

IN THE SUPREME COURT OF THE STATE OF VERMONT

STAN BAKER and PETER HARRIGAN)
v. STATE of VERMONT and)
TOWN of SHELBURNE)
)
)
NINA BECK and STACY JOLLES)
v. STATE OF VERMONT and CITY of)
SOUTH BURLINGTON)
)
)
LOIS FARNHAM and HOLLY PUTERBAUGH)
v. STATE OF VERMONT and TOWN of)
MILTON)

VERMONT SUPREME COURT

DOCKET No. 98-32

ON APPEAL FROM THE CHITTENDEN SUPERIOR COURT
DOCKET No. 1009-97CnC

BRIEF AMICUS CURIAE

THE ROMAN CATHOLIC DIOCESE OF BURLINGTON VERMONT

BURLINGTON VERMONT STAKE OF THE CHURCH OF JESUS
CHRIST OF LATTER-DAY SAINTS

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TABLE OF CONTENTS

PRELIMINARY STATEMENT	1
INTEREST OF AMICI	1
STATEMENT OF THE CASE	1
INTRODUCTION	1
A. Marriage Between One Man and One Woman Creates a Uniquely Valuable Institution That Is Much More Than the Sum of Its Many Social Functions.	2
B. Marriage Serves Vital Social Functions.	6
1. Procreation and the continuity of human life.	7
2. The inculcation of moral and cultural norms.	8
3. The integration of men and women.	10
4. Providing male and female role models for children.	11
5. Public affirmation of an ideal in human relations and of an institution essential to social survival.	12
C. The Protection of Marriage and the Traditional Family Unit It Generates Constitutes a Compelling Governmental Interest.	13
CONCLUSION	16

TABLE OF AUTHORITIES

CASES

<i>Adams v. Howerton</i> , 486 F. Supp. 1119 (C.D.Cal. 1980).....	13, 14
<i>In re Agosto</i> , 553 F. Supp. 1298, (D. Nev. 1983)	8
<i>Amezquita-Soto v. I.N.S.</i> , 708 F.2d 898 (3d Cir. 1983)	13
<i>C.C. v. A.B.</i> , 406 Mass. 679, 550 N.E.2d 365 (1990)	5
<i>Constant A. v. Paul C.A.</i> , 344 Pa. Super. 49, 496 A.2d 1 (1985)	12
<i>In re Estate of Cooper</i> , 149 Misc. 2d 282, 564 N.Y.S.2d 684 (1990)	5, 14, 15
<i>Griswold v. Connecticut</i> , 381 U.S. 479 (1942)	3
<i>Maynard v. Hill</i> , 125 U.S. 190 (1888)	9, 10, 15, 16
<i>Michael H. v. Gerald D.</i> , 491 U.S. 110 (1989)	13
<i>Moore v. City of East Cleveland</i> , 431 U.S. 494 (1977)	8
<i>Oliverson v. West Valley City</i> , 875 F. Supp. 1465 (D.Utah 1995)	13
<i>Stanley v. Illinois</i> , 405 U.S. 645 (1972)	13
<i>United States v. Virginia</i> , — U.S. — , 116 S. Ct. 2264 (1996)	2, 6
<i>Ziedorff v. Catholic Social Services</i> , 92 Mich. App. 579, 285 N.W.2d 378 (1979)	13

MISCELLANEOUS

I Corinthians 11:11.....	4
Edmund Burke, <i>Reflections on the Revolution in France</i> , THE BEST OF BURKE: SELECTED WRITINGS AND SPEECHES OF EDMUND BURKE 565 (1963).....	8
Teresa Stanton Collett, <i>Recognizing Gay Marriage: Asking for the Impossible?</i> , 47 CATH. U. L. REV. ____ (1998) (forthcoming)	2, 3
B. Findlen, <i>Is Marriage the Answer?</i> , MS. 86 May/June 1995.....	11

John M. Finnis, *Law, Morality, and "Sexual Orientation"*,
69 NOTRE DAME L. REV. 1049 (1994)..... 12

William J. Goode, *The Family as an Element in the Social
Structure*, in *Marriage and Family in the Modern World*
15 (1974)..... 8, 9

Bruce C. Hafen, *The Constitutional Status of Marriage,
Kinship, and Sexual Privacy: Balancing the Individual
and Social Interests*, 81 MICH. L. REV. 463 (1983)7, 9, 11

R. Horwitz, *John Locke and the Preservation of Liberty:
A Perennial Problem of Civic Education*, in *THE MORAL
FOUNDATIONS OF THE AMERICAN REPUBLIC* 131 (1979) 9

Lynn D. Wardle, *A Critical Analysis of Constitutional
Claims for Same-Sex Marriage*, 1996 B.Y.U.L. Rev. 1 3, 6

PRELIMINARY STATEMENT

This brief *amicus curiae* is submitted in support of Appellees State of Vermont, Town of Shelburne, City of South Burlington, and Town of Milton.

INTEREST OF AMICI

Statements of the interest of the *amici* are attached as Appendices I and II.

STATEMENT OF THE CASE

Amici adopt Appellees' statement of the case.

INTRODUCTION

The parties to this action and their *amici* have submitted to the Court an array of technical arguments addressing various claims and counterclaims and explaining why this or that legal test is or is not satisfied. The legal debate is essential, of course. But as the Court digests the competing legal claims, it is imperative that it not lose sight of the institution that hangs in the balance.

Appellants and their *amici* urge the Court to fundamentally alter the legal nature of marriage, the most basic institution in our society.¹ This is no small matter. At stake in this debate is the very foundation of our social order. It is no exaggeration to say that the outcome of this case will have profound and wide-reaching effects.

As the Court decides whether to radically change the legal character of marriage, thoughtful reflection on the distinct nature and contribution of marriage as it presently exists, and as it has existed for millennia, is appropriate. The traditional marital union between one man and one woman meets vital social needs that cannot be fully addressed in any other institution or

¹ Throughout this brief the term "marriage" shall refer to traditional, opposite-sex unions unless specifically indicated otherwise, *e.g.*, "same-sex marriage" or "homosexual marriage."

program. Yet, the intrinsic value of the institution of marriage is at least as important as any of its social functions or the sum of such functions. Marriage affords the opportunity for a type of male-female association that is singularly important and which society and government have the highest interest in promoting and preserving. To accede to Appellants' demands would require the abandonment of a substantive social vision that is indispensable to civilization as we know it.

A. Marriage Between One Man and One Woman Creates a Uniquely Valuable Institution That Is Much More Than the Sum of Its Many Social Functions.

In debating the many state interests served by marriage, the tendency is to value the importance of marriage purely by referencing the utility of its many social functions. Those functions, some of which are described below, are no doubt vital to society and thus fully justify marriage's special legal status. Nevertheless, the worth of traditional marriage cannot be reduced to the social utility of its practical benefits. Marriage has intrinsic, not merely instrumental, value.

By birth, each of us is either male or female. Although there are innumerable similarities between the sexes by virtue of their shared humanity, there are also (in the words of Justice Ginsburg) “[i]nherent differences’ between men and women” which “we have come to appreciate” and which “remain cause for celebration.” *United States v. Virginia*, — U.S. —, 116 S.Ct. 2264, 2276 (1996).

Marriage joins a man and a woman, with their inherent differences, to form a unique institution that is neither wholly male nor female in nature, but simultaneously both. At its ideal, marriage between a man and woman has been “described as a communion of two giving rise to a community of persons greater than the two.” Teresa Stanton Collett, *Recognizing Gay Marriage: Asking for the Impossible?*, 47 CATH. U. L.REV. ____ (1998) (forthcoming). Marriage, as a communion of love between one man and one woman, ideally contemplates a

total gift of self to the spouse. This gift includes not only the mind, body, and spirit of the person, but their past, present and future. It encompasses not only the willing offering of self, but the loving reception and embrace of the other.

Through this communion the husband and wife experience affirmation of the goodness inherent within each.... Husband and wife create a common future from the gifts and talents each brings to the union — a future which can be richer and more satisfying than the future either could create alone.

Id.

Rather than a semantical technicality, the heterosexual dimension of marriage is indispensable to its intrinsic worth. The physical, intellectual, and emotional blending of the male and female produces a bond and a union different from all others.

The heterosexual dimension of the relationship is at the very core of what makes marriage a unique union and is the reason why marriage is so valuable to individuals and to society. The concept of marriage is founded on the fact that the union of two persons of different genders creates a relationship of unique potential strength and inimitable potential value to society. The essence of marriage is the integration of a universe of gender differences (profound and subtle, biological and cultural, psychological and genetic) associated with sexual identity.

Thus, the definition of marriage as a cross-gender union is not merely a matter of arbitrary definition or semantic wordplay; it is fundamental to the concept and nature of marriage itself.

Lynn D. Wardle, *A Critical Analysis of Constitutional Claims for Same-Sex Marriage*, 1996

B.Y.U. L. REV. 1, 39. The Supreme Court expressed a similar view in *Griswold v. Connecticut*, 381 U.S. 479, 486 (1942):

Marriage [between a man and a woman] is a coming together for better or for worse, hopefully enduring, and intimate to a degree of being sacred. It is an association that promotes a way of life, not causes; a harmony of living, not political faiths; a bilateral loyalty,

not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

The physical union that is emblematic of male-female unity in marriage naturally leads not only to physical and emotional fulfillment but also to new life. When born within the bounds of wedlock, children become the living heritage of their parents' marital oneness, a physical manifestation of their enduring commitment. In turn, children make a marriage a family and bind their parents together beyond their lifetimes.

For many, including the instant *amici*, the marriage of a man and a woman also has profound religious significance. Christian scripture, for instance, teaches that “neither is the man without the woman, neither the woman without the man, in the Lord.” 1 Corinthians 11:11. Emblematic of Christ's love for his Church, the covenantal and sacramental meaning which tens of millions of Americans ascribe to marriage further confirms and deepens its enduring significance.

The foregoing states an ideal, a paradigm, which many marriages fail to fully achieve. But even marriages that are less than ideal involve, at least in their best moments, much of the male-female communion just described. The heterosexual nature of the institution requires the man and the woman to give of themselves and to reach out towards each other as they struggle with life's complexities; otherwise the marriage is unlikely to last. Thus, the very survival of a marriage necessitates conflict resolution and compromise, frequently entailing painful but salutary stretching by each spouse across the gender divide to attain marital harmony. The consequence is a life, jointly lived, that is a hybrid of the male and female — of the strengths of each sex.

This single reality arising from the lifetime marital union of one man and one woman is itself, apart from the utility of its social functions, worthy of the special legal sponsorship the state

has traditionally provided. The individual flourishing that can occur only within traditional marriages and the families they beget, and the nature of that flourishing, are of inestimable human value. No other association presents such possibilities. In recognition, Vermont's marriage laws (like those of all American jurisdictions) affirm and promote the positive good of male-female marriage and the families that very often arise therefrom. Beyond conserving marriage's obvious worth as a means to other important social ends, Vermont has a compelling interest in promoting the institution of marriage as an end in itself:

[T]he State has a compelling interest in fostering the traditional institution of marriage (whether based on self-preservation, procreation, *or in nurturing and keeping alive the concept of marriage and family as a basic fabric of our society*), as old and as fundamental as our entire civilization, which institution is deeply rooted and long established in firm and rich societal values.

In re Estate of Cooper, 149 Misc.2d 282, 287, 564 N.Y.S.2d 684, 688 (1990), *aff'd* 187 A.D.2d 128, 592 N.Y.S.2d 97 (N.Y.A.D. 1993) (emphasis added); *see also C.C. v. A.B.*, 406 Mass. 679, 690-91, 550 N.E.2d 365, 373 (1990) (“Despite a vast array of recent challenges to the traditional concept of the family, our civilization still places inestimable value on the importance of family life.”).

Regardless of its legal status or label, a same-sex union can never attain the ideal embodied in a male-female marriage. It may be argued that a homosexual union includes commitment, love, support, and so on just like traditional marriage. But although important, these elements alone are insufficient to create a true marriage: the sexes of the participants necessarily define and limit the nature of the institution.

No matter its personal value to those involved, a same-sex union cannot synthesize the separate lives of a man and a woman into a shared life that is uniquely male *and* female and thus more fully human — more complete — than any other intimate association. Thus, it cannot be a

marriage. This is not simply a matter of arbitrary definitions. What is unique about traditional marriage cannot be captured by same-sex unions, whatever one chooses to call them. “[T]he very concept and reality of the relationship between man and woman that we call *marriage* fundamentally differs from the nature of the relationship between two persons of the same sex.” *Wardle*, 1996 B.Y.U. L. REV., at 38. Marriage requires the equal participation of both sexes — neither the man nor the woman can be omitted; both are indispensable. It cannot seriously be denied that “a community made up exclusively of one [sex] is different from a community composed of both.” *Virginia*, 116 S.Ct. 2264, 2276 (1996) (Ginsburg, J., writing for the Court). Sexual segregation in marriage is an impossibility. Without the integration of the sexes, marriage cannot exist.

Vermont, like all jurisdictions, acknowledges the great value of this immutable reality by providing special institutional recognition for traditional marriage. That is not a denial of the importance or meaningfulness to individuals of the many other forms of human association. It is instead an affirmation of the distinctly important association that is created when a man and a woman voluntarily join their lives in marriage.²

B. Marriage Serves Vital Social Functions.

Although not reducible to its instrumental value, traditional, opposite-sex marriage advances many critically important social interests which cannot adequately be furthered in any

² As should be obvious, this argument is *not* about the tremendous value individual men and women, married or single, contribute to society apart from their companions and associates. And it most emphatically should *not* be understood as a critique of efforts to improve the legal and social standing of women and men as individuals. Rather, the point we wish to make relates to the profoundly important relationship that can arise when two individuals, a man and a woman, voluntarily choose to share their lives in marriage.

other way. A full listing and explication of these numerous interests is beyond a single brief, but several deserve particular mention, especially because (in a few instances) they clearly highlight the fundamental difference between the traditional, male-female marital union and the homosexual associations Appellants and their *amici* demand be given the status of marriage.

1. Procreation and the continuity of human life.

Traditional marriage is the principal vehicle through which human society extends itself over time. Every child necessarily has a father and a mother and thus a biological history, whether born of a marital union or not. However, beyond supplying essential genetic material, procreation *within marriage* provides a child with a full human context — a history that accounts not only for biology but also for the deeper intentions and commitments of the parents who conceived the child — as well as a stake in that context. The child born of the physical union of parents in an enduring marriage arrives as a natural and pre-integrated part of the continuous stream of life which, by connecting past generations with future, gives meaning to the present. In short, the child becomes part of a family.³ Only the heterosexual (and monogamous) norm in marriage can give full expression to the commitment to time and history evident in having and caring for children. No other human association has the same power to account for the past while projecting life into the future, and thus no other association is as essential to the continuity of human society and well-being of children.⁴ In marriage, procreation moves beyond the mere

³ Of course, the legal status and human worth of a child should in no way be dependent upon whether his or her parents are married. The argument we are making is about the importance to the child of birth into a context where the child's parents are committed both to the child and to each other through marriage.

⁴ Professor Bruce C. Hafen makes the point this way:

Not all formal families are stable But the commitments inherent in formal families do increase the likelihood of stability and continuity for children. Those factors are so essential to child development that they alone may justify the legal incentives and preferences traditionally given to permanent kinship units based on marriage. The same factors can justify the denial of legal protection to unstable social patterns that threaten children's developmental environment.

biological and takes on a permanence that is decisively different from the procreation of (in the memorable words of Edmund Burke) “the flies of a summer,” which, having no connection to the past, care nothing for the future. See Edmund Burke, *Reflections on the Revolution in France*, in THE BEST OF BURKE: SELECTED WRITINGS AND SPEECHES OF EDMUND BURKE 565 (Peter J. Stanlis, ed., 1963).

2. The inculcation of moral and cultural norms.

As suggested, the continuation of human life is a biological process, to be sure, but it is also a social process involving the inculcation of the ethical and moral norms essential to a meaningful life with others. Marriage generates families, and it is in families that “we inculcate and pass down many of our most cherished values, moral and cultural.” *Moore v. City of East Cleveland*, 431 U.S. 494, 503-504 (1977). As one court insightfully concluded:

The family, as the basic unit of American society, is the milieu in which such values are inculcated into individuals, and thus into society as a whole. Consequently, the child learns to relate to society and have respect for society within the initial framework of his own relationship to his parents and other family members.

In re Agosto, 553 F. Supp. 1298, 1326 (D. Nev. 1983).

Thus, it is in the family that a child first learns about honesty, trustworthiness, obedience, sacrifice, selflessness, and reverence for the basic freedoms we all enjoy. Marriage and family life teach a mother and father about sacrifice, selflessness, and genuine concern for others. And in the family all members become aware and learn to take account of the needs and wants of others, critical skills for life in the broader human community. As William J. Goode, renowned family

Bruce C. Hafen, *The Constitutional Status of Marriage, Kinship, and Sexual Privacy: Balancing the Individual and Social Interests*, 81 MICH. L.REV. 463, 475-76 (1983).

expert and professor of sociology at Columbia University, recognized more than two decades ago:

[T]he family is the fundamental instrumental foundation of the larger social structure, in that all other institutions depend upon its contributions. The role behavior that is learned within the family becomes the model or prototype for role behavior required in other segments of the society. The content of the socialization process is the cultural traditions of the society; by passing them on to the next generation the family acts as a conduit or transmission belt by which the culture is kept alive.

William J. Goode, *The Family as an Element in the Social Structure*, in MARRIAGE AND FAMILY IN THE MODERN WORLD 15 (R. Cavan ed., 4th ed. 1974) (emphasis omitted).

The traditional family, of which heterosexual marriage is the chief cornerstone, is also best situated to teach public virtue to children and to cultivate its growth in adults. This virtue, expounded by the Founders as a crucial component in the American system, requires self-control, self-sacrifice, and a desire to work for the good of society even at a cost to one's personal interests.⁵ Although it has a role, by nature government is limited in its capacity to inculcate this most important of virtues. The majority of teaching in this regard must be left to basic family units, where children and adults learn in microcosm the values and virtues necessary to the functioning of society:

Because this essential social — even political — ingredient [*i.e.* public virtue] could not be a coercive State function, American society has relied to a considerable extent on the family not only to nurture the young but also to instill the habits required by citizenship in a self-governing community. We have relied on the family to teach us to care for others, and to moderate self-interest. This connection between home and society has made it clear since the early days of the Republic that it was more important to keep pure the headwaters of humanity than simply to worry about downstream pollution. With this perspective, the family in a

⁵ See generally R. Horwitz, *John Locke and the Preservation of Liberty: A Perennial Problem of Civic Education*, in THE MORAL FOUNDATIONS OF THE AMERICAN REPUBLIC 131 (R. Horwitz ed. 1979).

democratic society not only provides emotional companionship, but is also a principal source of moral and civic duty.

Hafen, 81 MICH. L.REV. at 477 (quotations and citations omitted). The Supreme Court captured this very point long ago in *Maynard v. Hill*, 125 U.S. 190 (1888), when it stated that “[m]arriage” “creat[es] the most important relation in life” and “ha[s] more to do with the morals and civilization of a people than any other institution,” and that traditional marriage is “the foundation of the family and of society, without which there would be neither civilization nor progress.” *Id.* at 205 and 211.

3. The integration of men and women.

Human society requires that we learn to value difference within the community. To truly value diversity and to truly make it a strength within a community requires that citizens see not only difference but complementarity; that they not only acknowledge diversity among the many parts of the body politic, but also recognize the manner in which the body’s different yet essential parts can combine to make a unified whole. It is in the recognition and affirmation of complementarity, therefore, that true unity can exist amidst diversity.

The complementarity of men and women is affirmed and embodied in marriage. Marriage bridges the most readily apparent distinction between persons in society — *i.e.*, that between the sexes — precisely because in marriage both the man and the woman are equally essential. This is the vision of the sexes codified in Vermont’s marriage laws. Heterosexual marriage decisively affirms the equal indispensability and importance of each sex to the other. Marriage teaches that both sexes fundamentally need each other; neither sex can go it alone. This interdependency is undeniable as regards procreation, in that over time each sex would literally cease to exist without the other. But it is also evident in the truth that the good of marriage cannot be obtained by one sex alone.

If recognized, homosexual “marriage” would institutionalize a radically different vision of sexual relationships, rejecting the interdependency and indispensability of both sexes to marriage.⁶

Homosexual marriage would teach that fundamentally the sexes do not need each other and can — perhaps ought — to live separately. In traditional marriage, each sex is essential; in homosexual marriage one sex or the other would be superfluous.

Proponents of homosexual marriage often present their position as advancing the equality of the sexes. *See* Brief *Amicus Curiae* of Vermont Chapter of the National Organization for Women, *et al.*, *passim*. Precisely the opposite is true. Homosexual marriage embodies a vision of sexual segregation which denies the equal value and indispensability of each sex to marriage and thus is inherently injurious to the notion of sexual equality. A dignified social equality between the sexes may well be the primary victim of a legal regime that not only tolerates the sexual separateness of homosexual relationships but also accords them society’s highest seal of approval. The Court should not require the state, in the name of equality, to publicly affirm and legally sponsor relationships which fundamentally contradict the vital ethos of gender integration. Forcing the state to grant marital status to homosexual unions would do just that.

4. Providing male and female role models for children.

⁶ The radical intent of the homosexual marriage movement is openly admitted by its advocates. For instance, in a nationally circulated magazine article, the executive director of the National Gay and Lesbian Task Force, Melinda Paras, discussed the upcoming battles regarding recognition of homosexual marriage and the changes it will have upon legislation and society. She then is quoted saying, “By the time equality finally gets won universally, we’ll be in a whole other place about the definition of family, and gay marriage may become almost irrelevant.” B. Findlen, *Is Marriage the Answer?*, *MS*. 86, 91 May/June 1995.

“Children grow up best under conditions of intense emotional involvement with their parents.” Hafen, 81 MICH. L. REV. at 477 (quotation, ellipses and brackets omitted). The involvement of each parent — father and mother — in a child’s life is important. Neither the father nor the mother is expendable. In their diverse ways, both parents serve as crucial role models for their children. Of especial importance is the modeling a mother and father can provide of the equal dignity with which each sex should treat the other. Heterosexual marriage demonstrates to children the interdependency of the sexes. Boys and girls naturally segregate themselves along gender lines. The unique status and obvious prominence of opposite-sex marriage are a subtle yet powerful reminder that the destiny of both sexes lies together. Officially sanctioned same-sex marriage would send precisely the opposite message.

5. Public affirmation of an ideal in human relations and of an institution essential to social survival.

In like fashion, state-sponsorship of traditional marriage and family life affirms an ideal in human relations. Vermont law grants special benefits and imposes special duties on a man and woman joined in matrimony. Thereby, the state not only accommodates the private desires of individual men and women to unite their lives in matrimony, but also *publicly* affirms the correctness and goodness of that decision.

It is well-established in law and modern government theory that the state has a proper role in upholding public morality and fostering those institutions which the majority judge to be most conducive to the preservation and continuation of a good society. *See* John M. Finnis, *Law, Morality, and “Sexual Orientation”*, 69 Notre Dame L. Rev. 1049, 1052-53 (1994) (distinguishing between state supervision of truly private vice and state supervision of the public “moral-cultural-educational environment”). Traditional marriage and family life are the first among such institutions:

It is clearly evident that the concept of family is essential to [the survival of] society; homosexual relationships are not. A primary function of government and law is to preserve and perpetuate society, in this instance, the family.

Constant A. v. Paul C.A., 344 Pa. Super. 49, 496 A.2d 1, 6-7 (1985).

The universal determination of governments, including Vermont's, to accord official state recognition and privilege only to heterosexual unions is a proper and noncoercive method for the state to publicly recognize and support the intrinsic and instrumental good of traditional marriage and family life. Appellants seek the same public affirmation and statement of government approval for their lives. However, it is for the democratically-elected government of the people to decide which institutions and norms it will publicly advocate as socially ideal and which it will not. Vermont's constitution may preclude the state from regulating certain types of private conduct. But no association, orientation, lifestyle, or relationship has a constitutional right to state endorsement and sponsorship.

C. The Protection of Marriage and the Traditional Family Unit It Generates Constitutes a Compelling Governmental Interest.

The intrinsic and instrumental importance of marriage and families has been recognized in the many court decisions holding that protection of the traditional family is a vital or compelling state interest.⁷ Yet of particular value to the Court are those cases which have directly confronted

⁷ See, e.g., *Oliverson v. West Valley City*, 875 F.Supp. 1465 (D.Utah 1995), in which the court concluded:

[The traditional family] has tremendous societal value which helps to explain why it alone continues to serve as the only legitimate referent for our political and public discussions about intimacy, sexuality, and morality, as well as defining for us what are appropriate family policies and needed law reforms.

Id. at 1485 (quotations omitted); see also *Michael H. v. Gerald D.*, 491 U.S. 110, 124 (1989) ("Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition."); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) ("The [United States Supreme]

the specific issue of whether granting special state preference to marriage and the traditional family, but not to all other intimate associations, properly advances compelling state interests.

Two cases are highly instructive. In the first, *Adams v. Howerton*, 486 F.Supp. 1119 (C.D.Cal. 1980), *aff'd* 673 F.2d 1036 (9th Cir.), *cert. denied* 458 U.S. 1111 (1982), a male Australian citizen and a male American citizen sought to have their informal marriage ceremony recognized by the state in order to prevent the I.N.S. from deporting the Australian. Plaintiffs argued that their union should be recognized by the court as a legal marriage under governing state and federal law, and that if either prohibited same-sex marriages, such a law “is unconstitutional under due process and equal protection.” *Id.* at 1121. The District Court firmly rejected these claims, recognizing some of the compelling state interests at issue in marriage. *Id.* at 1124.

Significantly, the court then expressly and specifically responded to the plaintiffs’ argument that even if there were a compelling governmental interest in protecting traditional marriage and family life, prohibition of homosexual marriage is not narrowly tailored to that interest because today many persons enter marriage without the desire or ability to have children:

There is no real alternative to some over breadth in achieving this goal. The state has chosen to allow legal marriage as between all couples of opposite sex. The alternative would be to inquire of each couple, before issuing a marriage license, as to their plans for children and to give sterility tests to all applicants, refusing licenses

Court has frequently emphasized the importance of the family.”); *Amezquita-Soto v. I.N.S.*, 708 F.2d 898, 908 (3d Cir. 1983) (“The family and relationships between family members occupy a place of central importance in our nation’s history and are a fundamental part of the values which underlie our society.”); *Ziedorff v. Catholic Social Services*, 92 Mich.App. 579, 581, 285 N.W.2d 378, 380 (1979) (“The family relationship occupies a basic position in our society’s hierarchy of values, and is of great importance.”).

to those found sterile or unwilling to raise a family. Such tests and inquiries would themselves raise serious constitutional questions.

Thus, it seems to me that the state has chosen the least intrusive alternative available to protect the procreative relationship. When the legislative classification is narrowly tailored to serve a compelling state interest, there is no constitutional infirmity even when there is a strict scrutiny requirement. Such a narrowly tailored classification exists here.

Id. at 1124-1125 (citations and footnote omitted).

The second case, *In re Estate of Cooper*, involved a claim by the surviving partner of a homosexual relationship for a declaration that he had the right to elect against his homosexual partner's will as a "surviving spouse" under New York law. 149 Misc.2d 282, 283, 564 N.Y.S.2d 684, 685 (1990), *aff'd* 187 A.D.2d 128, 592 N.Y.S.2d 97 (N.Y.A.D. 1993). Petitioner argued to the court that his relationship with the decedent was "identical to that of husband and wife" and that the only reason they did not enter into formal marriage was that "New York State will not issue licenses to persons of the same sex." *Id.*

Initially determining that petitioner was not entitled to heightened scrutiny because there was no invidious discrimination in the state's refusal to recognize homosexual marriage, the court upheld the law under rational basis review. 149 Misc.2d at 288, 564 N.Y.S.2d at 688. However, even assuming that heightened scrutiny was required, the court determined that the state's marriage law was valid because it directly furthered compelling governmental interests:

In traditional equal protection terminology, it seems beyond dispute that the state has a compelling interest in fostering procreation of the race and providing status and stability to the environment in which children are raised.

* * * *

[T]he State has a compelling interest in fostering the traditional institution of marriage

149 Misc.2d at 287, 564 N.Y.S.2d at 688.

Like the State of New York, the State of Vermont has a compelling interest in publicly affirming only traditional heterosexual marriages in order to advance the many vital social functions marriage serves and to “nurtur[e] and keep[] alive the concept of marriage and family as the basic fabric of our society.” *Id.*

Among the innumerable interests, important and petty, that the State of Vermont advances through law, few if any are of greater importance to the health and ultimate survival of society than the preservation and promotion of male-female marriage. As society’s most primal institution, marriage is at the heart of human community. It “creat[es] the most important relation in life.” *Maynard*, 125 U.S. at 205. It is “the foundation of the family and of society, without which there would be neither civilization nor progress.” *Id.* at 211. And it “ha[s] more to do with the morals and civilization of a people than any other institution.” *Id.* at 205; *see also* Goode, *supra*, at 15 (marriage and family are “the fundamental instrumental foundation of the larger social structure, in that all other institutions depend upon its contributions”). Because of the intrinsic worth of marriage and the inestimable value of the many social functions it performs, Vermont’s reservation of marital status for traditional, opposite-sex unions serves a compelling state interest.

CONCLUSION

Marriage is much more than the sum of its social functions. Marriage, defined as the union of one man and one woman, is intrinsically valuable because of the singular institution it creates. In marriage, men and women come together to form a union whose nature is, in a unique

way, both male and female. Homosexual unions, whatever their legal label, are inherently different from marriage because they lack the combined strength of both sexes. Marriage also serves numerous compelling state interests, a few of which have been mentioned above. In light of those interests, courts have sustained the limitation of marriage to heterosexual couples.

Finally, we have no way of knowing what will become of society should the definition of our most basic institution be progressively expanded (as the logic of Appellants' argument requires) to include any intimate grouping of emotionally committed persons. Marriage, like all things, must have a definition. It cannot mean everything, or it will ultimately mean nothing. Throughout all history, marriage has been heterosexual. Vermont's marriage laws are no exception. Upon the life-generating foundation of marriage and family life is built the entire edifice of civilization. Appellants have asked the Court to alter an essential attribute of that foundation, implying it will have no negative impact on society or the stability of traditional marriage. Naturally, we cannot know precisely what such a change will do. But common sense suggests that even a small shift in a foundation can have seismic effects on the structure that relies on it for support. We respectfully urge the Court not to tamper with the age-old definition of marriage.

Dated at this ___ day of May, 1998.

Respectfully submitted,

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APPENDIX I

STATEMENT OF INTEREST OF THE ROMAN CATHOLIC DIOCESE OF BURLINGTON, VERMONT

The Roman Catholic Diocese of Burlington, Vermont has served Vermonters since the early 1800s. With 147,000 members in 133 parishes and missions, the Diocese offers a wide array of spiritual, educational, and social services for its members and non-members. As spiritual leader of the Diocese, Bishop Kenneth A. Angell has a duty to speak to the moral implications of public policy issues, keeping the good of every citizen of Vermont foremost in mind. He seeks to do so with reasons that can be persuasive to Catholics and non-Catholics alike. In doing so, he gladly joins hands with all citizens of good will who care about the future of Vermont.

The Roman Catholic Church believes that marriage is a faithful, exclusive, and lifelong union between one man and one woman, joined as husband and wife in an intimate partnership of life and love. Because the marital relationship offers benefits, unlike any other, to persons, to society, and to the church, the institution of marriage, as the union of one man and one woman, must be preserved, protected, and promoted in both private and public realms. The Church teaches emphatically that individuals and society must respect the basic human dignity of all persons, including those with a homosexual orientation, in its actions in support of marriage.

Thirty years ago, Bishop John J. Russell of Richmond submitted an *amicus curiae* brief to the U.S. Supreme Court in *Loving v. Virginia*. In that brief, Bishop Russell urged the Court to *reject* Virginia's racist law in order to uphold the institution of marriage. In this case, for the same reason, Bishop Angell urges the Court to *uphold* Vermont's marriage law, since Vermont — unlike Virginia — properly understands marriage to be the union of one man and one woman. The U.S. Supreme Court's decision in *Loving v. Virginia* represented the triumph of marriage over racism. Upholding Vermont's marriage law would similarly represent the triumph of marriage over those who also seek, for different reasons, to redefine it. The Diocese urges the Vermont Supreme Court to vindicate the right of Vermonters to define marriage as they always have: as the union of one man and one woman.

STATEMENT ON SAME-SEX MARRIAGE

The Roman Catholic Church believes that marriage is a faithful, exclusive, and lifelong union between one man and one woman, joined as husband and wife in an intimate partnership of life and love. This union was established by God with its own proper laws. By reason of its very nature, therefore, marriage exists for the mutual love and support of the spouses and for the procreation and education of children. These two purposes, the unitive and the procreative, are equal and inseparable. The institution of marriage has a very important relationship to the continuation of the human race, to the total development of the human person, and to the dignity, stability, peace, and prosperity of the family and of society.

Furthermore, we believe the natural institution of marriage has been blessed and elevated by Christ to the dignity of a sacrament. This means that Christian marriage is more than a contract. Because they are married in the Lord, the spouses acquire a special relationship to each other and to society. Their love becomes a living image of the manner in which the Lord personally loves his people and is united with them. Living a Christian sacramental marriage becomes their fundamental way of attaining salvation.

Because the marital relationship offers benefits, unlike any other, to persons, to society, and to the church, we wish to make it clear that the institution of marriage, as the union of one man and one woman, must be preserved, protected, and promoted in both private and public realms. At a time when family life is under significant stress, the principled defense of marriage is an urgent necessity for the wellbeing of children and families, and for the common good of society.

Thus, we oppose attempts to grant the legal status of marriage to a relationship between persons of the same sex. No same-sex union can realize the unique and full potential which the marital relationship expresses. For this reason, our opposition to "same-sex marriage" is not an instance of unjust discrimination or animosity toward homosexual persons. In fact, the Catholic Church teaches emphatically that individuals and society must respect the basic human dignity of all persons, including those with a homosexual orientation. Homosexual persons have a right to and deserve our respect, compassion, understanding, and defense against bigotry, attacks and abuse.

We therefore urge Catholics and all our fellow citizens to commit themselves both to upholding the human dignity of every person and to upholding the distinct and irreplaceable community of marriage.

Most Reverend Joseph L. Charron, CPPS
Chairman, NCCB Committee on
Marriage and Family

Most Reverend William S. Skylstad
Chairman, USCC Committee on
Domestic Policy

July 19, 1996

APPENDIX II

STATEMENT OF INTEREST OF AMICUS CURIAE
BURLINGTON VERMONT STAKE OF
THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

Amicus Burlington Vermont Stake of The Church of Jesus Christ of Latter-day Saints is an ecclesiastical subdivision of The Church of Jesus Christ of Latter-day Saints (“LDS Church” or “Church”). A Stake in the LDS Church is composed of a number of congregations in a particular geographical area. The LDS Church as a whole has more than 10 million members worldwide, with many congregations in the State of Vermont.

At issue in this litigation is the very nature and definition of marriage and the future of the family in Vermont. Marriage and the family are central to the doctrine and beliefs of the LDS Church. The Church teaches that marriage between man and woman is ordained of God and that the family is the foundation of society. Marriage and family supply the crucial relationships through which parents and children learn to live basic moral norms and acquire public and private virtue:

The family is ordained of God. Marriage between man and woman is essential to His eternal plan. Children are entitled to birth within the bonds of matrimony, and to be reared by a father and a mother who honor marital vows with complete fidelity. Happiness in family life is most likely to be achieved when founded upon the teachings of the Lord Jesus Christ ...

. . . [W]e warn that the disintegration of the family will bring upon individuals, communities, and nations the calamities foretold by ancient and modern prophets.

We call upon responsible citizens and officers of government everywhere to promote those measures designed to maintain and strengthen the family as the fundamental unit of society.

The Family: A Proclamation to the World, The First Presidency and Council of the Twelve Apostles of the Church of Jesus Christ of Latter-day Saints, September 23, 1995 (the full text of the Proclamation is included in this appendix).

