



**Parents, Families, Friends of Lesbians, Gays, Bisexuals, and Transgenders**

**November 2003**

**NEWSLETTER**

**Brewster, MA**

## **Reactions to SJC Ruling**

[Excerpts from *PlanetOut.com* and the AP]

"Whether and whom to marry, how to express sexual intimacy, and whether and how to establish a family — these are among the most basic of every individual's liberty and due process rights," the majority opinion said. "And central to personal freedom and security is the assurance that the laws will apply equally to persons in similar situations. The Massachusetts Supreme Judicial Court ruled Tuesday, November 18, that civil marriage licenses in the state must be made available to same-sex couples in 180 days.

The court then stayed its ruling "for 180 days to permit the Legislature to take such action as it may deem appropriate in light of this opinion." Providing a six-month window for vaguely defined legislative action is a far cry from the Vermont civil union ruling, which dumped full responsibility for equalizing marriage rights into the lawmakers' collective lap. Here, the court has explicitly legalized same-sex marriage, and given the Legislature some time—not to fine-tune the remedy—but to come along for the ride.

Within an hour of the Massachusetts ruling, GLBT rights groups hailed it in a tumble of press releases. "The court today recognized that a constitution that protects individual rights does not allow government to say that only some families will be protected," wrote Matt Coles of the American Civil Liberties Union. "Today, the Massachusetts Supreme Court (sic) made history," exulted Elizabeth Birch of the Human Rights Campaign.

Lambda Legal's David Buckel, who is leading the legal charge for marriage in New Jersey, called it an historic day. "The court has said explicitly that civil marriage can't be limited to different-sex couples. The state Legislature will now look at how, not whether, Massachusetts couples will have equal marriage rights."

And from their Boston headquarters, GLAD's Mary Bonauto, one of the lead attorneys in the Vermont case as well as the Massachusetts case, called Tuesday's decision "a momentous legal and cultural milestone.

As a state matter, the court's ruling is not subject to appeal. Nor can the state Legislature amend the state Constitution in time to prevent same-sex marriages from taking place next May. Although an anti-marriage constitutional amendment is under discussion in the Massachusetts Legislature, its passage would require two successive majority votes by the combined Legislature, followed by a public vote in November 2006 at the earliest.

## **SJC Decision**

### **Affirms Gay Right-to-Marry**

[Westlaw.com]

The Following is an "Unofficial Synopsis Prepared by the Reporter of Decisions" of the SJC.

The Supreme Judicial Court held today that "barring an individual from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts Constitution." The court stayed the entry of judgment for 180 days "to permit the Legislature to take such action as it may deem appropriate in light of this opinion."

"Marriage is a vital social institution," wrote Chief Justice Margaret H. Marshall for the majority of the Justices. "The exclusive commitment of two individuals to each other nurtures love and mutual support; it brings stability to our society. For those who choose to marry, and for their children, marriage provides an abundance of legal, financial, and social benefits. In turn it imposes weighty legal, financial, and social obligations." The question before the court was "whether, consistent with the Massachusetts Constitution," the Commonwealth could deny those protections, benefits, and obligations to two individuals of the same sex who wish to marry.

In ruling that the Commonwealth could not do so, the court observed that the Massachusetts Constitution "affirms the dignity and equality of all individuals," and "forbids the creation of second-class citizens." It reaches its conclusion, the court said, giving "full deference to the arguments made by the Commonwealth." The Commonwealth, the court ruled, "has failed to identify any constitutionality adequate reason for denying civil marriage to same-sex couples."

The court affirmed that it owes "great deference to the Legislature to decide social and policy issues." Where, as here, the constitutionality of a law is challenged, it is the "traditional and settled role" of courts to decide the constitutional question. The "marriage ban" the court held, "works a deep and scarring hardship" on same-sex families "for no rational reason." It prevents children of same-sex couples "from enjoying the immeasurable advantages that flow from the assurance of 'a stable family structure in which children will be reared, educated, and socialized.'" It cannot be rational under our laws," the court held, "to penalize children by depriving them of State benefits" because of their parents' sexual orientation.

The court rejected the Commonwealth's claim that the primary purpose of marriage was procreation. Rather, the

[Continued on p. 2]

**National Freedom to Marry Day – February 12**

## SJC Decision, continued

history of the marriage laws in the Commonwealth demonstrates that "it is the exclusive and permanent commitment of the marriage partners to one another, not the begetting of children, that is the *sine qua non* of marriage."

The court remarked that its decision "does not disturb the fundamental value of marriage in our society." "That same-sex couples are willing to embrace marriage's solemn obligations of exclusivity, mutual support, and commitment to one another is a testament to the enduring place of marriage in our laws and in the human spirit," the court stated.

The opinion reformulates the common-law definition of civil marriage to mean "the voluntary union of two persons as spouses, to the exclusion of all others. Noting that "civil marriage has long been termed a 'civil right,'" the court concluded that "the right to marry means little if it does not include the right to marry the person of one's choice, subject to appropriate government restrictions in the interests of public health, safety, and welfare...."

Justice Greaney concurred "with the result reached by the court, the remedy ordered, and much of the reasoning in the court's opinion," but expressed the view that "the case is more directly resolved using traditional equal protection analysis." He stated that to withhold "relief from the plaintiffs, who wish to marry, and are otherwise eligible to marry, on the ground that the couples are of the same gender, constitutes a categorical restriction of a fundamental right." Moreover, Justice Greaney concluded that such a restriction is impermissible under Art. 1 of the Massachusetts Declaration of Rights. In so doing, Justice Greaney did not rely on Art. 1, as amended in 1976, because the voters' intent in passing the amendment was clearly not to approve gay marriage, but he relied on well-established principles of equal protection that antedated the amendment.

Justice Cordy, with whom Justice Spina and Justice Sosman joined, dissented on the ground that the marriage statute, as historically interpreted to mean the union of one man and one woman, does not violate the Massachusetts Constitution because "the Legislature could rationally conclude that it furthers the legitimate State purpose of ensuring, promoting, and supporting an optimal social structure for the bearing and raising of children." Justice Cordy stated that the court's conclusions to the contrary are unworkable in light of "the presumption of constitutional validity and significant deference afforded to legislative enactments, and the 'undesirability of the judiciary substituting its notion of correct policy for that of a popularly elected legislature' responsible for making it." Further, Justice Cordy stated that "while 'the Massachusetts Constitution protects matters of personal liberty against government intrusion at least as zealously and often more so than does the Federal Constitution,' this case is not about government intrusions into matters of personal liberty," but "about whether the State must endorse and support [the choices of same-sex couples] by changing the institution of civil marriage to make its benefits, obligations, and responsibilities applicable to them." Justice Cordy concluded that, although the plaintiffs had made a powerful case for the extension of the benefits and burdens of civil marriage to same-sex couples, the issue "is one deeply rooted in social policy" and "that decision must be made by the Legislature, not the court."

Justice Spina, in a separately filed dissenting opinion, stated that "what is at stake in this case is not the unequal treatment of individuals or whether individuals rights have been impermissibly burdened, but the power of the Legislature to effectuate social change without interference from the courts,

pursuant to Art. 30 of the Massachusetts Declaration of Rights." He emphasized that the "power to regulate marriage lies with the Legislature, not with the judiciary."

Justice Sosman, in a separately filed dissenting opinion, stated that "the issue is not whether the Legislature's rationale behind [the statutory scheme being challenged] is persuasive to [the court]," but whether it is "rational" for the Legislature to "reserve judgment" on whether changing the definition of marriage "can be made at this time without damaging the institution of marriage or adversely affecting the critical role it has played in our society." She concluded that, "[absent consensus on the issue (which obviously does not exist), or unanimity amongst scientists studying the issue (which also does not exist), or a more prolonged period of observation of this new family structure (which has not yet been possible), it is rational for the Legislature to postpone any redefinition of marriage that would include same-sex couples until such time as it is certain that redefinition will not have unintended and undesirable social consequences."

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## NJ Same-Sex Marriage on Track

[LambdaLegal.org 11/5/03]

Lambda Legal said that a state court ruling against legalizing marriage for same-sex couples in New Jersey moves the case forward toward the state's Supreme Court.

"We're not surprised by this lower-court ruling," said David Buckel, Lambda Senior Staff Attorney and lead attorney on the lawsuit. "More than anything, this ruling propels us forward to higher courts where both sides have always known it will be decided. Today's ruling speeds up the clock toward the day lesbian and gay couples in New Jersey can seek the protections they need for their families from the state's high court."

Lambda Legal filed the historic lawsuit against the State of New Jersey in June, 2002, on behalf of seven lesbian and gay couples seeking full marriage rights. The lawsuit is based solely on the New Jersey Constitution. Therefore, the New Jersey Supreme Court will have the last word in the case. Lambda Legal said it is appealing today's ruling; the appeal will be filed in the next several weeks.

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## Arizona Court Upholds Gay Marriage Ban

[365Gay.com]

An Arizona appeals court has ruled that the state's ban on same-sex marriage is constitutional. "...the fundamental right to marry "does not encompass the right to marry a same-sex partner."

The case was brought by two Phoenix men. Their lawyer argued that it is unconstitutional for the state to deny legal protections to gay couples that it extends to heterosexual couples. He called for the court to strike down the Defense of Marriage Act, which prohibits marriages between people of the same sex and defines a valid marriage as one between a man and a woman.

Today's court ruling said that "although many traditional views of homosexuality have been recast over time in our state and nation, the choice to marry a same-sex partner has not taken sufficient root to achieve constitutional protection as a fundamental right."

[Note: The Massachusetts and NJ cases began this way!]

## Catholic Bishops Condemn Homosexual Unions

[Excerpted from *Boston Globe* 11/13/2003]

The Catholic bishops of the United States voted overwhelmingly yesterday to oppose any form of public approval for homosexual activity, criticized the decision by the Episcopal Church USA to ordain an openly gay bishop, and decided to launch a public campaign to convince Catholics of the wrongfulness of contraception.

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## Russian Orthodox Church Splits

[PlanetOut.com]

The furor surrounding the consecration of Gene Robinson as the first openly gay bishop in the Anglican Communion continues, with yet another church denouncing the U.S. Episcopal Church.

The Russian Orthodox Church announced it is cutting ties with the U.S. church because the appointment of Robinson, who was voted as bishop of New Hampshire by both his diocese and the country's bishops, goes against Scripture.

"Homosexual sexual contact has always been considered a grave sin by the Christian Church," the Russian Orthodox Church's Moscow Patriarchate said. "Biblical passages that condemn homosexuality are clear and unequivocal."

The statement added that the Russian church cannot "condone the perversion of human nature" and must therefore "freeze its relations" with the U.S. Episcopal Church.

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## GLBT Naval Academy Alums Come Out

[*Baltimore Sun* 11/12/03]

As midshipmen, they led double lives, quietly endured anti-gay slurs, and feared discovery and expulsion. But yesterday, 31 gay and lesbian graduates of the Naval Academy asked to be recognized, filing a formal application with the college's alumni organization to start a national chapter for homosexual graduates.

The request, delivered pointedly on Veterans Day, appears to be a first for a U.S. military academy. Although a West Point graduate has run an unofficial group for gay and lesbian service academy alumni for 12 years, never before have homosexuals sought official recognition from an academy alumni association, experts said.

It will be weeks before the Naval Academy Alumni Association makes what would be an historic and controversial decision on whether to grant the request.

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## Anti-Gay Research 'Hit List'

[Glaad.org]

A list of nearly 200 scientists has been compiled and distributed to federal lawmakers by the Traditional Values Coalition (TVC), a virulently homophobic anti-gay industry group. Some fear that the list, which includes the names of some of the most well-respected scientists and researchers around the country, will be used to target the funding of studies dealing with HIV and AIDS, sexually transmitted diseases, and sexual behavior.

The list has been circulated to the National Institutes of Health, as well as to Rep. Billy Tauzin, a Louisiana Republican who oversees a subcommittee that has been reviewing the awarding of grants by the NIH.

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## Gay Marriage Campaign

[*Washington Post*, 11/10/03]

Gay marriage is shaping up as a hot-button issue for the Republicans in 2004 - which is why one gay rights group is spending as much as \$1million on advertising to frame the issue in positive terms. "We want to educate people about what marriage is," says spokesman Mark Shields of the Human Rights Campaign.

The ads, to be placed in major national newspapers, try to humanize the issue of same-sex unions. "Why Are 'Pro-Family' Groups Attacking This Family?" says one ad featuring a Maryland couple, Jo and Teresa, and their three young children: Between "skinned knees" and "soccer practice . . . they face all the same joys and frustrations as other parents - but without the same protections." Other versions showcase two elderly women, two black women, two church-going men and Keith Bradkowski holding a photo of his partner, who died in the World Trade Center attack. "The terrorists killed people not because they were gay or straight - but because they were Americans," the headline says.

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## Legal Protection for Transgenders

[Reuters, 11/11/2003]

Corporations and lawmakers are expanding protections against sexual harassment and discrimination to cover transsexuals, cross-dressers, and others who fall outside the traditional notions of gender identity.

In the last two years, 19 companies in the Fortune 500 -- including Bank One Corp. and Microsoft Corp. -- have banned discrimination based on "gender identity and expression." Sixty-five cities and counties have similar protections, with 16 ordinances passed in 2002.

The measures extend protections to men perceived as effeminate and women viewed as masculine.

In August, California's recalled governor, Gray Davis, signed legislation banning discrimination in housing and employment based on gender stereotypes or transgendered status. Three other states -- Minnesota, Rhode Island and New Mexico -- have similar protections.

Another four states -- New York, Connecticut, New Jersey and Massachusetts -- have had either court or administrative rulings that could be interpreted as banning discrimination against gender expression or status as a transsexual, according to Human Rights Campaign.

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## Wisconsin Anti-Gay Bill Fails

The Wisconsin Assembly failed by one vote to override Gov. Jim Doyle's veto of legislation defining marriage as strictly between a man and a woman.

In his veto message, Doyle called the bill "redundant and unnecessary," saying state law already makes it clear that marriage between a husband and a wife means one man and one woman. "It seems that nobody except members of the Legislature are confused as to whether a husband is a man and a wife is a woman."

Doyle's press secretary urged Republican legislators to give up on their social policy agenda and focus on trying to solve the tough economic issues facing the state.

Advocates of the so-called "defense of marriage" bill said it was needed to clarify state law and define marriage in a way that would prevent a court from ruling that state law allowed marriages between same-sex couples.

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## GAYLA Ball Dinner-Dance

The fourth annual GAYLA Ball will be held at the Four Points Hotel, Sheraton, Eastham, on February 7, 2004. This event will be an elegant and glorious celebration bringing together the Cape's lesbian, gay, bisexual, transgendered, and transsexual community, friends, and allies.

Dinner Buffet with cash bar from 7-8pm, and dancing until midnight with Catherine & The Greats.

Tickets \$50 (more if you can, less if you can't), advance reservations ONLY and a limited number of tickets. Dress up or down. For reservations/info call 508-385-9775.

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## "Lesbian Connections" Group

A peer-led support and social group for lesbians meets on the 1st Friday of each month, 6:30 – 8pm, in the First Parish Barn (UU Church, Brewster), Room 3. The Barn is reached by the driveway across from the church, which leads to a large parking lot. At the fork in the driveway, turn right, and you'll come to the Barn. For more information, call 896-4692.

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## Angels, Reagan, and AIDS

[Frank Rich, *New York Times* 11/ 16/03]

November 16 was the night when Americans might have tuned into Part 1 of "The Reagans" on CBS. But the joke is on the whiners who forced the mini-series off the air. Just three weeks from tonight, HBO will present the first three-hour installment of Mike Nichols's film version of Tony Kushner's "Angels in America," starring Al Pacino and Meryl Streep. (Part 2 is one week later.) This epic is, among other things, a searing indictment of how the Reagan administration's long silence stoked the plague of AIDS in the 1980's.

"Angels" is the most powerful screen adaptation of a major American play since Elia Kazan's "Streetcar Named Desire" more than a half-century ago. It's been produced not only with stars but at four times the budget of "The Reagans." People are going to talk about it, and, as they do, HBO will replay it relentlessly to rake in more and more of the country. Threats of a boycott against a channel soon to unveil a new season of "The Sopranos" will go nowhere.

"Angels" is only minutes old when Mr. Pacino appears as a real-life crony of the Reagans — Roy Cohn, in his post-McCarthy-era incarnation as a still-powerful Republican fixer, closely tied to the Ed Meese justice department. A photo on his office wall shows him arm in arm with both the president and his vice president.

## GLBT Group Meetings

CISGYA 56 Barnstable Rd. Hyannis, 7pm Wed & Thur, age to 22

Freedom to Marry Coalition of CC: ccfmc@yahoo.com

Lesbian Connections meets 1<sup>st</sup> Fridays, 6:30-8pm

Metropolitan Community Ch. 1st & 3rd Sundays, 7pm, Chapel in the Pines, Eastham, 385-2873 or 430-2682

Straight Spouse Group. third Thur monthly, 896-9060

Transgender Support second Sundays 2-4pm, Dawes Hall (across from Brewster UU on 6A) & fourth Mondays, 7pm, CISGYA House, Hyannis, 255-5354 or 362-4438

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## Dates to Remember

Dec15, Jan19, Feb16: Brewster PFLAG, 7 pm

Dec18, Jan16, Feb19 Straight Spouse, 896-9060

Dec14 & 22, Jan 11 & 26, Feb 8 & 23: Trans 432-8119

Feb 7 GAYLA Ball Dinner-Dance (see article p. 4)

Feb 12 National Freedom to MarryDay

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## PFLAG/Cape Cod, Brewster

PO Box 1167 Orleans, MA 02653

**MISSION:** *Promote the health and well-being of gay, lesbian, bisexual, and transgendered persons, their families and friends, through Support, to cope with an adverse society; Education, to enlighten an ill-informed public; and Advocacy, to end discrimination and secure equal civil rights.*

**MEETINGS:** 7 pm on the third Monday of each month at First Parish Church, Brewster; everyone is welcome. For information call 508-240-2737 or 508-432-8119.

**MEMBERSHIP:** Dues-paying members support the efforts of PFLAG both locally and nationally. Ten dollars goes to PFLAG National (includes subscription to *Pflagpole*), and the balance is used for our own Newsletter and the purchase of pamphlets, books, and videos. Our fiscal year begins October 1.

**OFFICERS:** Co-Leaders, Pem Schultz & Rob Lewis; Treasurer, Martha Berndt; Corresponding Sec'y, Betsy Cochran; Publicity, (volunteer needed); Newsletter, Joann Figueras and Doris Scherbak; Program, (volunteer needed); and Library, Randy Kendall;

**NEWSLETTER:** Published four times a year. Send articles to PO Box or e-mail joann@pflagcapecod.org.

**WEBPAGE:** www.pflagcapecod.org

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\_\_\_\$35 Family \_\_\_\$25 Individual \_\_\_\$15 Limited income

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