic partnership category into law.

Implementing the category here is not without challenges. The Federal Court ruled Aug. 17 in the Moore and Akerstrom case that the federal government must extend employee benefits to same-sex couples but not by creating a separate category (in this case "same-sex partner relationship"). Creating a category that treats same-sex couples as "separate but equal" to heterosexual couples is "discriminatory," ruled Justice Andre MacKay.

But we already "discriminate" among a variety of relationships. Common law relationships have fewer rights and obligations than legal marriages, and rights are not immediate. Furthermore, married or common law couples can limit their rights and obligations to some extent by signing cohabitation and pre-nuptial agreements.

Does that mean there is a hierarchy of relationships? Sure, but it's very individual. If I cohabit rather than marry, for me cohabitation is obviously at the top of the hierarchy. For someone who marries, that arrangement is at the top of the hierarchy.

There are many people who enter into long-term

relationships of mutual support and dependence that may or may not include a sexual component. Those relationships should not have to continue in legal limbo.

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Subject: Vermont Chief Justice and Hawaii Governor on same wavelength

Date: Sat, 21 Nov 1998 13:21:13 -0800

From: Thomas Coleman <tomcoleman@earthlink.net>

To: Ben Cayetano <gov@gov.state.hi.us>, Matt Matsunaga <senmatsunaga@capitol.hawaii.gov>, Avery Chumbley <senchumbley@capitol.hawaii.gov>

BCC: "Dorian and Marshall, ATM Project" <dsolot@netspace.org>, tomcoleman@earthlink.net

Dear Governor Cayetano:

I am forwarding this article to you because I thought you would find it interesting that the Chief Justice of the Vermont Supreme Court has made the same suggestion that you have: that some form of domestic partnership be made available for everyone as a secular legal institution. Although he did not expressly say so, this comment by the Chief Justice seems to imply that "marriage" might be left to religion and churches.

I think that realistically, so-called "civil" marriage is so engrained in our traditions that most opposite-sex couples who do not want a church wedding would probably still want the label of "marriage" in a civil setting. However, calling it "civil" marriage is somewhat of a misnomer since "marriage" is so infused with religious beliefs, dogma, and restrictions. Calling marriage "civil" does not transform it from a religious or quasi-religious institution any more than it would to create "civil" confession or penance. It would still carry religious overtones.

The only truly way to create a secular institution for adult relationships would be to pass legislation creating a legal relationship called something other than "marriage." Call it domestic partnership, or registered partnership, or family partnership, but not marriage.

Then, same-sex couples would get the same rights and benefits (and obligations) as marriage, but without the religiously-oriented label. Opposite-sex couples who do not want the religious label but who are willing to assume the same legal obligations to each other as marriage entails, would finally have a secular alternative. I assume that most opposite-sex couples would still opt for "marriage," but at least the state would create a secular option for the 10% or more of opposite-sex couples who would prefer domestic partnership.

The state provides secular options in another aspects of the law. For example, for those who do not believe in God or who do believe in God but do not want to "swear" God's name, the state allows them to "affirm" that they will tell the truth before they testify. Those who prefer the customary "oath" may swear to God that they will tell the truth. Thus, the state has a quasi-religious method and a truly secular method for placing people under penalty of perjury. There is no rational reason why people should not have a truly secular option when it comes to assuming legal obligations for adult familial relationships.

In any event, I thought you would find it interesting that your "domestic partnership for everyone" idea is being discussed on the East Coast.

The following is the AP article which made reference to the question posed by the Chief Justice during oral argument in a gay marriage case earlier this week.

Sincerely,

Thomas F. Coleman
Spectrum Institute

cc: Senator Avery Chumbley
Senator Matt Matsunaga

BOSTON GLOBE

Vermont Supreme Court justices
hear arguments on gay marriage

By Ross Sneyd, Associated Press, 11/19/98 01:01

MONTPELIER, Vt. (AP) - Vermont's Supreme Court was asked Wednesday to settle a fundamental question: whether gays and lesbians are entitled to the "little bundle of rights and privileges" attached to legally recognized marriage.

Throughout an hour of debate on complex legal theories and practical politics, that phrase coined by Justice Denise Johnson summed up the issue before the court.

"Isn't this case really about whether or not the state can deny this little bundle of rights and privileges that come with the status of being married to people on the basis of sex?" Johnson asked.

The justices heard the case of whether three same-gender couples are unconstitutionally being denied their right to marriage simply because they are lesbian or gay.

The significance of the case was underlined by the hordes of people who wanted to witness the arguments and by the length of time the justices gave to hearing it - at least twice what most cases get.

Folding chairs were set up and tickets to get into the building - something the court has never before required - were snatched up the moment doors opened hours before the scheduled arguments.

After voters in Hawaii and Alaska earlier this month essentially overturned their courts' decisions moving toward legalizing gay marriage, Vermont was thrust to the center of a nationwide debate. It now is the only state where the highest court in the state is weighing the question.

>From the point of view of the three couples who sat in a front row Wednesday, it couldn't come soon enough.

Stan Baker and Peter Harrigan of Shelburne, Nina Beck and Stacy Jolles of South Burlington, and Lois Farnham and Holly

Puterbaugh of Milton sued last year when their town clerks, on the advice of the attorney general, denied them marriage licenses.

“After 26-plus years, it's pretty overwhelming,” Puterbaugh said of the hearing, referring to the length of her relationship with Farnham.

“We've wanted to be married for a long time. I can't believe we're actually here,” Beck said downstairs from the court chamber, facing two dozen cameras, microphones and reporters.

The question upstairs, though, was whether marriages between two men or two women could be recognized under Vermont law, or whether gays and lesbians should be given some other status.

Chief Justice Jeffrey Amestoy posed a hypothetical theory that all marriage might be thrown out and replaced with some kind of domestic partnership status.

That's not enough, said Middlebury lawyer Beth Robinson, representing the three couples. “Certainly marriage as we know it is a bundle of rights and responsibilities. It's also a status and that status has an independent value,” she said.

Underlying the case are questions about whether marriage is a fundamental right. If it is, the question then becomes whether gays and lesbians are being discriminated against.

“Why are people being excluded from a marriage license here?” Johnson asked. “A man can't marry a man because he's a man. A woman can't marry a woman because she's a woman. Why isn't that gender discrimination?”

Assistant Attorney General Timothy Tomasi said it was not discrimination because both men and women were given the right to marry in Vermont. “There's no benefit given to males that isn't given to females,” he said.

Robinson argued that was the same kind of rationale that defenders of a prohibition against interracial marriage used during the middle of the century.

She urged the justices to follow the lead of the California Supreme Court, which 50 years ago struck down statutes outlawing interracial marriage.

“The parallels between that case and this case are striking,” she said. In 1948, proponents of the interracial ban used many

of the same arguments as gay marriage opponents use today, she said.

In particular, she disputed the state's contention that marriage between a man and a woman furthers the link between procreation and child rearing.

“If the state's concern is about protecting children, then that would be protected by allowing these couples to marry,” Robinson said, pointing out that two of the three couples have children.

Redefining marriage would usurp the rights and responsibilities of the Legislature, which has the power to change statutes if it so decides, said Assistant Attorney General Eve Jacobs-Carnahan.

“That would eliminate the safe harbor for the Legislature about where it can operate, where it can legislate without looking over its shoulder” to the court, she said.

The Legislature's role in the issue is another important question.

Justice Marilyn Skoglund said lawmakers already had enacted a number of statutes protecting gays and lesbians, from anti-discrimination laws to granting them the rights to adopt children.

“Haven't they already identified that as a class that should alert us to a heightened scrutiny?” Skoglund asked.

All that demonstrates, said Tomasi, is that gays and lesbians have the power to influence the Legislature, something they could do if they desire the right to marry.

“It is not a political powerless minority,” he said.

Robinson rejected that argument.

“It's puzzling to try to understand the state's argument,” she said. “To argue that things are fine now, that we don't have to worry about long-standing discrimination because we have an anti-discrimination statute, is to ignore the continuity of history. ... We're dealing with a class of people who have been historically discriminated against.”

It normally takes months for the court to issue a decision after hearing oral arguments.

SPECTRUM INSTITUTE

A Non-Profit Corporation Promoting Respect For Human Diversity

November 23, 1998

Governor Ben Cayetano
Honolulu, Hawaii

*Thomas F. Coleman
Executive Director
Family Diversity Project*

Re: Inclusive domestic partnership

Fax Transmission
9 pages

Dear Governor Cayetano:

Since your staff is drafting proposed legislation for a comprehensive domestic partnership act in Hawaii, I wanted to share some additional information with you on this issue.

I am sending you the position of California Governor-elect Gray Davis on the subjects of family diversity, domestic partnership, and marital status discrimination. Before the election, he participated in a survey of political candidates that was conducted by Spectrum Institute.

As you can see, Gray Davis supports domestic partnership benefits *for all adults, regardless of sex*. I have no doubt that he will sign one or more domestic partnership bills in the next legislative session. As a result, California's treatment of domestic partners will be consistent with the other states that have extended dp benefits, namely, the benefits will be available to same-sex *and* opposite-sex unmarried couples who are functioning as a nonmarital family unit.

The states of Vermont, New York, and Oregon currently extend employment benefits to state workers with domestic partners (regardless of sex). It would make sense for Hawaii to pass legislation that is consistent with the public policies in other states supporting gender-neutral domestic partnership protections.

The National Organization for Women has taken a position in favor of gender-neutral domestic partnership. There is no good reason for you to propose, or for the Legislature to pass, a domestic partnership law that is restricted to same-sex couples. (See attachments.)

Seniors groups support inclusive domestic partner laws and programs since many unmarried seniors live with an opposite-sex partner. Your proposal should not exclude older unmarried couples of the opposite-sex from participating in a comprehensive dp law in Hawaii. (See attachments.)

This information underscores the importance of keeping sexism out of domestic partner bills.

Yours truly,



THOMAS F. COLEMAN

Hawaii Officials

Governor Ben Cayetano
Fax: (818) 586-0006

House Speaker Calvin Say
Fax: (818)586-6201

Senate President Norman Mizuguchi
Fax: (818) 586-6819

House Judiciary Chair Paul Oshiro
Fax: (818) 586-6361

Senate Judiciary Co-chairs
Avery Chumbley / fax 586-6031
Matt matsunaga / fax 586-7109

To: Patricia Ireland
National Organization for Women

From: Thomas F. Coleman
Spectrum Institute

Re: Letter to Governor of Hawaii
and key legislative leaders

Date: December 10, 1998

As usual, it was a pleasure speaking with you today. Also as usual, the conversation was productive.

I appreciate your willingness to draft a preemptive policy statement for NOW indicating that the organization supports inclusive and gender-neutral domestic partnership laws and benefits programs and opposes sexist programs that exclude opposite-sex couples (or that exclude same-sex couples, although I do not know of any such programs).

I am also pleased that you will write a letter to the Governor of Hawaii, with copies to key legislative leaders there, encouraging the passage of a gender-neutral comprehensive domestic partnership act in that state. Since such legislation is in the process of being privately discussed by these leaders and will be introduced in the next few weeks, it would be appropriate for your letter to reach these leaders as soon as possible.

I have already started the educational process with them. Along with this note, I am faxing you two letters (and some attachments) which I have already sent to the Governor, Senate President, House Speaker, and co-chairs of the judiciary committees of both houses.

Please send me a copy of any letters you may write to them. Also, whenever the preemptive policy statement is drafted, I would also like to receive a copy of it.

I hope that you have a pleasant and enjoyable holiday overseas. With all of the work you have been doing, I am sure that you can use the rest.

Best wishes and much gratitude,

Tom Coleman

Hawaii Officials

Governor Ben Cayetano

Fax: ~~(818)~~ 586-0006

(808)

House Speaker Calvin Say

Fax: ~~(818)~~ 586-6201

Senate President Norman Mizuguchi

Fax: ~~(818)~~ 586-6819

(808)

House Judiciary Chair Paul Oshiro

Fax: ~~(818)~~ 586-6361

(808)

Senate Judiciary Co-chairs

Avery Chumbley / fax 586-6031

Matt matsunaga / fax 586-7109



EXECUTIVE CHAMBERS
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BENJAMIN J. CAYETANO
GOVERNOR

December 23, 1998

VIA FACSIMILE ONLY: (323) 258-8099

Mr. Thomas F. Coleman
Spectrum Institute

Dear Mr. Coleman:

This is in response to your letter dated December 9, 1998, regarding initiatives in other states concerning domestic partnerships. It is always helpful to see what other states are doing.

Thank you for your interest in this matter.

With warmest personal regards,

Aloha,

Benjamin J. Cayetano
BENJAMIN J. CAYETANO