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Section 3: Gay Rights after Lawrence

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WASHINGTON -- When the Supreme Court struck down laws banning sex between homosexuals last month, a dismayed Justice Antonin Scalia warned that the court was siding with gay men and lesbians in a "culture war." He accused the majority of flouting public opinion and of opening the door to legal gay marriages. But the court's 6-3 vote to invalidate state anti-sodomy laws reflected a nation where polls indicate that most people now believe that homosexual relations between consenting adults should be allowed. Legal analysts across the ideological spectrum agree that the court's decision in Lawrence vs. Texas also appears to mirror a growing public acceptance of homosexuals.

Polls indicate that most Americans continue to oppose legalizing gay marriages. But in the three weeks since the court's ruling cited a right of privacy for homosexuals, it has become clear that many American institutions are ready, in various ways, to express support for gay men and lesbians:

* On July 6, The Dallas Morning News began running advertising notices of same-sex unions with its wedding announcements.

* Two days later, The Boston Globe editorialized in favor of gay marriage and compared state laws against it to those that once banned marriage between whites and blacks. "It may be difficult to imagine a time when interracial marriage was considered an abomination by much of society," the newspaper said, "... just as some day it will be hard to imagine that gay couples were once ostracized simply for trying to form stable families."

Newspaper editorials on the East and West coasts praised the Supreme Court's ruling, but so did many in the central part of the USA that generally are not as liberal, including The Des Moines Register and the Chicago Tribune. The Tribune's editorial page noted that seven years ago it had supported Illinois' "defense of marriage act," which withheld recognition of any same-sex marriages granted in other states. (No state allows same-sex marriages, but Vermont allows "civil unions" for gay and lesbian couples.)

"That view has changed," the Tribune said. It also said "it's difficult to see how
same-sex marriage would undermine traditional families."

Opposing voices have not been as prominent, but religious broadcaster Pat Robertson has urged his followers to pray for the retirements of some justices who expressed support for gay civil rights. He says the court's ruling "opened the door to (laws legalizing) homosexual marriage, bigamy, . . . prostitution and even incest."

Robert Knight, director of the culture and family institute at the Washington-based Concerned Women for America, says he hopes that more opposition will emerge.

"Justice Scalia is correct: The Supreme Court has become a wrecking ball against the moral order," Knight says. "But I think (heterosexual) marriage will be defended in the end. I think a lot of people will say, 'This far and no further.'"

In striking down state laws that prohibited oral and anal sex, the court did not address gay marriage. But the majority opinion by Justice Anthony Kennedy emphasized privacy for gay men and lesbians beyond sexual relations.

Kennedy added that states should not try "to define the meaning of the relationship or to set its boundaries, absent injury to a person or abuse of an institution the law protects."

Lawyers on both sides of the debate believe that Kennedy's references to gay privacy beyond sexual relations ultimately could lead to legal protections for gay marriages.

Analysts also say that Kennedy's description of the "enduring" personal bonds of gay couples will encourage public acceptance of same-sex relationships.

"The public has looked to the Supreme Court as a source of moral guidance," says Michael Dorf, a law professor at Columbia University in New York City. "The court cannot push society beyond where it wants to go, but it can give a gentle nudge to a poised social movement."

Kevin Worthen, a law professor at Brigham Young University in Provo, Utah, says the court has "enormous credibility with the public. I think the ruling is going to have a real impact in the long term, even in conservative areas such as this one."

Karlyn Bowman, who tracks trends in public opinion for the American Enterprise Institute in Washington, D.C., says "society is certainly changing its mind" on same-sex relationships.

Bowman cites surveys indicating that about 60% of Americans now believe that homosexual relations between consenting adults should be legal, up from just over 40% in the mid-1970s. She says people increasingly are aware of gay and lesbian co-workers, neighbors and acquaintances.

The Dallas newspaper's decision to accept announcements of gay unions had been in the works for months, says Robert Mong, the newspaper's president. "A lot of it came about because of the increasing diversity in our community," he says. The response to the new policy generally has been positive, he says,
although some readers have called to protest or to cancel their subscriptions.

Wal-Mart's decision to ban discrimination based on sexual orientation came after a two-year campaign by gay rights groups. They were led largely by the Pride Foundation, a group in Seattle that raises money, gives grants to gay and lesbian organizations and invests in Wal-Mart stock.

Wal-Mart spokesman Tom Williams says there was no connection between the company's move and the high court's ruling a week earlier.

Zach Wright, a lawyer with Pride Foundation, says Wal-Mart's new policy puts the company in league with many Fortune 500 companies but is particularly significant because of Wal-Mart's "rural, conservative base."

For opponents of increased gay rights, Wal-Mart's action was a distressing endorsement of homosexuality.

"The ruling in the Texas case affects the public discourse in ways that encourage companies like Wal-Mart to make decisions that they otherwise wouldn't make," says Genevieve Wood of the Family Research Council.

The federal government and most states have laws like the one in Illinois that defines marriage as a union between a man and a woman. The laws allow states to ignore any same-sex marriage from another state; those laws are likely to be tested in court if some states begin allowing such marriages.

In a much-watched case, the Massachusetts Supreme Judicial Court is considering whether gay and lesbian couples have a right to marry under state law.

The issue probably will land at the U.S. Supreme Court -- someday.

"The court will be ready to recognize marriage for gay people when the general public believes that the union of two gay people is morally similar to the union of two heterosexual people," says Chai Feldblum, a Georgetown University law professor and an advocate for gay civil rights. "And I think we're closer to that than I would have anticipated five years ago."
The Supreme Court ruling to strike down the nation's anti-sodomy laws combined two of the most contentious issues on the political landscape by grounding the liberty of gays in the same legal turf that sustains the right to abortion -- and it directly points to yet another clash in the culture war: a fight over gay marriage. The decision did not spell out what this could mean for laws banning gay marriage, gay adoption and related controversies. But dissenting Justice Antonin Scalia warned from the bench that the constitutional grounds for maintaining those prohibitions are now gone.

"It is clear from this that the Court has taken sides in the culture war," Scalia declared, taking the unusual step of reading his dissent from the bench. He savaged the passing statement by the majority that the sodomy law decision had nothing to do with the gay marriage issue. "Do not believe it," he warned.

Lawrence v. Texas could have implications far beyond the closed doors of private homes. In an unexpectedly large step, the court said traditional morality is no justification for making legal distinctions among sexual behaviors of consenting adults. "The fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice," Justice Anthony M. Kennedy wrote, quoting approvingly from his colleague Justice John Paul Stevens.

And in at least one earlier precedent, the realm of private, intimate life has been defined by the Supreme Court to include "marriage . . . family relationships [and] child rearing."

At the same time, marriage and adoption are more public matters than the intimacies the court was dealing with in the Texas case. Other grounds, beyond morals alone, might be found to justify continuing those prohibitions if states choose to do so.

That's the next fight.

It could come quickly. Gay rights lawyers recently filed suit in federal court challenging new wording in Nebraska's constitution banning gay marriage; yesterday's decision should strengthen their case. *** Executive Director [of the Lambda Legal Defense and Education Fund] Kevin M. Cathcart stressed the broader impacts of the decision, saying, "This historic civil rights ruling promises real equality to gay people in our relationships, our families and our everyday lives.

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Across the cultural divide, Tom Minnery, Focus on the Family's vice president of public policy, predicted that "if the people have no right to regulate sexuality then ultimately the institution of marriage is in peril, and with it, the welfare of the coming generations of children."

Many observers had predicted that the court would find very narrow grounds to throw out a Texas law that criminalized sodomy for homosexuals only. After all, with a few notable exceptions, the high court has been reluctant over the past 25 years to write controversial decisions in broad strokes.

The court of the 1950s, '60s and '70s -- an era shaped by Chief Justice Earl Warren and that legendary builder of liberal majorities, Justice William J. Brennan Jr. -- painted with a bold brush on issues ranging from civil rights to school prayer, from capital punishment to abortion. The justices became heroes to many and infuriated many others.

The court of the 1980s, '90s and today -- an era shaped by Chief Justice William H. Rehnquist and the increasingly dominant builder of centrist majorities, Justice Sandra Day O'Connor -- has rolled back some of those decisions and shored up others. But the court has generally preferred to hunt for fresh controversies in abstract realms such as federalism and original intent where any outrage stirred up is registered in law review articles, not on billboards.

But the majority opinion in Lawrence went back to the earlier era for its inspiration. Drawing on the 1965 case that found a right to contraception and the 1973 case that found a right to abortion, Kennedy said that the "right to privacy" also applies to homosexuals. "Adults may choose to enter upon this relationship in the confines of their homes and their private lives and still retain their dignity as free persons," he wrote. "The liberty protected by the Constitution allows homosexual persons the right to make this choice."

With that, the court overturned a 1986 decision that had rejected the right-to-privacy argument for same-sex relationships. O'Connor voted with the 1986 majority, and she declined to repudiate that position yesterday. But she added a separate, sixth, vote for the new rule that legal distinctions between heterosexual relations and homosexual relations cannot be made on purely moral grounds.

"Moral disapproval of a group cannot be a legitimate governmental interest under the Equal Protection Clause," she wrote.

Scalia, Rehnquist and Justice Clarence Thomas, in their dissents, said the step, if it was going to be taken, should have been left to the state legislatures. "Were I a member of the Texas legislature, I would vote to repeal" the sodomy law, Thomas wrote.

Legislatures "unlike judges, need not carry things to their logical conclusion," Scalia noted. They can legalize "private homosexual acts" while continuing to prohibit gay marriage if they wish. "The Court today pretends that it possesses a similar freedom."

Soon enough, America will find out.

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HIGH COURT'S TERM ENDS;
Sodomy Ruling Fuels 'the Culture War'; Gays celebrate the landmark decision as a 'day of liberation.' Christian groups fear the decree could lead to same-sex marriage

Los Angeles Times
June 27, 2003

Mitchell Landsberg and John M. Glionna

The Supreme Court's decision Thursday to strike down Texas' criminal sodomy law electrified both sides in what Justice Antonin Scalia called "the culture war," with advocates for gay civil rights and religious fundamentalism agreeing that the ruling was a watershed that could ultimately knock down barriers to same-sex marriage. The decision prompted celebrations in heavily gay and lesbian communities such as West Hollywood, where Mayor Jeffrey Prang called it "a landmark" that "essentially said what we have believed all along -- that the consensual relations between people in privacy is not the business of the government."

"It is monumental," agreed Jon Davidson, a Los Angeles-based attorney for the Lambda Legal Defense and Education Fund, which represented the two Houston men at the center of the Supreme Court case. "There were tears running down my face as I was reading the decision."

It alarmed and angered advocates of Christian-based "family values" for whom homosexuality is abhorrent. "We think this is the start of the court putting San Francisco values on the rest of the country," said Peter LaBarbera, senior policy analyst with the Culture and Family Institute, which advocates public policy based on biblical principles.

"We believe the court one day could use this same rationale to ... open and legalize so-called [same-sex] marriage," LaBarbera added.

In a decision written by Justice Anthony M. Kennedy, the court ruled that the Texas law prohibiting homosexual sex was an unconstitutional violation of the right to privacy. The ruling was expected to apply to sodomy laws in 12 other states, including nine that ban oral or anal sex between heterosexual as well as homosexual couples.

In San Francisco, a city with a powerful gay voting bloc, many residents rejoiced at news of the Supreme Court ruling.

"It’s about time! It’s about time!" exclaimed Matthew Wright, a student who was waiting for a bus in the city's Castro District. "Hello! People in Washington and everywhere else! What I do in my bedroom ain't nobody's business, period. What this ruling does is bring us up to speed with the rest of Western civilization. We're just a bit slow in the United States, that's all."

Legal scholars agreed that the ruling is a huge step forward for gay civil rights.
"This is a very powerful statement by the court about privacy rights, a profound statement that it's none of the government's business who we sleep with," said Erwin Chemerinsky, a USC professor of constitutional law. "In California and elsewhere, there are countless ways laws draw distinctions between straights on one hand and gays on the other -- in areas such as marriage, adoption, custody matters and employment. This is the strongest statement the court can give calling into doubt those lines."

Pamela Karlan, a Stanford University law professor, said the repercussions of the ruling might not be immediately apparent to the average American household. "Does it change what happens in the day-to-day lives of straight people? I'm not sure it does," she said. "But it does change the world in important ways by sending a powerful message that all adults should have same right in the nature of their intimate lives."

Another constitutional law scholar, Eugene Volokh of UCLA, argued that the ruling could be stretched to apply to a range of proscribed sexual behavior, including polygamy and incest. "This isn't as much about homosexual rights as it is sexual rights in general," Volokh said.

Opposition to the court's decision was centered among Christian fundamentalists, who believe sodomy laws uphold society's interest in maintaining moral order, and who also argue that the transmission of HIV gives society an interest in prohibiting gay sex.

"This is one of the worst decisions the court has ever made, in my opinion," said Scott Lively, an attorney in the Sacramento suburb of Citrus Heights and director of the American Family Assn. California. His group is affiliated with a national organization headed by the Rev. Donald Wildmon.

"It is an exercise in judicial activism that puts a stamp of approval on anything-goes sexuality," Lively said. "One of the responsibilities for the government is to set the standard of what should be approved and disapproved by society. They are essentially saying the states should not be able to regulate sexual conduct at all, except for minors, nonconsensual sexual activity and things like that."

"Once again the government has invented a right where no other existed before," said Richard Lessner, senior analyst for the Family Research Council. "Now [laws against] bigamy, incest, polygamy, bestiality, prostitution and anything else you can think of ... are now going to come under attack."

Davidson, the Lambda attorney, said he did not believe the ruling could be so broadly interpreted. "That's just false," he said. For instance, he said, the state has an interest in preventing incest because it has genetic consequences. No such state interest can be argued in the case of sex between consenting gay men or women, he said.

However, Davidson agreed with many opponents of the ruling who said it could pave the way to same-sex marriage. "That is certainly our view, and I think at some point there will certainly be a case that tests that," he said.
Sodomy laws, according to Bernadette Brooten, a professor of Christian studies at Brandeis University, date to the early Christian era in Europe and are deeply rooted in religion. In fact, she said, several of the state laws affected by the high court's ruling used biblical language taken directly from the Book of Leviticus and Paul's Letter to the Romans.

"So although this is not a church-state issue in the narrowest sense, it is a victory for the separation of church and state," Brooten said. By holding that the individual's right to privacy trumps the public interest in enforcing standards of behavior, she added, "the court has moved beyond ... a Christian shaping of laws concerning sexuality."

Judith Stacey, a professor of sociology and gender studies at USC, said sodomy laws are also holdovers from a time when an agrarian society put a premium on procreation, when "creating the next set of workers is what's important in a marriage."

They were not aimed primarily at prohibiting homosexuality, as some are now, she said.

Back where the case started, in Houston, a bustling area west of downtown called the Montrose District includes a thriving gay community. There, gay leaders and attorneys behind the case were similarly jubilant. As in at least 35 other cities across the country, they quickly pieced together plans for a rally supporting equal rights for gays.

Local authorities said John Geddes Lawrence and Tyron Garner are the only people in Texas who have ever been charged under the statute. But Houston attorney Mitchell Katine, who represented the two men behind the case since its inception, said the impact of the Supreme Court ruling is far broader than those two solitary arrests. He pointed out, for example, that gay candidates for public office in Texas have been painted as criminals by their opponents because of the statute.

"This can no longer be used as a tool to attack gays and lesbians in family law, housing or employment law," he said. Davidson, the Lambda attorney in Los Angeles, called it "a day of liberation."

"I mean," he said, struggling for words, "I must tell you, I kind of -- in reading the decision -- it kind of felt like we'd been given a rose, with many layers, each one smelling more sweet. Because the opinion is very deep, in terms of the way in which it discusses the rights at stake."

Copyright © 2003 The Los Angeles Times
WASHINGTON The Supreme Court's decision upholding gay civil rights leads logically -- and some say, inevitably -- to same-sex marriages in the United States, say both gay rights supporters and advocates of traditional family structures.

The two sides in this "culture war" find themselves in agreement on what Thursday's decision means.

By a 6-3 vote, the court struck down laws criminalizing sex between gays and described their relationships as a "personal bond" that is protected by the Constitution.

If so, some of these people say, it is only a small step further to say that gays who establish such personal bonds should be permitted to marry, just like heterosexual couples.

"If you extend the logic and the reasoning of that decision, that's where we are headed," says Richard Lessner of the Family Research Council. "We're convinced this case was brought to provide the foundation for same-sex marriages. [Gay-rights advocates] were looking for a precedent, and now they have it."

The lawyers who brought the Texas case before the high court agree it leads logically to recognition of same-sex marriages.

"I think it is inevitable now. In what time frame, we don't know," said Patricia Logue, a lawyer for Lambda Legal Defense and Education Fund in New York and co-counsel in the Lawrence vs. Texas case decided Thursday. "It's happening in Canada and in Europe, and the Lawrence decision obviously helps here. Most of anti-gay discrimination comes down to, 'We don't approve of you, and we don't like you.' But the court has [held] that is not an acceptable reason for discrimination."

State courts in Massachusetts and New Jersey are considering cases brought by gay couples seeking the right to marry. If they win in one state, lawyers for gay civil rights hope to set a precedent that will eventually allow for same-sex marriages nationwide.

"It's not going to happen this year or next, but in the next decade, I think it's likely," said Georgetown University law professor Chai Feldblum, who teaches gay rights law. "The state lawyers [in the pending cases] have a hard time proving that [allowing gays to marry] will harm the institution of marriage."
In one way, the Supreme Court went out of its way to make clear it was not giving gays a right to marry under state law. In his majority opinion, Justice Anthony M. Kennedy said the Texas case "does not involve whether the government must give formal recognition to any relationship homosexual persons seek to enter." In her concurring opinion, Justice Sandra Day O'Connor added that the "traditional institution of marriage" is not at issue.

But other parts of the court's opinion stressed the "moral disapproval" of gays did not justify a state's discrimination against them.

The justices "are not ready to open up marriage to gay people. They think the public isn't quite ready for it," said Feldblum, a former clerk at the court. "But as a matter of logic and principle, there is no reason not to provide the institution of marriage for gay people. The court is leaving that open for the future."

Lessner, whose group has been pressing for state laws that say marriage is reserved for a man and a woman, believes the court's decision poses a major threat. "We find ourselves strangely in agreement with the people on the gay rights side," he said.

In 1996, Congress passed the Defense of Marriage Act to try to block a state-by-state drive toward same-sex marriages.

Proponents of that law feared that state courts in Hawaii or Vermont would accord gays and lesbians a right to marry. And after marrying there, gay couples could seek recognition of their legal unions in other states under the "full faith and credit" clause of the Constitution. This provision requires courts in one state to honor legal agreements made in another state.

Although the Defense of Marriage Act creates one barrier to same-sex marriages, opponents say it would not prevent the Supreme Court from striking down as unconstitutional all the state laws excluding same-sex marriage.
Backers of amendment against same-sex unions see Texas ruling as boost

The Washington Times

July 1, 2003

Stephen Dinan

Backers of a constitutional amendment to declare marriage a covenant between a man and woman are calling last week's Supreme Court sodomy ruling a boost, but they say it will take a state endorsing homosexual "marriage" to force a vote. "Lawrence has set the stage, but the real action will begin when we see that decisive move made, probably this summer and probably in Massachusetts," said Matt Daniels, executive director for the Alliance for Marriage, which is backing the amendment.

"I think what it's going to take, in all frankness, is a court case, like the one pending in Massachusetts, which will destroy marriage as a man and a woman," he said.

In the Lawrence decision, the Supreme Court struck down a Texas statute banning homosexual sodomy, but many court watchers say the legal underpinnings lay the groundwork for homosexuals to claim a constitutional right to marry.

Many observers expect the Massachusetts Supreme Judicial Court to do just that later this summer, and at least some observers have argued that the court was waiting for the U.S. Supreme Court's ruling in Lawrence before going ahead.

Foreign events may also press the marriage amendment.

A Canadian appeals court recently struck down the definition as a union between a man and woman and replaced it with a union between two persons. Also, the British Parliament announced its own plans yesterday for civil unions, and though it didn't call them "marriages," it designed them to be as close to marriage as possible. It extends rights for work benefits and inheritance to same-sex partners.

Rep. Marilyn Musgrave, Colorado Republican and the sponsor of the amendment, said the amendment is needed to enshrine the common understanding of marriage.

"We've had the definition or marriage for over 200 years as the union between a man and a woman. I am very committed to keeping that definition intact," she said.

But Elliot Mincberg, vice president of People for the American Way, said lawmakers should give the legal situation time to settle.

"I think it's likely to take at least a little bit of time for this issue to work itself through, which is why I think it would be particularly damaging for Congress to immediately jump in with a
constitutional amendment that stops any activity in this area," he said.

Joining People for the American Way in opposing the amendment are the American Civil Liberties Union and a host of homosexual-rights groups.

Congress in 1996 passed the Defense of Marriage Act, signed by President Clinton and saying the federal government may not recognize a homosexual union sanctioned by a state and that no other state has to accept a homosexual "marriage" performed in another state.

But both proponents and opponents said they expect courts to rule the law unconstitutional, because the Constitution requires states to give "full faith and credit" to contracts, including marriage contracts, from other states. So the amendment's backers say that amending the Constitution is the answer.

"You're responding to liberal judges. The activists have not chosen to go through the legislative process. Now this is how we have to respond," Mrs. Musgrave said.

Passing an amendment in Congress requires a two-thirds majority vote in each house, then ratification by three-fourths of the states.

The vote on the 1996 law suggests that there is enough support in Congress. That bill passed 85-14 in the Senate and 342-67 in the House.

"I think if leadership wants this to come to a vote, it will be much like it was with DOMA. That passed and was signed into law by Bill Clinton," Mrs. Musgrave said. She also said 36 states have passed their own versions of the Defense of Marriage Act. That's two shy of the 38 states needed to ratify an amendment.

But Mr. Minchberg said there's a difference between passing a bill and a constitutional amendment. He pointed to the overwhelming support in Congress for federal statutes banning flag burning but their failure to muster a two-thirds majority in the Senate to pass such an amendment.

Senate Majority Leader Bill Frist endorsed the amendment Sunday. House leaders haven't endorsed it, though both House Speaker J. Dennis Hastert, Illinois Republican, and House Majority Leader Tom DeLay, Texas Republican, voted for the Defense of Marriage Act.
Gay unions: A matter of rights or a threat to traditional marriage?
Americans must preserve institution of marriage

USA Today
July 10, 2003

Rick Santorum

The Supreme Court decision striking down anti-sodomy laws has stirred up the ever-simmering debate over whether gay men and lesbians should be able to marry legally. Some now want a constitutional ban on same-sex marriages. Two views:

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The majority of Supreme Court justices may not be willing to admit it, but everyone else seems eager to acknowledge that the greatest near-term consequence of the Lawrence v. Texas anti-sodomy ruling could be the legalization of homosexual marriage.

Although the court’s majority opinion attempts to distance the ruling from the marriage debate, the dissenting justices say, "Do not believe it." Major Web sites such as America Online’s home page, as well as newspapers and TV commentators, have signaled that the decision puts the gay-marriage debate in high gear. The Washington Post’s front page trumpeted, "A debate on marriage, and more, now looms." And Newsweek’s July 7 cover asks: "Is Gay Marriage Next?"

Before, the right to privacy in sexual matters was limited primarily to married couples. Now the court in its sweeping decision expanded constitutional privacy protection to consensual acts of sodomy, striking down anti-sodomy laws in Texas and 12 other states.

The court’s majority opinion telegraphed unmistakably its position on the question of homosexual marriage. It listed "personal decisions relating to marriage" among the areas in which homosexuals "may seek autonomy," just as heterosexuals may.

The dissenting justices, including Chief Justice William Rehnquist, noted: "Today's opinion dismantles the structure of constitutional law that has permitted a distinction to be made between heterosexual and homosexual unions, insofar as formal recognition in marriage is concerned."

After the ruling, Senate Majority Leader Bill Frist, R-Tenn., expressed concern over the court’s encroaching upon Americans' right to protect the family and joined the majority of Americans in backing a proposed constitutional amendment to ban homosexual marriage. I also would support a constitutional amendment to affirm traditional marriage.

In fact, I believe that Congress has an obligation to take action to defend the legal status of marriage before the Supreme Court or individual state
supreme courts take away the public's ability to act.

Every civilization since the beginning of man has recognized the need for marriage. This country and healthy societies around the world give marriage special legal protection for a vital reason -- it is the institution that ensures the society's future through the upbringing of children. Furthermore, it's just common sense that marriage is the union of a man and a woman.

There is an ocean of empirical data showing that the union between a man and a woman has unique benefits for children and society. Moreover, traditional family breakdown is the single biggest social problem in America today. In study after study, family breakdown is linked to an increase in violent crime, youth crime, teen pregnancy, welfare dependency and child poverty.

Marriage has already been weakened. The out-of-wedlock childbirth rate is at a historically high level, while the divorce rate remains unacceptably high. Legalization of gay marriage would further undermine an institution that is essential to the well-being of children and our society. Do we need to confuse future generations of Americans even more about the role and importance of an institution that is so critical to the stability of our country?

The last thing we should do is destroy the special legal status of marriage. But galvanized by the Supreme Court victory, proponents of removing that status are out in force. Ruth Harlow, lead attorney representing the plaintiffs in the Texas case, said, "The ruling makes it much harder for society to continue banning gay marriages."

That is where we are today, thanks to the Texas ruling. But the majority of Americans will have the final say in the battle to preserve the institution of marriage.

I hope elected leaders will rally behind the effort to defend the legal status of marriage from a non-elected group of justices, and I urge you to join those elected leaders in this vital case.

Rick Santorum is a U.S. senator from Pennsylvania and chairman of the Senate Republican Conference.

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'Don't ask, don't tell' faces challenge; Sodomy ruling threatens military gay ban

The Washington Times

July 7, 2003

Rowan Scarborough

Groups opposed to the military's homosexual ban are exploring whether to revive court challenges to the law, basing new actions on the Supreme Court's June 26 sodomy ruling. "It's not definite, but I would say it is an 80 percent possibility that we will" file a lawsuit on behalf of service members discharged because they are homosexual, says C. Dixon Osburn, director of the Servicemembers Legal Defense Network.

The group helps those targeted under the exclusion policy, known as "don't ask, don't tell." It also assisted homosexual rights groups in unsuccessful legal challenges in the 1990s.

As homosexual rights advocates plot strategy, pro-military groups are gearing up for a renewed fight. The Pentagon is studying the ruling as well. ***

"It certainly could embolden the gay groups to go after the law again," says Elaine Donnelly, head of the Center for Military Readiness. "The case could be made that under this new principle the law should be considered unconstitutional."

William Woodruff, a professor at Campbell University School of Law in North Carolina and a retired Army colonel, says: "I'm sure the ruling will be used to try to overturn section 654 [the homosexual-exclusion law]. But I'm not sure it's a winner."

The same two groups that brought legal suits in the 1990s - the American Civil Liberties Union, and Lambda Legal Defense and Education Fund - are studying the Lawrence v. Texas case to make new arguments.

The Texas decision, Mr. Osburn says, "changes the landscape significantly."

"Now, whether it's enough to reverse opinion on challenges to the gay ban or not remains an open question." He says new lawsuits are most likely to argue that the Supreme Court's defense of privacy should also apply to consenting adults in the military.

The U.S. armed forces, which operate under their own criminal laws as defined by the Uniformed Code of Military Justice, ban sodomy. A separate UCMJ section enacted in 1993 and signed by President Clinton excludes homosexuals from military service.

The Clinton administration drafted the don't ask, don't tell policy in 1994. It allows homosexuals to serve as long as they keep their sexuality private. The 1993 law reinforced a homosexual ban that existed for years. Congress enacted the prohibition after Mr. Clinton moved
in his first months in office to lift the ban by decree.

There is a tried-and-true defense if homosexual advocates file lawsuits, proponents of the ban say.

Mr. Woodruff, a lawyer during a 22-year military career, and Mrs. Donnelly point out that courts have for years given the military deference to make special rules it needs to maintain what it calls "good order and discipline." In fact, legal challenges to the 1993 law ended in the late 1990s, after eight court challenges from homosexual rights groups failed. Federal courts of appeals from Virginia to California backed the military's right to regulate sexuality in the ranks. The Supreme Court refused to hear petitions filed by homosexual advocacy groups in 1998. The ruling seemed to have settled the argument.

Al Gore revived the issue during the 2000 presidential campaign, promising homosexuals he would appoint generals and admirals to the Joint Chiefs of Staff only if they agreed to open the ranks to homosexuals. Now the Supreme Court may have opened the door for a new challenge.

"We're trying to figure out how the decision will affect the military policy," says Paul Cates, director of public education for the Lesbian and Gay Rights Project in the American Civil Liberties Union. "We're studying the decision."

Air Force Maj. Michael Shavers, a Pentagon spokesman, says the Defense Department's general counsel is examining the Supreme Court ruling to see whether it affects the sodomy or homosexual laws. "It's a little premature to say there would be any impact at this point," he says.

Mrs. Donnelly says there are three key reasons appeals courts will uphold the ban, even with the Lawrence decision in place. Courts have for years allowed the Pentagon to make rules, unacceptable in civilian law, to instill discipline. An example is the law prohibiting officers from having romantic relationships with those of lower rank.

Mrs. Donnelly notes that there is no right to privacy in the military, as the Supreme Court decreed there is for civilians. Because the law applies to both sexes, in her view equal-protection arguments view would not be successful.

On this point, the law states, "The potential for involvement of the armed forces in actual combat routinely make it necessary for members of the armed forces involuntarily to accept living conditions and working conditions that are often spartan, primitive and characterized by forced intimacy with little or no privacy." Homosexual conduct creates "an unacceptable risk to the armed forces' high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability."

"I feel very confident about the law," Mrs. Donnelly says. She urges President Bush to discard the Clinton don't ask, don't tell regulations because, she says, they differ from the strict homosexual-exclusion law.

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SCALIA JAB AT 'LAW-PROFESSION CULTURE' DEBATED
DISSENT IN GAY RIGHTS CASE SEEMS DRIVEN BY JUSTICE'S
FRUSTRATION AT WHAT HE SEES AS ELITE'S USE OF LAW AS CLUB IN
CULTURE WAR

Legal Times

July 7, 2003

Tony Mauro

In his angry dissent in the June 26 gay rights case Lawrence v. Texas, Supreme Court Justice Antonin Scalia reserved some of his sharpest words not for the Court majority or for homosexuals, but for what he called a "law-profession culture that has largely signed on to the so-called homosexual agenda."

Later in the dissent, he took aim at fellow lawyers again: "So imbued is the Court with the law profession's anti-anti-homosexual culture that it is seemingly unaware that the attitudes of that culture are not obviously 'mainstream.'"

The venom Scalia displayed for the profession he has belonged to for more than 40 years still resonates nearly two weeks after the ruling, and has left some of his fellow lawyers asking: What was that all about?

Friends and foes alike say the outburst reflects Scalia's deep and long-simmering disaffection with what he sees as the profession's abandonment of its traditional above-the-fray stance in the "culture wars" of the day. Instead of staying aloof from those debates or refereeing them, Scalia laments, top lawyers have cast their lot with the liberal elites he abhors.

"It's more than animus towards the legal profession. He has animus towards the entire intellectual elite that tries to force values on society through the courts when it can't get them through the legislature," says American Enterprise Institute senior scholar Robert Bork, a friend of Scalia's and a former Supreme Court nominee.

Georgetown University Law Center professor Chai Feldblum, who wrote a pro-gay rights brief in Lawrence on behalf of nearly 20 gay and lesbian lawyers groups, takes a more psychoanalytic view. "He is deeply frustrated and bewildered about how quickly some moral views have changed," she says. "And when you are frustrated and bewildered, you try to find some group to blame it on." Lawyers and their professional organizations are a nearby target, Feldblum suggests, though she asserts they don't deserve that status. "Lawyers were not in the vanguard on this issue, by any means."

In Scalia's view, lawyers' organizations should stick to their knitting -- debating issues relating strictly to the profession - rather than getting in the middle of social policy debates.

In 1981, Scalia chaired the American Bar Association's administrative law
section and immersed himself happily in
the ABA's byzantine structure of
sections, divisions, and forums. But then
came leaked disclosures of the ABA's
divided rating of Bork in 1987, and its
endorsement of abortion rights in 1990

Scalia drifted away from the ABA,
dropped his membership, and now rarely
if ever appears at any of its hundreds of
events. One ABA insider says the split
between Scalia and the ABA is a
"chasm."

For the ABA, then, to file a brief in
Lawrence on the side of gay rights must
have been the final insult for Scalia.

In that brief, the ABA noted that as long
ago as 1973, the organization's house of
delegates urged the repeal of state laws
against homosexual conduct. The
association has taken other steps in favor
of gay rights, the brief also said,
including its approval in 1994 of a
policy requiring that ABA-accredited
law schools not discriminate on the basis
of sexual orientation in admissions.

ABA President Alfred Carlton Jr. shrugs
off Scalia's attack on lawyers as part of
the "general criticism the profession
always gets when we try to defend and
enforce constitutional rights. That's our
job. . . . If this issue isn't central to the
legal system and jurisprudence, then I
don't know what is."

Carlton adds, "I'm sorry Justice Scalia is
unhappy about losing. We, obviously,
were on the right side of the case."

In his Lawrence dissent, Scalia did not
mention the ABA brief or policies, but
instead pointed his finger at the
Association of American Law Schools,
as he did in a 1996 dissent in Romer v.
Evans. The association requires
members not to discriminate in hiring
and admissions, and also excludes from
membership any law school that allows
its students to be interviewed by job
recruiters from firms that do not hire
homosexuals.

AALS President Mark Tushnet, a
professor at Georgetown, says Scalia's
comments mystified him. "He has a bee
in his bonnet about our policy, clearly,
but I don't understand its relevance."

When the AALS policy took effect,
some religiously affiliated law schools
resisted, Tushnet says, but eventually the
issue was worked out. He also notes that
membership in AALS, which Scalia said
is a must for any "reputable law school,"
is not necessary for ABA accreditation.

Bernard Dobranski, former dean of
Catholic University of America
Columbus School of Law, negotiated an
agreement with the AALS in the 1990s
in which the law school recognized "the
inherent value and dignity of all
members of the human family," and
pledged nondiscrimination in general,
but held to Roman Catholic teachings
that disfavor homosexual conduct. "We
were able to sit down and work out a
resolution," he says.

Now, Dobranski is dean of Ave Maria
School of Law, which graduated its first
class of 67 in May. A conservative
Catholic school founded by Domino's
Pizza billionaire Tom Monaghan, Ave
Maria won accreditation by the ABA last
year and won't be eligible for AALS
membership for several years.
Dobranski agrees with Scalia to some extent, acknowledging that for a law school adhering to Catholic teachings, leaders of the legal profession can present a "barrier you have to contend with." Law professors with minority views on sexual-orientation discrimination have difficulty being heard. But as far as the AALS policy cited by Scalia goes, Dobranski hopes to do at Ave Maria what he did at Catholic: come to agreements that respect the positions of both sides.

The AALS's Tushnet also thinks Scalia is right to the extent that "clearly, the legal profession and the law professoriate is strongly in favor" of nondiscrimination against gays, as is the "elite culture" in general. "But I don't agree that there is a discrepancy between elite opinion and the general public on this," he says.

New York Law School professor Art Leonard, who has tracked the legal profession's stance toward gay rights for decades, says support is indeed widespread, including not only law schools but the private sector -- where more and more law firms allow benefits for domestic partners, and gay lawyers are actively recruited.

Another dramatic change that may be a factor in Scalia's world view, Leonard says, is "the very open presence of gay law clerks at the Supreme Court. I'd like to see Scalia have a few."


"What makes you think that this court has a capacity to make the judgment for the society that not even a single state has made?" Scalia asked angrily at one point during the moot court.

At that session and in his Lawrence dissent, Murdoch says, "he is giving voice to a position's dying moments -- the last gasp of unlimited heterosexual privilege."

Even Scalia's syntax in using the label "law profession" rather than "legal profession" seems pejorative to some -- in the same way that conservatives sometimes dis the Democratic Party by calling it the "Democrat Party."

But legal writing expert Bryan Garner says Scalia did not necessarily mean to be derogatory when he used the noun law instead of the adjective legal in describing the profession. "It's not the standard idiom," Garner says, but it does appear in 19th century usage and in phrases still in use today, such as "law teacher."

"Justice Scalia often finds a special way of putting things, doesn't he?" says Garner, who notes that his own company is named LawProse Inc. -- not LegalProse.

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Washington -- To the recognition he received in almost 20 years of military service -- Bronze Stars, Purple Heart, promotions -- former Lt. Col. Steve Loomis would like to add another distinction: helping to end the "don't ask, don't tell" policy on gays. Loomis was dismissed from the Army in 1997, after an arson investigation of a fire at his home turned up evidence that he was gay. Now his lawsuit is the latest assault on the nearly 10-year-old "don't ask" policy, and it is thought to be the first suit filed following the recent U.S. Supreme Court ruling that a Texas sodomy law "furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual."

Loomis said he delayed filing his federal suit, seeking retirement benefits, to incorporate the ruling on the Texas law.

"I'll be honest with you -- yes, I want to see my own personal retirement reinstated. It's valuable to me," said Loomis, who now works in land development in Albuquerque, N.M.

"But by the same token, I think there are a couple of other things that I would like to see out of this. One would be that the Army recognize that my service was, in fact, good and beneficial to the military.

"I would think I would also like to see the courts acknowledge that 'don't ask, don't tell, don't pursue' is unfair, and it just isn't working."

A Pentagon spokesman, in an e-mail response to a question, said the Defense Department cannot comment because it has not received the complaint. It has until early September to file a response.

10 years of 'don't ask'

Ten years ago this month, President Clinton announced the new policy, which sought to end military officials' efforts to expose and expel gays in the ranks. It was signed into law that November.

Steve Ralls, director of communications for the Servicemembers Legal Defense Network, which assists those affected by "don't ask, don't tell," said Loomis' case is only the beginning of a new round of
assaults on the policy and prohibition of sodomy for anyone in the service.

"We anticipate that . . . there are going to be numerous other cases that are going to be filed as well," he said. "I think those will be both from straight and gay service members who have been impacted by the sodomy statute."

The "don't ask" policy, according to Army spokeswoman Martha Rudd, calls for each case to be judged on its own merits. Service members can be dismissed for engaging in homosexual acts, openly asserting that they are gay or lesbian, or proclaiming a same-sex marriage.

**Deferred to military**

There have been eight court challenges since the law took effect in 1994, said Dixon Osburn, executive director and co-founder of the defense network. Four of them made it to federal appeals courts.

"All of them concluded that 'don't ask, don't tell' survived constitutional muster only because the courts at the time were willing to defer to the military and its judgment about the rationale underlying the policy," Osburn said.

None went to the U.S. Supreme Court, he added.

Legal experts disagree on the sodomy ruling's impact.

"The Lawrence decision takes away the main justification for anti-gay discrimination in all arenas, which is moral disapproval of homosexuality," said Suzanne Goldberg, a law professor at the Rutgers University School of Law in New Jersey. She was part of the legal team that represented the sodomy defendants in Texas.

"It is clear that Lawrence will have an effect on virtually all litigation about lesbian and gay rights. I think the open question is the extent of that effect."

Loomis' lawyer, Washington attorney David Sheldon, said that question is one the military will have to examine:

"The worn-out stereotypes that gays and lesbians cannot serve honorably in the military because of their sexual orientation is going to be challenged and is challenged by the Lawrence holding."

But George Fisher, a Stanford Law School professor in California, predicts that the lower courts will rule in favor of the military, giving deference to the Pentagon's own rules, and the Supreme Court will decline to review.

The Pentagon spokesman said the department's general counsel's office is reviewing the Lawrence decision. It would be "premature" to say whether military law would be affected, the spokesman said.

More than 900 service members were discharged for violating rules on homosexuality last year, according to the Servicemembers Legal Defense Network.

While the connection between the military and civilians might not be as strong as during the 1940s, when President Harry Truman ended racial discrimination in the service, Goldberg
said, the military's size gives its decisions tremendous weight.

Change was apparent to Aaron Belkin, director of the University of California at Santa Barbara's Center for the Study of Sexual Minorities in the Military, when an article he wrote appeared in the summer issue of Parameters, the quarterly journal of the U.S. Army War College.

Belkin's article, "Don't Ask, Don't Tell: Is the Gay Ban Based on Military Necessity?" detailed a study of four U.S. allies that dropped their bans.

"I think it's a legitimate issue that has to be dealt with," Parameters editor Robert Taylor said. In 1993, after then-Joint Chiefs of Staff Chairman Colin Powell greeted Harvard graduates, activists got a partial victory with the "don't ask, don't tell" rule. Following the Supreme Court's recent Texas sodomy ruling, some want all restrictions on homosexuals in the service dropped.

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Gay 'marriages' ahead; Debate stirs in the states

The Washington Times

July 13, 2003

Cheryl Wetzstein

For years, the issue of same-sex "marriage" in America has surfaced only occasionally, a topic of arcane conversation, and promptly slips away. No longer. High court decisions in Canada and the United States and a pending lawsuit in Massachusetts will finally force "gay marriage" to the top of the nation's legal and cultural agenda.

"Today's decision has awakened a sleeping giant," attorney Mathew D. Staver said after the June 26 U.S. Supreme Court ruling that a Texas ban on homosexual sodomy was an unconstitutional violation of privacy.

The ruling "will galvanize and reinvigorate the majority of Americans who believe in traditional marriage but have ignored the radical agenda of the same-sex marriage movement," said Mr. Staver, president and general counsel of Liberty Counsel, the public-interest law firm in Florida that had filed a brief in behalf of Texas.

The high court ruling followed a June 10 decision by Canada's Ontario Court of Appeal that restricting marriage to "a man and a woman" was unconstitutional.

From now on, the court said, "two people" can marry in Ontario.

The Canadian ruling was greeted with jubilation by homosexual activists, and hundreds of homosexual couples including dozens from the United States have gone to Ontario to marry. There has been no test of whether any of these marriages will be recognized in any of the 50 United States.

'Mother of all cultural battles'

A more sweeping marriage-related decision could be handed down from the Massachusetts Supreme Judicial Court by tomorrow.

The court is considering a lawsuit titled Goodridge v. Massachusetts Department of Public Health, which is brought by seven homosexual couples who say they have been unconstitutionally denied state marriage licenses.

The Massachusetts high-court ruling, from which an appeal could be difficult, could tell the state to begin issuing marriage licenses to same-sex couples. If that happens, say lawyers specializing in domestic law, thousands of homosexual couples will marry in Massachusetts and file lawsuits in every other state seeking recognition of their marriages.

This ruling will lead to the "mother of all cultural battles," in which "every public official in the country will be forced to take a stand on gay marriage," predicts Hoover Institution scholar Stanley
Kurtz, writing in National Review Online.

Same-sex "marriage" has many advocates on the left; liberal religious groups, law firms, child welfare leaders, educators and historians have all filed briefs in support of the Massachusetts plaintiffs.

Democratic presidential candidate Howard Dean, who as Vermont's governor signed that state's landmark civil-union law (in a post-midnight act, without ceremony), has promised that as president he would "insist that every state find a way to recognize the same legal rights for gay couples as they do for everybody else."

"If a [homosexual] couple goes to Canada and gets married, when they come back, they should have exactly the same legal rights as every other American," Mr. Dean recently told an interviewer on NBC's "Meet the Press."

Traditional family organizations and many religious groups oppose same-sex "marriage," arguing that it would destroy the unique model of traditional marriage that has lasted in undisturbed form for thousands of years across many cultures.

Amending the Constitution

Some of these groups support an ambitious tactic of adding two sentences about marriage as an amendment to the U.S. Constitution.

The first sentence of the bipartisan Federal Marriage Amendment bill, introduced in May by Rep. Marilyn Musgrave, Colorado Republican, is simple and direct: "Marriage in the United States shall consist only of the union of a man and a woman." The second sentence is equally forthright: "Neither this Constitution or the constitution of any state, nor state or federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups."

Senate Majority Leader Bill Frist endorsed the amendment. President Bush has recently declined to do so, though he made a vague endorsement of traditional marriage. "I don't know if it's necessary yet," Mr. Bush told reporters in the Roosevelt Room of the White House. "Let's let the lawyers look at the full ramifications of the recent Supreme Court hearing [barring prohibition of sodomy]. What I do support is the notion that marriage is between a man and a woman."

The amendment, promoted by a coalition of religious, legal and civil rights advocates, is called the Alliance for Marriage.

How likely is same-sex "marriage" in America?

Legal observers say that the Massachusetts decision could have the greatest direct impact, as it will take only one state to start the flood of same-sex "marriages" - and related lawsuits to recognize homosexual unions.

In contrast, the impact of homosexual "marriage" in Ontario - which along with British Columbia are the only two provinces in Canada where it is currently allowed - is minimal.
U.S. states don't have to recognize any marriage that violates U.S. public policy, says Lynn D. Wardle, a law professor at Brigham Young University who studies same-sex "marriage." Thus, "what happens in Canada is not going to legally affect what happens here, although its political impact can be pretty profound."

The effects of a domestic endorsement of a same-sex ritual is less clear. "I think anyone can say with certainty that a [Canadian] gay marriage won't be recognized as a marriage here in New York," Patrick Synnoie, counsel to the city clerk, told the New York Daily News. "It's against the law."

Instead, it will be considered a domestic partnership, he said, since "the City Council passed a local law last year permitting any civil union or domestic partnership done elsewhere to be recognized by the city of New York."

_Decriminalizing sodomy_

The immediate effect of the 6-3 Supreme Court ruling invalidating the Texas ban on homosexual sodomy is that it invalidates similar laws in Kansas, Oklahoma and Missouri, as well as antisodomy laws in nine other states, including Virginia.

The wider-reaching aspect of the decision, titled Lawrence v. Texas, written by Justice Anthony M. Kennedy, is that it overturned a 1983 Supreme Court decision that allowed states to criminalize homosexual sex.

"Liberty presumes an autonomy of self that includes freedom of thought, belief, expression and certain intimate conduct," Justice Kennedy wrote.

"The [Texas] case involves two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle," he wrote. "Their right to liberty under [the Constitution] gives them the full right to engage in their conduct without intervention of the government."

Justice Antonin Scalia, dissenting, warned that the decision undermines an elected government's right to regulate "immoral and unacceptable" sexual behavior. "[L]aws against bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality and obscenity are sustainable" only when laws on moral choices are upheld, Justice Scalia wrote. "Every single one of these laws is called into question by today's decision ...."

Justice Kennedy wrote that the Lawrence decision "does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter."

However, he identified marriage as a protected personal choice: "Our laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child-rearing and education. Persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do."

Homosexual activists have hailed both the U.S. and Canadian decisions as enlightened, inevitable and essential for equal rights.
The Lawrence ruling "starts an entirely new chapter in our fight for equality for lesbian, gay, bisexual and transgendered people," said Kevin Cathcart, executive director of the Lambda Legal Defense and Education Fund.

"It puts tremendous winds in our sails," Evan Wolfson, head of Freedom to Marry, told the Washington Blade after the Canadian decision. Freedom to Marry is dedicated to legalizing same-sex "marriage" in at least one U.S. state within five years.

New census data show that "gay and lesbian families live in nearly every county in the country," said David Smith, spokesman for the Human Rights Campaign, the nation's largest homosexual rights advocacy group. Many of these couples have children, and "these families should have the same protections, rights and responsibilities as other families." Marriage is "a matter of necessity."

No longer 'theoretical'

Conservative and traditional-values advocates see these decisions as undermining the rule of law against sex-related crimes and laying the groundwork to allow same-sex "marriage."

"Private sexual acts have public consequences," said Ken Connor, president of the Family Research Council. If consent and privacy are the only things that matter, he said, "then that throws the door open to any sexual behavior." The Supreme Court, he said, has "put this country on the fast track to recognizing same-sex marriages."

So what should bewildered Americans make of all this?

First, they can realize that they haven't heard a full debate on the issues, say two media watchers who oppose same-sex "marriage."

Same-sex "marriage" has been "very theoretical" to most Americans, says Maggie Gallagher, an author and columnist who frequently writes on the issue. But a Massachusetts ruling for the homosexual plaintiffs would put an end to that.

Stanley Kurtz of the Hoover Institution cautions that most of the debate so far has been framed in a way that favors the same-sex "marriage" views. The media elite sees same-sex "marriage" in simplistic civil rights terms - that homosexuals have a right to marry, he says. This point of view makes any opposition to same-sex "marriage" appear as simple prejudice, especially when it comes from a religious group.

What's not being articulated in much of the media, says Mrs. Gallagher, is that "gay marriage is a complete innovation," and even though other cultures have accepted homosexuality, "none of them confused these relationships with marriage."

Mr. Kurtz notes there are important secular arguments to be made against changing marriage. These include recognizing the importance of marriage to providing children with their own fathers and mothers, and the institution of marriage's ability to harmonize the different genders. These things cannot occur in same-sex unions.
"Once you start redefining marriage on civil rights grounds, the process will not stop," says Mr. Kurtz, who argues that polygamy and "polyamory" will become marriage battlegrounds as well. Polyamory is the practice of either sex having multiple spouses.

Marriage is not some "warm and fuzzy" lifestyle choice, Mrs. Gallagher argues. If marriage is turned into some kind of benefits system for sexual partners in which "every individual makes up what marriage is and registers it," marriage as a social institution will lose both its identity and its historic power.

Homosexual activists are pushing for expanded rights in other states:

* In New Jersey, seven homosexual couples have sued the state for denying them civil marriage licenses. On June 26, Mercer County Superior Court Judge Linda R. Feinberg heard arguments on a state motion to dismiss the case. Her ruling is expected by the end of the summer. The lawsuit, Lewis, et. al. v. Harris, et. al., is likely to be reviewed by the New Jersey Supreme Court, which has ruled favorably on several homosexual-rights issues.

* In California, the state Democrat-led Assembly passed a domestic-partnership bill that would award "the same rights ... as are granted to and imposed upon spouses" to homosexual couples. These rights include joint filing of tax returns, child support, court immunity, medical leave, pension benefits and debt liability.

Opponents of the bill, titled AB 205, say it "functionally reverses" voters' wishes, since three years ago Californians enacted Proposition 22, which defines marriage as only the union of a man and a woman.

The bill's supporters say that it doesn't affect marriage but will benefit California's 19,000 registered domestic partners. The bill is now before the Democratic-majority state Senate, which is expected to approve it.
San Francisco — While national debate simmers over the issue of same-sex marriage, the nation's largest legal group today will consider the rights of gay and lesbian couples to adopt children. In a vote scheduled for today, the American Bar Association's governing body will vote on a resolution that applies to unmarried couples who are either heterosexual or gay. It calls on the 410,000-member lawyer group to support state laws and court rulings that permit joint adoptions and second-parent adoptions by unmarried people.

"Recognizing these relationships is an essential means of protecting the core rights of children," said Washington lawyer Mark Agrast, chairman of an ABA individual rights committee. "Every child should have a legally recognized relationship to each parent."

The issue is before the lawyer group only weeks after the U.S. Supreme Court decriminalized gay sex. In that ruling, the high court held that homosexuals' "dignity as free persons" barred prosecution of their private sexual conduct.

Atlanta lawyer Paula Frederick, a member of the House of Delegates, said she supports the resolution. "There are too many unwanted children out there who need loving parents," she said.

"I think it's a wonderful thing for children to find two people who'll love them and are willing to adopt them," she said.

An ABA task force report on the issue notes that many same-sex parents try to protect their relationships with their children through legal documents such as wills and guardian agreements. "But they do not create a legally recognized parental relationship, and they are vastly inferior to the security and legal protection that adoption provides for children."

Financial needs

Without adoption, the report noted, a child of one parent cannot claim financial support or inheritance rights from the second parent; is not entitled to Social Security, retirement or workers' compensation benefits from the second parent; and is ineligible for health insurance benefits from the second parent's employer.

Nationwide, eight states and the District of Columbia have either passed laws or had appellate court rulings allowing a second gay parent to join with an
adoptive parent. Georgia is not among those states.

On Aug. 4, the California Supreme Court became the latest court to guarantee the rights of gay couples to adopt children. Second-parent adoption, the court said, can secure the benefits of "legally recognized parentage for a child . . . who otherwise must remain a legal stranger."

The next key ruling is expected soon from the federal appeals court in Atlanta, which is considering a challenge to a Florida law banning adoption by any gay person.

The case hinges on whether the 11th U.S. Circuit Court of Appeals can determine there was a reasonable rationale behind the Florida statute.

*Florida inconsistent*

In court filings, the state of Florida said it prefers to place children in homes with both mothers and fathers and which are stabilized by long-term marriage.

"In such homes, children have the best chance to develop optimally, due to the vital role dual-gender parenting plays in shaping sexual and gender identity and in providing heterosexual role modeling," the state said.

It is also preferable to place a child in an adoptive home "which minimizes social stigmatization to the extent possible," the state said. "It is reasonably related to these interests to discourage adoption into homosexual environments."

But the American Civil Liberties Union lawyers, which represents two gay couples and a lesbian couple in the case, said Florida has allowed couples with drug and alcohol problems or histories of domestic violence to adopt children. Florida judges allow some gay couples to become permanent legal guardians.

"Given the state's frank acknowledgement that lesbians and gay men pose no risk of harm to children, and its willingness to place children with lesbians and gay men permanently, it is impossible to credit the idea that the ban was adopted to promote child welfare," the ACLU said.

"The only purpose the ban could possibly serve is the forbidden one: expressing the state's disapproval of lesbians and gay men."

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[Lawyers: Pentagon must ease rules | AP Online | Wednesday, August 13, 2003 | Anne Gearan | ***

[In other votes Tuesday, ABA delegates:

[-- Easily approved a recommendation that states and courts allow gay partners and unmarried heterosexual couples to adopt children together. ***

[The adoption recommendation did not address whether gay people should be eligible to marry. The ABA is already on record supporting the right of gay people to adopt.

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