

**Commission to Study All Aspects of Same Sex Civil Marriage and the Legal Equivalents
Thereof, Whether Referred to as Civil Unions, Domestic Partnerships,
or Otherwise SB 427, Chapter 100:2, Laws of 2004**

51. The Commission has received credible evidence to support the claim that extension of marriage like benefits to same gender couples will provoke a legal challenge to the current ban on SSM. First, the Commission had expert testimony from the NH AG's office through Commissioner Bud Fitch on research on these cases for States of VT, MA, CT, NH, AZ, and CA. Commissioner Fitch concluded that legal challenge to NH's ban on SSM is plausible. Second, the Commission heard expert testimony from (a) Glen Lavy, Esq. for the Allied Defense Fund (www.AlliedDefensefund.org) and also (b) Law Professor Dwight Duncan, Esq. that extension of marriage like benefits, such as civil unions would provoke a legal challenge to NH's current law and ban on SSM.

E. NH CONSTITUTION NEEDS AMENDMENT TO CLARIFY THE EQUAL RIGHTS AMENDMENT 1974 DID NOT INCLUDE RIGHT TO SAME SEX MARRIAGE AND MARRIAGE SHOULD NOT BE UP TO JUDICIAL REINTERPRETATION.

52. The Commission has received credible evidence to support the claim that a legal challenge for SSM could be made under NH Constitution Part I, Article 2 and Part I Article 10 from Professor Hesse testimony on 9/12/05. First, the Commission is aware that at least two other States had their definition of marriage ruled unconstitutional under the challenge for sex discrimination (See Hawaii 1996 and Alaska 1998). The New Hampshire Constitution has such similar language. In both instances, these States amended their Constitutions and banned SSM after a legal challenge. The Commission finds that NH is in a similar situation if a legal challenge occurs and recommends preempting the legal challenge by amending the Constitution as 18 States have done and possible an additional 12 States are pending a similar remedy.

53. Second, the Commission has received evidence to support the claim that the best way to ensure that legislature and the people retain their sovereignty over marriage is to add a Constitutional amendment defining marriage as only a union of one man and one woman. Currently, 19 States have such amendments and a dozen States are leaning to amend their Constitutions post the Massachusetts decision (Goodridge) of 2003. An example where both can co-exist is the State of Hawaii that has a constitutional amendment to define marriage but also has reciprocal benefits for both same sex couples and other persons that are barred from marrying. Thus, protection of marriage by a constitutional amendment and recognition of other classes of families can be achieved as found by the Commission as a possible course of action for the legislature.

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III. RECOMMENDATIONS – NON MOVING PARTY SUMMARY

- A. Do not recognize, establish, and adopt same sex marriage for NH residents nor recognize same sex marriage for non-residents from other jurisdictions. MOTION TO ADOPT SAME SEX MARRIAGE FAILED 2-10 ON 10/24/05 AND MOTION TO RECOGNIZE SAME SEX MARRIAGES FROM OTHER JURISDICTIONS FAILED 5-7 ON 10/24/05.**

FACTS, TESTIMONY, AND RESEARCH:

1. The Commission finds that New Hampshire should not recognize, establish, and adopt same sex marriage for New Hampshire residents, nor recognize same sex marriage from foreign jurisdictions due to the following reasons:

- Legal recognition of same sex marriage requires complete acceptance and promotion of homosexuality as a State interest through the soft powers of the law upon social institutions, private employers and interstate commerce, parents and educational facilities, and governmental entities where approval by the public has not been accepted and a State interest for promoting homosexuality has not been substantiated.
- Legal recognition of same sex marriage involves complex constitutional issues of granting rights of marriage to a new class of persons but does not address why other classes of persons, such as sibling who have Constitutional protections as found in U.S., Supreme Court case of Moore v. E. Cleveland 431 U.S. 494 (1977)¹⁰⁴ are not entitled to the same rights or privileges.
- Legal recognition of same sex marriage involves complex constitutional issues of federal preemption where many federal laws preempt legal recognition and 44 States have legal bans against recognition of same sex marriage and/or other legal status given to same sex couples.
- Legal recognition of same sex marriage involves complex constitutional issues and social issues relevant to the roles of churches and religion plays in society and what rights of persons that are opposed to same sex marriage can exercise under protections for civil rights law.

¹⁰⁴ http://straylight.law.cornell.edu/supct/html/historics/USSC_CR_0431_0494_ZO.html Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. ^[m2] It is through the family that we inculcate and [p504] pass down many of our most cherished values, moral and cultural. Whether or not such a household is established because of personal tragedy, the choice of relatives in this degree [p506] of kinship to live together may not lightly be denied by the State. *Pierce* struck down an Oregon law requiring all children to attend the State's public schools, holding that the Constitution "excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only." 268 U.S. at 535. By the same token, the Constitution prevents East Cleveland from standardizing its children -- and its adults -- by forcing all to live in certain narrowly defined family patterns.

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- Legal recognition of same sex marriage involves complex issues of family laws, sociological effects on children, and effects on cultural issues regarding social programs that remain unknown and financial impacts undetermined.
- Legal recognition of same sex marriage involves a complex issues regarding social behaviors including issues of public health, costs for health care that are unknown, and other sociological changes may result that are unforeseen like bi-sexuality and transgenderism as lifestyles that may be raised to legal protection status.

ANALYSIS AND CONCLUSIONS:

2. . For all of these reasons, the Commission finds that New Hampshire should not recognize, establish, and adopt same sex marriage for New Hampshire residents, nor recognize same sex marriage from foreign jurisdictions due to the above reasons.

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C. Do not recognize, establish, and adopt civil unions or domestic partnerships for NH residents nor recognize civil unions or domestic partnerships for non-residents from other jurisdictions. MOTION TO ADOPT CIVIL UNIONS FAILED 3-8 ON 11/07/05

FACTS, TESTIMONY, AND RESEARCH:

1. The Commission finds that New Hampshire should not recognize, establish, and adopt civil unions for New Hampshire residents, nor civil unions from foreign jurisdictions due to the following reasons:

- Civil unions are the same thing as ‘same sex marriage’ without the name and suffers the same flaw as the facts and argument for same sex marriage. In addition, there is legal precedent that granting civil unions will make legal challenges to current definition easier based on evidence the three lawsuits that are pending in States of Connecticut, New Jersey, and California. In addition, the case of Goodridge vs. Department of Public Health, 440 Mass. 309, 798 N.E.2d 941 (2003), the Massachusetts Supreme Judicial Court was asked by the State if ‘civil unions’ would be constitutional and the Court ruled no.
- Legal recognition of civil unions requires complete acceptance and promotion of homosexuality as a State interest through the soft powers of the law upon social institutions, private employers and interstate commerce, parents and educational facilities, and governmental entities where approval by the public has not been accepted and a State interest for promoting homosexuality has not been substantiated.
- Legal recognition of civil unions involves complex constitutional issues of granting rights of marriage to a new class of persons but does not address why other classes of persons, such as sibling who have Constitutional protections as found in U.S., Supreme Court case of Moore v. E. Cleveland, 431 U.S. 494 (1977)¹⁰⁵ are not entitled to the same rights or privileges.
- Legal recognition of civil unions involves complex constitutional issues of federal preemption where many federal laws preempt legal recognition and 44 States have legal bans against recognition of same sex marriage and/or other legal status given to same sex couples.

¹⁰⁵ http://straylight.law.cornell.edu/supct/html/historics/USSC_CR_0431_0494_ZO.html Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. ^[in12] It is through the family that we inculcate and [p504] pass down many of our most cherished values, moral and cultural. Whether or not such a household is established because of personal tragedy, the choice of relatives in this degree [p506] of kinship to live together may not lightly be denied by the State. *Pierce* struck down an Oregon law requiring all children to attend the State's public schools, holding that the Constitution "excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only." 268 U.S. at 535. By the same token, the Constitution prevents East Cleveland from standardizing its children -- and its adults -- by forcing all to live in certain narrowly defined family patterns.

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- Legal recognition of civil unions involves complex constitutional issues and social issues relevant to the roles of churches and religion plays in society and what rights of persons that are opposed to civil unions can exercise under protections for civil rights law.
- Legal recognition of civil unions involves complex issues of family laws, sociological effects on children, and effects on cultural issues regarding social programs that remain unknown and financial impacts undetermined.
- Legal recognition of civil unions involves a complex issues regarding social behaviors including issues of public health, costs for health care that are unknown, and other sociological changes may result that are unforeseen like bi-sexuality and transgenderism as lifestyles that may be raised to legal protection status.

ANALYSIS AND CONCLUSIONS:

2. For all of these reasons, the Commission finds that New Hampshire should not recognize, establish, and adopt same sex marriage for New Hampshire residents, nor recognize same sex marriage from foreign jurisdictions due to the above reasons.

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D. Do not recognize, establish, and adopt 2 parent adoption or co-parent adoption by the Legislature. MOTION TO ADOPT 2 PARENT ADOPTION FAILED 4-7 ON 11/07/05

FACTS, TESTIMONY, AND RESEARCH:

1. The Commission finds that New Hampshire should not recognize, establish, and adopt 2 parent adoption or co-parent adoption by the Legislature for New Hampshire residents, due to the following reasons:

- The Commission noted from much testimony of the public hearings, much ignorance of the existing rights regarding current laws and procedures for codify joint parental rights under current guardianship law under RSA 463:10 and other contracts that are used by same sex couples exists¹⁰⁶. When Commissioners inquired to same sex couples about using such processes, many were unaware of the existing law. Furthermore, when Commissioners pressed to make the existing laws more efficient, less costly, and reducing out pocket legal expenses for private contracts that supplement existing State law, they were scoffed at and mocked. Advocates for same sex marriage have a priority of ‘it’s all about same sex marriage and public recognition of their sexual relationship’ and less about accrual rights and protections that flow from marriage. When pressed if they had a choice on whether it’s the social recognition or the economic and equity protections, there is answer is usually about the public recognition of their relationship.

- The Commission notes that several issues exist regarding where 2-parent adoption is being suggested where the applicants are of the same gender. The Commission notes there are probably 2 scenarios of children that may be involved in adoption and guardianship. The first is a case where one partner has a child from a previous heterosexual relationship or has conceived a child through artificial reproductive technology where the home has another same gender adult in a committed sexual relationship with the primary biological parent. The second is where a childless same sex partner and/or couple is petitioning or want to co-petition for adoption or guardianship of a child that is not biologically related to either applicant. Thus, here the State is making a judgment for the best interest of the child for selecting a possible home.

¹⁰⁶ http://www.glad.org/rights/newhampshire_lgbt.shtml#custody, Co-guardianship: This process allows a parent to name the other non-legal parent as a co-guardian so that he or she may secure medical attention and health insurance for the child and in all other ways act with the legal authority of a parent. See NH RSA 463:10 (allowing appointment of appropriate persons, including “co-guardians may be appointed when in the best interests of the minor”), 12 (rights of guardian).

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- The Commission notes that the first scenario involving, where one partner has a child from a previous heterosexual relationship and has another same gender adult in a committed sexual relationship, advocates voted against improving the existing process, under RSA 463:10 and other contracts that are used by same sex couples exists. (See Minutes 10/31/05 and 11/7/05). Thus, though the Commission received testimony of persons wanting co-parenting recognition, very few used the existing statutory scheme and there was not indication the statutory existing scheme could not be made better or is deficient at the existing moment. Hence, the issue of, 2-parent adoption has other legal and also sociological issues for children that need at the minimum further study.
- The Commission notes that the second scenario involving, where a childless same sex partner and/or or couple is petitioning or want to co-petition for adoption or guardianship of a child that is not biologically related to either applicant, here the State is making a judgment for the best interest of the child for selecting a possible home. The Commission notes it received much expert testimony on same sex parenting, but even the best pro-gay medical children's expert admitted much studies are lacking, particularly on male to male parent studies and best research for an optimum environment is married male/female home. (See expert testimony 9/12/05¹⁰⁷)
- The Commission notes though New Hampshire does not ban gay adoption, the issue of whether the legislature can regulate adoption for minor children is an important issue when it involved placing children in homes where neither applicant(s) is biologically related to the child.

¹⁰⁷ VAILLANCOURT: Are there any studies for children raises in families such as Male/Male, Female/Female, or Male/Female? ANSWER: Single parents are the most disadvantaged. All the research looked at female/female homes. Some studies have been with gay men but they have been with single or divorced males. Thus, the answer is probable no. EARNSHAW: Are you saying there are no studies showing any differences between children raises in same sex parents and married couples. ANSWER: I did not say that. There were some studies done in the 1990's and some did find differences such as the ones involving children raised by female same sex couple that male children tend to be less aggressive. But as I stated earlier, there are not a lot of studies that involved male/male homes compared to male/female homes and there are no long-term studies from birth to adulthood of children in same sex adult homes.

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- The Commission note that legislative powers to give preference to heterosexual homes for foster children in the case of Lofton v. Secretary of the Department of Children and Family Services,^{108 109} D. C. Docket No. 99-10058-CV-JLK for the U.S. Court of Appeals of the 11th Circuit (2004) and “*Review Of Research On Homosexual Parenting, Adoption, And Foster Parenting*” (2004), by George A. Rekers, PhD,^{110 111} Professor of Neuropsychiatry & Behavioral Science, University of South Carolina School of Medicine. Thus, issues of allowing 2nd parent adoption is a serious issue that needs further study and controversy exist on medical research. Hence, when the standard is the best interest of the child, public policy must reflect this.

ANALYSIS AND CONCLUSIONS:

2. For all of these reasons, the Commission finds that New Hampshire should not recognize, establish, and adopt 2 parent adoption or co-parent adoption by the Legislature for New Hampshire residents, due to the above reasons

¹⁰⁸ <http://www.ca11.uscourts.gov/opinions/ops/200116723.pdf>

¹⁰⁹ Ibid, Florida clearly has a legitimate interest in encouraging a stable and nurturing environment for the education and socialization of its adopted children. See, ~Palmore v. Sidoti, 466 U.S. 429, 433, 104 S. Ct. 1879, 1882 (1984) (“The State, of course, has a duty of the highest order to protect the interests of minor children, particularly those of tender years.”); Stanley, 405 U.S. at 652, 92 S. Ct. at 1213 (noting that “protect[ing] the moral, emotional, mental, and physical welfare of the minor” is a “legitimate interest[, well within the power of the State to implement”)(internal quotation marks omitted).

¹¹⁰ <http://www.narth.com/docs/RationaleBasisFinal0405.pdf>

¹¹¹ Ibid, Homosexual partner relationships are significantly and substantially less stable and more short-lived on the average compared to a marriage of a man and a woman, thereby inevitably contributing to a substantially higher rate of household transitions in foster homes with a homosexually-behaving adult. Homosexually-behaving adults inherently suffer significantly and substantially higher rates of partner relationship breakups, psychological disorder, suicidal ideation, suicidal attempt, completed suicide, conduct disorder, and substance abuse; therefore, as a group, households with a resident homosexually-behaving adult are substantially less capable of providing the best psychologically stable and secure home environments needed by foster children. This greater instability would inevitably necessitate more frequent foster child removal for transition to an alternate foster placement.

IV. RECOMMENDATIONS – MINORITY REPORT

B. The definition of “adultery” in RSA 645:3 should be amended to read as follows: A person is guilty of a class B misdemeanor if, being a married person, he engages in sexual [~~intercourse~~] activity with another not his spouse or, being unmarried, engages in sexual [~~intercourse~~] activity with another known by him to be married. *In this section, “sexual activity” shall be as defined in RSA 649-A:2, III.* And Amend RSA 458:7, II to read as follows: II. Adultery of either party, *as defined in RSA 645:3.*
DENIED BY MAJORITY BY VOTE 5-7 ON 10/31/05

C. The definition of “incest ” in RSA 639:2, I should be changed to replace the terms “sexual intercourse” with sexual activity where “*sexual activity*” shall be as defined *In RSA 649-A:2, III.* RSA 639:2, I amended to read as follows: A person is guilty of a class B felony if he marries or has sexual [~~intercourse~~] activity, or lives together with, under the representation of being married, a person whom he knows to be his ancestor, descendant, brother or sister, of the whole or half blood, or an uncle, aunt, nephew or niece; provided, however, that no person under the age of 18 shall be liable under this section if the other party is at least 3 years older at the time of the act. The relationships referred to herein include blood relationships without regard to legitimacy, stepchildren, and relationships of parent and child by adoption.
DENIED BY MAJORITY BY VOTE 5-7 ON 10/31/05

FACTS, TESTIMONY, AND RESEARCH:

1. The Commission was given a report (4-04-05) with a list of all New Hampshire Laws with the terms “Marriage”, “Husband”, “Wife”, “Relative”, “Spouse”, “Husband”, “Wife”, “Next of Kin”, and “Family” from attorney Michele Granda from Gay Lesbians Advocates and Defenders (GLAD) and the New Hampshire Freedom to Marry. Approximately 399 statutes were identified. However, as found in the analysis for federal laws, it is misleading to claim that same sex unions are denied 399 benefits under State law compared to married couples.

- Approximately 130 of the statutes listed involved the regulation of marriage, annulment, divorces, and/or involves issues of marriage benefits that are preempted under federal statutes for issues that outside of New Hampshire regulation.
- Approximately 10 statutes involve the recording, tracking, and maintenance of marriage licenses. Several statutes also confer jurisdiction to the Probate and Superior Courts regarding marriage administration.
- Approximately 68 statutes involve recognizing rights person that are next of kin and codify a spouse as a next of kin for a variety of property rights and privileges.

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- Approximately 72 statutes impose penalty to spouse for married couples. Examples of this include (a) Eligibility for public assistance and notice of assignment of liens/levy, (b) Disqualification for various State professions boards and licensing, (c) Notification of health risks for HIV and Fetal Alcohol Syndrome to applicants, and (d) Including definition of affinity to a spouse for purposes of protection of minors against sexual assault.

2. The Commission notes that under the duties of studying legal extension to same gender couples that are sexually intimate (gays and lesbians), many of New Hampshire's statutes for marriage are written in heterosexual terms and also imply heterosexual sexual contact and conduct. The Commission notes that several of the statutes in GLAD's list (See #391 for Incest, RSA 639:2 & # 393 for Adultery RSA 645:3) have been deemed invalid in a legal review involving homosexual issues involving current New Hampshire family law and certain statutes need to be rewritten if legal recognition was given to same gender couples in a marriage or a civil union model.

3. Specifically, a review of marriage and divorce in New Hampshire regarding the term "**adultery**" defined in RSA 645:3 that is used for fault divorce under New Hampshire in RSA 458:7 is clearly written regarding heterosexual relations and upheld to only apply to heterosexual relations recently by the New Hampshire Supreme Court, IN THE MATTER OF DAVID G. BLANCHFLOWER AND SIAN E. BLANCHFLOWER, 150 N.H. 226 (2003)¹¹².

4. A review of other State's marriage laws for Massachusetts, Vermont, Connecticut, New Jersey, and California that have same-sex marriage, civil unions, and/or domestic partnerships that allow dissolution that invoke marriage like laws have not legislatively or judicial defined adultery and/or incest for male and female same sex unions.

¹¹² <http://www.courts.state.nh.us/supreme/opinions/2003/blanc150.htm> "We note that the current criminal adultery statute still requires sexual intercourse: "A person is guilty of a class B misdemeanor if, being a married person, he engages in sexual intercourse with another not his spouse or, being unmarried, engages in sexual intercourse with another known by him to be married." RSA 645:3 (1996). Based upon the foregoing, we conclude that adultery under RSA 458:7, II does not include homosexual relationships. We reject the petitioner's argument that an interpretation of adultery that excludes homosexual conduct subjects homosexuals and heterosexuals to unequal treatment, "contrary to New Hampshire's public policy of equality and prohibition of discrimination based on sex and sexual orientation." Homosexuals and heterosexuals engaging in the same acts are treated the same because our interpretation of the term "adultery" excludes all non-coital sex acts, whether between persons of the same or opposite gender. The only distinction is that persons of the same gender cannot, by definition, engage in the one act that constitutes adultery under the statute."

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5. Commissioner Fredyma submitted an executive summary to the Commission on May 6, 2005 that discussed the flaws in existing laws for Incest, RSA 639:2 & Adultery RSA 645:3. A report on this subject is as follows.

1. Purpose of Review:

6. Many advocates of recognition of same sex marriage, civil unions, and/or domestic partners have argued for marriage benefits of (1) Property rights, (2) Pension and Health Care inclusion, (3) Taxation privileges, (4) Children and Custody Rights, and (5) Other rights currently codified for heterosexual unions be expanded for same sex, homosexual unions. Many advocates of same-sex marriage and/or civil unions have argued for simply changing the definition of marriage from “*a union of one man and one woman*” to an “*a union of 2 person*”. What is lacking in this argument is that such action removes gender from the statutory language of existing law for terms “husband”, “wife”, “spouse”, “mother”, and “father” without complete review of the effects of existing statutory law.

7. Furthermore, an obvious conflict is created regarding issues of family law regarding, annulment, divorce, and legal separation that have specific statutory prerequisites for both public policy of the State and rights on innocent spouses that needs to be addressed where homosexual conduct has not been codified into law. Thus, this report is to focus on the law involving divorce in New Hampshire regarding the term “**adultery**” defined in RSA 645:3 that is used for fault divorce in New Hampshire under RSA 458:7 if same sex unions are recognized and the impact on New Hampshire’s current laws per requested under SB 427 Amended and effective 05/14/04.

2. New Hampshire’s Current Laws Under RSA 458:7 and RSA 645:3.

8. A fundamental area of family law that every State has is laws regarding marriage also include statutory laws on divorce, annulment, and legal separation. New Hampshire is no different. An area of family laws that has long common law and statutory history is fault divorce in RSA 458:7 that states the following:

A divorce from the bonds of matrimony shall be decreed in favor of the innocent party for any of the following causes: I. **Impotency** of either party. II. **Adultery** of either party. III. Extreme cruelty of either party to the other. IV. Conviction of either party, in any state or federal district, of a crime punishable with imprisonment for more than one year and actual imprisonment under such conviction. V. When either party has so treated the other as seriously to injure health or endanger reason. VI. When either party has been absent 2 years together, and has not been heard of. VII. When either party is an habitual drunkard, and has been such for 2 years together. VIII. When either party has joined any religious sect or society which professes to believe the relation of **husband** and **wife** unlawful, and has refused to cohabit with the other for 6 months together. IX. When either party, without sufficient cause, and without the consent of the other, has abandoned and refused, for 2 years together, to cohabit with the other.

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New Hampshire's law for "**adultery**" is defined in RSA 645:3 as follows:

A person is guilty of a class B misdemeanor if, being a married person, he engages in sexual intercourse with another not his spouse or, being unmarried, engages in sexual intercourse with another known by him to be married.

9. New Hampshire's Supreme Court held IN THE MATTER OF DAVID G. LANCHFLOWER AND SIAN E. BLANCHFLOWER, 150 N.H. 226 (2003) ruled that a homosexual relationship by one spouse in a marriage did not constitute adultery for purposes of a fault divorce:

The plain and ordinary meaning of **adultery** is "voluntary sexual intercourse between a married man and someone other than his wife or between a married woman and someone other than her husband." Webster's Third New International Dictionary 30 (unabridged ed. 1961). Although the definition does not specifically state that the "someone" with whom one commits adultery must be of the opposite gender, [*4] it does require sexual intercourse... The plain and ordinary meaning of sexual intercourse is "sexual connection esp. between humans: COITUS, COPULATION." Webster's Third New International Dictionary 2082. Coitus is defined to require "insertion of the penis in the vagina[]," Webster's Third New International Dictionary 441, which clearly can only take place between persons of the opposite gender. We reject the petitioner's argument that an interpretation of adultery that excludes homosexual conduct subjects homosexuals and heterosexuals to unequal treatment, "contrary to New Hampshire's public policy of equality and prohibition of discrimination based on sex and sexual orientation." Homosexuals and heterosexuals engaging in the same acts are treated the same because our interpretation of the term "adultery" excludes all non-coital sex acts, whether between persons of the same or opposite gender. The only distinction is that persons of the same gender cannot, by definition, engage in the one act that constitutes adultery under the statute.

10. In summary, existing New Hampshire laws for fault divorce under RSA 458:7 involving **adultery** under RSA 645:3 is clearly written and interpreted to clear involve heterosexual conduct involving sexual intercourse that requires opposite genders to be involved. Furthermore, the Court also concluded this matter in reference to other New Hampshire statutes such as incest defined in RSA 639:2 involves sexual intercourse that also requires opposite genders. Hence, these issues are material and relevant to arguments on public policy issues of what laws would be affected if New Hampshire were to recognize same sex marriages, civil unions, and/or domestic partners that need to be addressed and have not been answered. Simply stated, male to male sexual conduct and female to female sexual conduct has neither legislatively defined for statutory purposes in New Hampshire's laws and would need to be addressed in any serious discussion of marriage like benefits for same sex marriages, civil unions, and/or domestic partners.

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3. Laws in Other State Where Same Sex Marriages, Civil Unions, and/or Domestic Partners Are Recognized, Summary of Findings.

11. Though several states have same-sex marriage, civil unions, and/or domestic partners by both judicial decisions (Massachusetts and Vermont) or by legislative initiatives (New Jersey, Connecticut, and California), a similar conflict exists between existing statutory laws and case law defining “**adultery**” as sexual intercourse and dissolutions for same sex couples where male to male sexual conduct and female to female sexual conduct has neither legislatively defined for statutory purposes. These conflict present serious issues for public policy involving effects of other States laws for same-sex marriage, civil unions, and/or domestic partners for New Hampshire law that needs to be addressed.

MASSACHUSETTS

12. The Massachusetts same sex decision was by ordered their State Supreme Court in GOODRIDGE vs. DEPARTMENT OF PUBLIC HEALTH, 440 Mass. 309 (2003) in a 4-3 vote. None of the same sex decision by their State Supreme Court has been codified into law by the legislature and the marriage license using terms ‘husband’ and ‘spouse’ have been replaced by terms “Party A” and “Party B” in the clerks marriage applications. Massachusetts’s existing law for divorce involving **adultery** is codified in MGL Chapter 272, Section 14 for adultery states:

A married person who has sexual intercourse with a person not his spouse or an unmarried person who has sexual intercourse with a married person shall be guilty of adultery and shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than two years or by a fine of not more than five hundred dollars.

13. In addition, Massachusetts has had similar problems with other existing laws that were originally written for sexual conduct that was primarily limited to “sexual intercourse”. In Massachusetts, the case of Commonwealth v. Smith, 431 Mass. 417 (2000) ruled the statute for “incest” was deemed only to sexual intercourse involving criminal prosecution for incest involving a parent. In response to this ruling, the Massachusetts legislature deemed it necessary to rewrite their incest statute to be all inclusive of all types of sexual behavior (MGL Ch.272, Section 17):

“Persons within degrees of consanguinity within which marriages are prohibited or declared by law to be incestuous and void, who intermarry or have sexual intercourse with each other, or who engage in sexual activities with each other, including but not limited to, oral or anal intercourse, fellatio, cunnilingus, or other penetration of a part of a person's body, or insertion of an object into the genital or anal opening of another person's body, or the manual manipulation of the genitalia of another person's body, shall be punished by imprisonment in the state prison for not more than 20 years or in the house of correction for not more than 21/2 years.”

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14. Hence, the Commonwealth of Massachusetts offers little guidance on dealing with answering questions relating to the public policy and addressing existing laws for marriage, divorce, annulment, and legal separation for same-sex couples where existing statutes are clearly written for heterosexual unions and sexuality and not homosexual conduct despite their Supreme Court decision in GOODRIDGE vs. DEPARTMENT OF PUBLIC HEALTH, 440 Mass. 309 (2003).

VERMONT

15. Vermont's State Supreme Court in Baker v. State (1999) ruled that under Vermont's public's benefits clause, denial protection of same sex couples failed the State's argument for rational basis exclusion. The Vermont's legislature passed a civil union law that was available to both in State and Non-Residents. The Vermont's legislature also passed a reciprocal benefits law for blood relatives for some property right decisions and health care, but far less exclusive than civil unions for same sex couples (Title 15, Chapter 25). Vermont's civil union law is codified in Title 15, Chapter 23, Subsections 1201- 1207. Dissolution of a civil union is governed by 15 V.S.A. § 1206 that states:

The family court shall have jurisdiction over all proceedings relating to the dissolution of civil unions. The dissolution of civil unions shall follow the same procedures and be subject to the same substantive rights and obligations that are involved in the dissolution of marriage in accordance with chapter 11 of this title, including any residency requirements. (Added 1999, No. 91 (Adj. Sess.), § 3.)

16. Vermont's Title 15, Chapter 11, Subsection 551 govern Vermont's laws for dissolution of a marriage for "Grounds for divorce from bond of matrimony" (15 V.S.A. § 551):

A divorce from the bond of matrimony may be decreed: (1) For adultery in either party...

17. First, it is important to note that **adultery** is not statutorily defined by Vermont, but the common law and statute interpretation is from the common language as used and 200 years of Vermont's family law that up until 1999 was for heterosexual marriage which is "*voluntary sexual activity (as sexual intercourse) between a married man and someone other than his wife or between a married woman and someone other than her husband*". Second, it is also important to note that "incest" is not statutorily defined by Vermont, but the common law and statute interpretation is from the common language as used and 200 years of Vermont's family law that up until 1999 was for heterosexual marriage which is "*sexual intercourse between persons so closely related that they are forbidden by law to marry*"

18. Hence, the State of Vermont offers little guidance on dealing with answering questions relating to the public policy and addressing existing laws for marriage, divorce, annulment, and legal separation for same-sex couples where existing statutes are clearly written for heterosexual unions and heterosexuality and not homosexual conduct despite their Supreme Court decision Baker v. State (1999).

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NEW JERSEY

19. The State of New Jersey passed a domestic partnership law that was effective 7/11/04 that provided marriage like benefits to both (1) Same-sex couples that are homosexuals and (2) Unmarried heterosexual couples that are older than age 62 defined in Title 26:8A-2 and Title 26:8A-4. New Jersey law has codified the dissolution process for domestic partnerships in “Title 26:8A-10 Jurisdiction of Superior Court relative to termination of domestic partnerships” as follows:

(1) The Superior Court shall have jurisdiction over all proceedings relating to the termination of a domestic partnership established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4), including the division and distribution of jointly held property. The fees for filing an action or proceeding for the termination of a domestic partnership shall be the same as those for filing an action or proceeding for divorce pursuant to N.J.S.22A:2-12. (2) The termination of a domestic partnership may be adjudged for the following causes:

(a) *voluntary sexual intercourse between a person who is in a domestic partnership and an individual other than the person's domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3)*; (b) willful and continued desertion for a period of 12 or more consecutive months, which may be established by satisfactory proof that the parties have ceased to cohabit as domestic partners...

20. New Jersey’s laws for dissolution of a marriage are governed by New Jersey Title 2A:34-2. Causes for divorce from bond of matrimony:

a. **Adultery.** b. Willful and continued desertion for the term of 12 or more months, which may be established by satisfactory proof that the parties have ceased to cohabit as **man** and **wife**...

21. First, it is important to note that since **adultery** is not statutorily defined by New Jersey’s common law and statute interpretation is from the common language as used and 200 years of New Jersey’s family law that up until 2003 until domestic partners were defined, the accepted interpretation was for heterosexual marriage which is “*voluntary sexual activity (as sexual intercourse) between a married man and someone other than his wife or between a married woman and someone other than her husband*”. Second, it is also important to note that incest is not statutorily defined by New Jersey’, but the common law and statute interpretation is from the common language as used and 200 years of New Jersey’s family law that up until 2003 was for heterosexual marriage which is “*sexual intercourse between persons so closely related that they are forbidden by law to marry*”. Third, New Jersey’s domestic partner law only uses the terms “sexual intercourse” as grounds to dissolve a same sex domestic partnership though same sex couples sexual conduct is expressly is not sexual intercourse. Hence, a double standard for heterosexual couples over age 62 to require sexual monogamy in terms of sexual intercourse but not for same sex couples involving sexual acts outside the partnership that are not sexual intercourse.

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22. Hence, the State of New Jersey offers little guidance on dealing with answering questions relating to the public policy and addressing existing laws for marriage, divorce, annulment, and legal separation for same-sex couples where existing statutes are clearly written for heterosexual unions and heterosexuality and not homosexual conduct despite their legislative classification for domestic partnerships for both (1) Same-sex couples that are homosexuals and (2) Unmarried heterosexual couples that are older than age 62.

CALIFORNIA

23. The State of California passed a domestic partnership law that was passed in 1999 and had subsequent changes over the years that provided marriage like benefits to both (1) Same-sex couples that are homosexuals and (2) Unmarried heterosexual couples that are older than age 62 according to the Secretary of State's web site regarding California's Domestic Registry (See California Family Code, Section 297-297.5). California law has codified the dissolution process for domestic partnerships in California Family Code, Section 299-299.3 as follows:

a) A registered **domestic** partnership may be terminated without filing a proceeding for dissolution of **domestic** partnership by the filing of a Notice of Termination of **Domestic** Partnership with the Secretary of State pursuant to this section, provided that all of the following conditions exist at the time of the filing:

(1) The Notice of Termination of **Domestic** Partnership is signed by both registered **domestic partners**...(c) The termination of a **domestic** partnership pursuant to subdivision (b) does not prejudice nor bar the rights of either of the parties to institute an action in the superior court to set aside the termination for fraud, duress, mistake, or any other ground recognized at law or in equity. A court may set aside the termination of **domestic** partnership and declare the termination of the **domestic** partnership null and void upon proof that the parties did not meet the requirements of subdivision (a) at the time of the filing of the Notice of Termination of **Domestic** Partnership with the Secretary of State.

(d) The superior courts shall have jurisdiction over all proceedings relating to the dissolution of **domestic** partnerships, nullity of **domestic** partnerships, and legal separation of **partners** in a **domestic** partnership. The dissolution of a **domestic** partnership, nullity of a **domestic** partnership, and legal separation of **partners** in a **domestic** partnership shall follow the same procedures, and the **partners** shall possess the same rights, protections, and benefits, and be subject to the same responsibilities, obligations, and duties, as apply to the dissolution of marriage, nullity of marriage, and legal separation of spouses in a marriage, respectively, except as provided in subdivision (a), and except that, in accordance with the consent acknowledged by **domestic partners** in the Declaration of **Domestic** Partnership form, proceedings for dissolution, nullity, or legal separation of a **domestic** partnership registered in this state may be filed in the superior courts of this state even if neither **domestic** partner is a resident of, or maintains a domicile in, the state at the time the proceedings are filed.

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24. The laws for dissolution of a marriage governed in California are codified in the CALIFORNIA CODES FAMILY CODE SECTION 2330-2348 which is entitled “Dissolution of Marriage”. California is a no-fault State for divorce where the only terms for divorce are “irreconcilable differences” and for “incurable insanity” (CALIFORNIA CODES FAMILY CODE SECTION 2310). California eliminated fault divorce for adultery, abandonment, drug addiction, and other grounds found in most States back in 1970. Hence, **adultery** or extra-marital sexual relations for husband and wives in marriage and spouses in domestic partnerships are not codified for fault in a dissolution under California family law and domestic partnership registry. However, California for their prohibitions for marriage and spouses in domestic partnerships are a different story. California in CALIFORNIA PENAL CODE SECTION 285 defines “**incest**” as follows:

Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who commit **fornication** or **adultery** with each other, are punishable by imprisonment in the state prison.

25. Furthermore, California in codifying sexual assault has defined **sodomy** in CALIFORNIA PENAL CODE SECTION 286 as follows:

Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.

26. Hence, the State California offers little guidance on dealing with answering questions relating to the public policy and addressing existing laws for marriage, divorce, annulment, and legal separation for same-sex couples though **adultery** is not a grounds for dissolution of a domestic partnerships, existing statutes for **incest** *are clearly written for heterosexual unions and heterosexuality and not homosexual conduct* despite their legislative classification for domestic partnerships for both (1) Same-sex couples that are homosexuals and (2) Unmarried heterosexual couples that are older than age 62. Thus, though **adultery** and fault divorce do not exist in California, other statutory definitions regarding conflicts involving same sex couples exist that have not been legislatively clarified despite their legislative classification of domestic partners.

CONNECTICUT

27. The State of Connecticut is the latest state to pass a civil union law that provided marriage like benefits to same-sex couples that are homosexuals that will be effective 10/1/05. According to the Legislative Office for the State of Connecticut, Connecticut’s Civil Union law differs from Vermont as follows:

1. Vermont’s law also creates a “reciprocal beneficiary” status, allowing two related people to qualify for certain benefits otherwise available only to spouses (15 V. S. A. ch. 25), while the Connecticut bill does not;

2. Vermont’s law affords no protection for state officials who decline to perform civil union ceremonies, *while the bill makes anyone authorized to perform civil unions exempt from liability for refusing to do so*;

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3. Vermont's law includes only a procedure for establishing and dissolving civil unions that parallels the state's marriage and divorce laws, while the bill also includes a provision requiring this state to recognize the validity of civil unions lawfully performed elsewhere; and

4. Vermont's law also established a commission to educate the public, study issues related to the law's implementation, and submit reports to the legislature for the first two years the law was in effect; Connecticut's bill contains no similar provision.

28. According to the Legislative Office for the State of Connecticut, the bill specifies that it extend to civil union partners may derive under statute, administrative regulations or court rules, policy, common law, or any other source of civil law. Generally, these fall into the following categories: 1. family law, including marriage, divorce, and support...Connecticut law has codified the dissolution process for marriage that is now applicable to civil unions under TITLE 46b FAMILY LAW Sec. 46b-40. (Formerly Sec. 46-32). Grounds for dissolution of marriage; legal separation; annulment are as follows

(a) A marriage is dissolved only by (1) the death of one of the parties or (2) a decree of annulment or dissolution of the marriage by a court of competent jurisdiction. (b) An annulment shall be granted if the marriage is void or voidable under the laws of this state or of the state in which the marriage was performed. (c) A decree of dissolution of a marriage or a decree of legal separation shall be granted upon a finding that one of the following causes has occurred: (1) The marriage has broken down irretrievably; (2) the parties have lived apart by reason of incompatibility for a continuous period of at least the eighteen months immediately prior to the service of the complaint and that there is no reasonable prospect that they will be reconciled; (3) **adultery**; (4) fraudulent contract.... (f) For purposes of this section, "**adultery**" means voluntary sexual intercourse between a married person and a person other than such person's spouse.

29. Hence, the State of Connecticut offers little guidance on dealing with answering questions relating to the public policy and addressing existing laws for marriage, divorce, annulment, and legal separation for same-sex couples where existing statutes are clearly written for heterosexual unions and heterosexuality and not homosexual conduct despite their legislative classification for Civil Unions for same-sex couples that are homosexuals.

ANALYSIS AND CONCLUSIONS

30. In summary, the Commission finds a review of both New Hampshire's laws and other states of Massachusetts, Vermont, New Jersey, Connecticut, and California for marriage, divorce, legal separation, and annulment clearly show that serious legislative review of **adultery** and **incest** laws would be needed if New Hampshire were to recognize same sex unions, civil unions, and/or domestic partners that mirror current marriage statutes. Simply stated, male to male sexual conduct and female to female sexual conduct has neither been legislatively defined for statutory purposes in New Hampshire's laws and would need to be addressed in any serious discussion of marriage like benefits for same sex marriages, civil unions, and/or domestic partners.

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D. Tighten the statutes on parental notification and consent on sex education in public schools. DENIED BY MAJORITY BY VOTE 5-7 ON 10/31/05

FACTS, TESTIMONY, AND RESEARCH:

1. The Commission also received expert testimony from a variety of sources, particularly those from the States of Massachusetts and Vermont that reaffirms many of the public's concern of cascade effects from the granting of legal status to homosexuality under the guise of same sex marriage. The Commission also received various emails from the public and research from individual Commissioner's regarding cascade effects in both other States and foreign jurisdictions concerning cascade effects from the granting of legal status to homosexuality that mirror the public's concern regarding effects on religious freedoms, parental rights and schools, private groups and public access, the gay rights agenda, and medical issues involving public health effects of homosexuality.

2. The Commission states that at the public hearings there was also opposition to speakers voicing their concerns on the cascade effects of granting of legal status to homosexuality under the guise of same sex marriage or civil unions. Several members continue to use a variety of propaganda techniques to silence both Commissioners and the public who raise these issues.¹¹³ The Commission is sensitive to attempt to not feed any bigotry, but at the same time discussing facts and having a debate is necessary to address policy issues at stake.

1. Parents face homosexuality being introduced in schools sex education due to SSM.

3. The Commission received a variety of testimony, research, and data to support that a major concern of the public has regarding granting legal status to same gender couples that are sexually intimate and all the issues that it may entail is the introduction of teaching of homosexuality and the history of gay rights in the public schools without parental oversight or consent.

¹¹³ See Books "The Overhauling of Straight America"
http://www.article8.org/docs/gay_strategies/overhauling.htm
and "'After the Ball - How America will conquer its fear and hatred of Gays in the 90s", 1989 by Marshall K. Kirk and Hunter Madsen, http://www.article8.org/docs/gay_strategies/after_the_ball.htm given to the Commission at Portsmouth Hearing 7/22/05.

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4. First, at the Portsmouth Public Hearing 6/22/05, speaker John Russo gave a list of books being introduced in Massachusetts Schools over the last 5 years¹¹⁴:

Exhibit #3 - Children Book "One Dad, Two Dads, Brown Dads, Blue Dads by Johnny Valentine.

Exhibit #4 - Children Book "Heather Has Two Mommies" by Leslea Newman.

Exhibit #5 - Children Book "Daddy's Roommate by Michael Willhoite

Exhibit #6 - Children Book "The Duke Who Outlawed Jelly Beans" by Johnny Valentine.

Exhibit #7 - List of Gay Theme Books from Allyson Books Publications.

Exhibit #8 - MassNews Story "Kids Get Graphic Instruction of Homosexual Sex" (2000)

Exhibit #9 - News Story from NPR "All Things Considered, 9/13/04.

Exhibit #10 - NPR Article "Pro-Gay Sex Ed on the Rise", 9/1/704

5. Also at the Portsmouth hearing, speaker Jack Luz gave a copy of the GLSEN book for Schools "*Little Black Book - Volume 2.0, Queer in the 21st Century*" that was recently distributed to at a statewide "Gay Lesbian Straight Education Network" conference held at Brookline High School on May 16, 2005. The "*Little Black Book*" is a do it yourself guide to hardcore pornographic sex acts for homosexual youths discussing such sexual acts as "rimming" (oral – anal sexual contacts) and "water sports" (self urination and defecations)¹¹⁵

6. The Commission also heard from Philip Travis, Democrat of the Massachusetts Legislature, and sponsor of Massachusetts Amendment for Massachusetts Constitutional Convention at the Keene Public Hearing on 7/25/05 and the Expert Public Meeting 9/19/05, stating that homosexual sex education now entering school system and parents are not being notified.

7. The Commission also heard from Kris Mineau, Massachusetts Family Institute at the Keene Public Hearing on 7/25/05 emphasizing the since Massachusetts legalized same sex marriage, schools are teaching issues involving homosexual sex education without parental notification or consent.

8. The Commission also heard from David Parker of Lexington, Massachusetts, a father in Massachusetts at the Nashua Public Meeting on 8/29/05 that he was arrested when he objected to school's handouts on diversity and sexual orientation given to his kindergarten aged son. SSM will take away parental rights in schools and those with objections of moral approval of homosexuality. Teachers and schools claimed "It is legal now" as a defense to supersede parental rights in schools¹¹⁶.

9. The Commission also heard for Dr. John Diggs, MD at the Expert public hearing on 9/12/05, confirming that in Massachusetts since the State Supreme Judicial Court legalized same sex marriage, the Schools and gay advocates are introducing the subject to students in public schools.

¹¹⁴ See Minutes of Portsmouth Public Hearing 6/22/05.

¹¹⁵ <http://www.article8.net/downloads/LittleBlackBook.pdf>

¹¹⁶ http://www.article8.org/docs/news_events/parker/main.htm

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10. The Commission is also aware of these issues being raised in Canada:

North of border, gay marriage spurs social revolution. In Canada, where same-sex marriage became legal in June, a social revolution is underway¹¹⁷.

Henry says Canadian schools are becoming battlegrounds. "Children will have to be taught about homosexual acts in health class, as they now are about heterosexual acts. Books that promote same-sex marriage are being introduced in some elementary schools. In one action, complainants have demanded 'positive queer role models' across the whole curriculum. If parents complain, they'll be branded as homophobes." Sound farfetched? People who disagree with same-sex marriage risk charges of hate speech. In British Columbia, teacher Chris Kempling has been found guilty -- and disciplined -- for defending male-female marriage in newspaper opinion pieces. Henry himself has been hauled before the Alberta Human Rights Tribunal for promoting traditional marriage in his pastoral letters. "The human rights tribunals have become like thought police," he says. "In Canada, you can now use the coercive powers of the state to silence opposition."

"Second, when male-female marriage and same-sex marriage become equal in the eyes of the law, treating them differently becomes discrimination. In Canada, "privileging" male-female marriage in any way is now a violation of human rights. According to Henry, "Canadians who believe in the historic definition of marriage, who believe that children need a mother and father, are now the legal equivalent of racists."

Canadian Teacher Harassed for Expressing Personal Views on Homosexuality¹¹⁸

An article in the May 18, 2003 edition of the newspaper, the *Edmonton Sun* details the consequences suffered by British Columbia schoolteacher and counselor Chris Kempling for publicly stating his views on homosexuality. Mr. Kempling's troubles began when he was handed a one-month suspension from his teaching position by the British Columbia College of Teachers, for writing a series of letters to newspapers setting forth his opinions about the way local school sex-education programs present homosexuality to children. Kempling, a Christian, pointed out that many religions consider homosexuality to be immoral. Further, he cited scientific studies which show instability and health risks associated with a gay lifestyle, all of which were omitted from mention in the school programs. The *Sun* story says that Mr. Kempling specifically addressed his comments to the public forum of the newspapers' letters column, refraining from sharing his viewpoints in the classroom.

Canadian Court Ruling May Expose Pre-School Children To Homosexual Literature¹¹⁹

Schools cannot ban books with gay-friendly themes from kindergarten classes, said Canada's Supreme Court in a December 2002 ruling. The ruling was the result of a lawsuit brought by a gay kindergarten teacher who wanted to introduce a book entitled "One Dad, Two Dads, Brown Dads, Blue Dads" to kindergarten and first-grade students. The story appeared on Reuters news service. The school board of Surrey, Vancouver, British Columbia, was criticized by a group of parents -- including Catholics, Protestants, Hindus, Sikhs, and Muslims -- who objected to the book's contents on the moral grounds of their respective faiths.

¹¹⁷ <http://www.startribune.com/stories/191/5711527.html>

¹¹⁸ <http://www.narth.com/docs/canteacher.html>

¹¹⁹ <http://www.narth.com/docs/expose.html>

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Supreme Court Chief Justice Beverly Mc Lachlin, writing for the majority, acknowledged while "religion is an integral aspect of people's lives, and cannot be left at the (school) boardroom door." However, she went on to say that "what secularism does rule out, however, is any attempt to use the religious views of one part of the community to exclude from consideration the values of other members of the community." The Surrey School Board had argued that five- and six-year old children are too young to be exposed to literature dealing with sexual themes, to which Mc Lachlin replied, "Tolerance is always age-appropriate." On the other side of the issue, Justice Charles Gonthier noted that the books went beyond expressing tolerance because they imply that all relationships are morally equivalent.

Judge Gonthier added that Canadians should not be banned from expressing moral disapproval of homosexuality. He said that pluralism should not transform tolerance into "mandated approval or acceptance." A group that argued on the side of the parents, the Catholic Civil Rights League, maintained that the ruling denies a voice to parents of conservative, traditional moral values in shaping what is essentially public policy.

11. Commissioner Fredyma submitted an executive summary of research (See Executive Summary #10 submitted July 22, 2005)¹²⁰ that listed a variety of cascade effects from persons opposed to legal status to same gender couples that are sexually intimate as equal to marriage under State policy. In Canada, a lawsuit or complaint has been filed requiring inclusion of homosexuality as a material education and inclusion in the classroom¹²¹.

VANCOUVER, B.C. July 11, 2005 (LifeSiteNews.com) – A British Columbia Human Rights Tribunal is preparing to hear what pro-family and religious groups are calling a truly frightening case. Murray and Peter Corren, a B.C. gay couple, filed a complaint against the B.C. Ministry of education in 1999 alleging that the Ministry's curriculum didn't adequately "address issues of sexual orientation." That case is slated to be heard beginning today.

Basically, there is systemic discrimination through omission and suppression of queer issues in the whole of the curriculum," alleges Murray Corren, who is an elementary school teacher in Port Coquitlam. What many are finding deeply disturbing, however, is that the Corren's are not only seeking inclusion of explicitly homosexual material in the curriculum, promoting homosexuality as a normative and safe lifestyle option, but also that they wish to ensure that the material is mandatory.

12. Commissioner Fredyma submitted an executive summary also included a list of other States and pending issues involving the effect of granting legal status to same gender couples that are sexually intimate in form of State recognized form equivalent to marriage.

¹²⁰ Executive Findings and Summary #10 – Review of Same Sex Unions Cascade Effects, Part II Employment Law and Public Schools by Commissioner Fredyma, 7/22/05

¹²¹ <http://www.lifesite.net/ldn/2005/jul/05071106.html> B.C. Gay Couple Seeks Mandatory Homosexual School Curriculum Without Parental Opt-Out

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Fireworks arrive early as school board looks at marriage¹²²

Ninth-grade health textbooks in Conejo Valley Unified School District (CVUSD) will define marriage as an agreement of partners—not just a man and a woman—after action at Tuesday night's board of education meeting. Trustees listened to nearly three emotion-filled hours of passionate public debate on the issue of whether or not CVUSD should approve a new ninth grade health textbook that doesn't define marriage as a union between a man and a woman. Board members decided to follow the original advice of the committee that reviewed the books

13. The Commission is aware that the debate and concern of that homosexuality is being introduced in schools sex education due to the granting legal status to same gender couples that are sexually intimate by the State in the form of same sex marriage, civil unions or domestic is real and rational due to the volume of litigation available publicly. The same advocates for same sex marriage are also advocates for induction of issues of homosexuality labeled as diversity training and violence prevention and new actors such as the Gay Lesbian Straight Education Network (GLSEN) in the public schools.

California

ACLU Victory: Pro-Homosexual Training Required for School District ACLU says new program will "serve as a model"; schools warned of lawsuits if homosexuality is not affirmed.¹²³

The American Civil Liberties Union in cooperation with the National Center for Lesbian Rights, won a major victory on January 6, 2004, against the Morgan Hill, California school district. The ACLU victory was a \$1.1 million settlement against the school district over the district's alleged failure to protect six homosexual students from harassment in 1998. In addition to the \$1.1 settlement, the ACLU also won a requirement that all school district administrators, teachers, campus monitors, custodians, school safety officers, and bus drivers take a pro-homosexual sensitivity training program.

Beginning in the 2004-2005 school year, the district will also require peer-to-peer training for all 9th graders on "anti-gay harassment." All 7th graders will be required to take classes on anti-gay harassment as well. Student handbooks and school policy manuals will be revised to state that "harassment and discrimination based on actual or perceived sexual orientation and gender identity is expressly prohibited under district policies and state law." This policy will remain in effect in the school district until June 30, 2008.

The inclusion of protections for "gender identity" will create a new set of challenges for school officials. "Gender identity" refers to drag queens, cross-dressers, and transsexuals (all included under the umbrella term, "transgender"). Under this new policy, school officials will apparently be prohibited from banning male students from attending school wearing the apparel of the opposite sex.

¹²² http://www.toacorn.com/news/2005/0630/Front_Page/002.html

¹²³ <http://www.narth.com/docs/victory.html>

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New York¹²⁴

New York Gay Rights Bill Targets Schools

A recent press release from the National Non-Sectarian Council of Pro-Family Activists addressed New York's pro-gay "Dignity for All Students Act," officially known as State Assembly Bill A1118. According to Council director David Eidensohn, the proposed bill would have far-reaching effects. The bill, if enacted, would place into New York schools state issued teaching materials (including textbooks) that would present such things as homosexuality and cross-dressing as normal, acceptable behavior. It would also label those who disagree with this opinion as bigoted and intolerant. And not only would public schools be affected; this material would also be required teaching in the state's religious schools, conflicting with the moral and theological doctrines taught in Jewish and Christian parochial schools. "The Bill is called 'Dignity for All Students' but does not teach dignity for religious students," said Eidensohn, who is a rabbi. He maintained that the bill would "replace discrimination against gays with discrimination against biblical and traditional family people."

GLSEN and GSA's

Gay Straight Alliance (GSA) High School Leader Threatens To Sue School Over Homophobia¹²⁵

June 14, 2005 - Justin Haley, head of the Gay Straight Alliance (GSA) club on the campus of West High School in Tracy, California, is threatening to sue the school over homophobia. Gay Straight Alliance clubs are sponsored by the national Gay, Lesbian and Straight Education Network (GLSEN). According to a report in the *Tracy Press* (June 13, 2005), Haley is talking to the American Civil Liberties Union about pursuing a law suit against the school unless all teachers are required to go through anti-homophobia training. "I'm giving them time to redeem themselves," Daley. "If the problems are fixed, then I won't move any further with it." Daley is a junior in the Institute for Global Commerce and Government program at the high school. An ACLU spokesman has noted: "We help school districts comply with anti-harassment laws both by referring them to trainers and doing training ourselves. We also do the same thing of protecting students when school districts fall down on the job, and when a lawsuit is the only approach to ensure that students are not harassed on campus."

In an effort to counter the political agenda of Gay Straight Alliance clubs on high school campuses, the Pro-Family Law Center has published a 15-page legal brief on the liability of hosting such clubs. The report, "The Legal Liability Associated With Homosexuality Education In California Public Schools,"¹²⁶ notes that one of the key arguments against imposing pro-homosexual education upon students is that it amounts to religious discrimination. Most of the world's religions condemn homosexuality. "In light of this fact, the adoption by schools of any policy which defines opposition to homosexuality as wrong, harmful, immoral or 'homophobic' directly attacks the religious beliefs and values of many students."

¹²⁴ <http://www.narth.com/docs/targets.html>

¹²⁵ <http://www.narth.com/docs/sueschool.html>

¹²⁶ http://www.abidingtruth.com/_docs/resources/2032505.pdf

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The report also notes that pro-homosexual education violates parental rights; creates a hostile academic environment; endangers the physical health of children; violates freedom of speech; and more. Dr. Sander Breiner, Professor of Psychiatry at Michigan State University, and a member of NARTH's Scientific Advisory Committee, presented a compelling paper¹²⁷ at the November, 2004 NARTH conference on the impact that pro-homosexual teachings can have on the maturing adolescent brain. According to Dr. Breiner, research indicates that the adolescent brain is still maturing and can be impacted by experiences and stresses. Sexually questioning teens can be derailed in their normal development if they are exposed to confusing sexual messages in junior high or high school.

14. Finally, the Commission is aware that recently a California Court ruled that parents don't have any rights to know about children's education on issues of sexuality that is clearly an issue that will add fuel to the fire in the area of cascade effects that involve legal recognitions of gay or lesbians as new class equal to marriage.

Court Upholds Calif. School's Sex Survey^{128, 129}

SAN FRANCISCO (AP) -- A federal appeals court Wednesday dismissed a lawsuit by parents who were outraged that a school district had surveyed their elementary school-age children about sex. The three-judge panel of the 9th U.S. Circuit Court of Appeals rejected the parents' claim that they have the exclusive right to tell their children about sex. In upholding a lower court ruling against the parents, Circuit Judge Stephen Reinhardt said "no such specific right can be found in the deep roots of the nation's history and tradition or implied in the concept of ordered liberty." The appeals court noted that other courts have upheld mandatory health classes, a school system's condom distribution program and compulsory sex ed. An attorney for the parents, Erik Gunderson, said he was considering an appeal. The district's attorney, Dennis Walsh, said the survey was part of a legitimate effort aimed at helping students. The district dropped the survey in 2002 amid complaints from parents. It was given to children in the first, third and fifth grades as part of a program to gauge early trauma and help youngsters overcome barriers to learning. Among other things, the students were asked how often they thought about sex. Parents whose students took the survey signed consent forms. But the forms never mentioned sex would be a topic.

ANALYSIS AND CONCLUSIONS:

15. The Commission's study of granting legal status to same gender couples and concerns about legal policies concerning the same sex couple extents both ways regarding public policies and the effects on the private and public institutions such as employers or employees, public educations, private groups, commerce, religion, and government. The issues of cascade effects are not to be dismissed. Especially when it involves areas of constitutional protected rights. Thus, the Commission finds that parental rights should be protected if legal recognition is given to same gender couples identified as gays and lesbians. An example of possible parental notification can be found in Rep. Russ Albert's bill filed last year in the New Hampshire House¹³⁰.

¹²⁷ Adolescent Homosexuality, <http://www.narth.com/docs/breiner2.html>

¹²⁸ Concord Monitor AP, 11/2/05, By DAVID KRAVETS Associated Press Writer

¹²⁹ <http://caselaw.lp.findlaw.com/data2/circs/9th/0356499p.pdf> **Fields vs. Palmdale**, U.S. Appeals Court 9th Circuit, 11/2/05

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- E. Include “religious creed” in RSA 354-A:1, RSA 354-A:8 , RSA 354-A:16,
and RSA 354-A:17 as similarly found in RSA 354-A:7.
DENIED BY MAJORITY BY VOTE 5-7 ON 10/31/05**

FACTS, TESTIMONY, AND RESEARCH:

1. The Commission addressed the subject of studying the duties of granting legal status to same gender couples that are sexually intimate and all the issues that it may entail. The Commission noted that the opposition to granting legal status to same gender couples that are sexually intimate deals exclusively with granting legal status of homosexuality by persons that have both religious objection and secular objection regarding cascade effects on religious freedoms, parental rights and schools, private groups and public access, the gay rights agenda, and medical issues involving public health effects of homosexuality.
2. The Commission also received expert testimony from a variety of sources, particularly those from the States of Massachusetts and Vermont that reaffirms many of the public’s concern of cascade effects from the granting of legal status to homosexuality under the guise of same sex marriage. The Commission also received various emails from the public and research from individual Commissioner’s regarding cascade effects in both other States and foreign jurisdictions concerning cascade effects from the granting of legal status to homosexuality that mirror the public’s concern regarding effects on religious freedoms, parental rights and schools, private groups and public access, the gay rights agenda, and medical issues involving public health effects of homosexuality.
3. The Commission states that at the public hearings there was also opposition to speakers voicing their concerns on the cascade effects of granting of legal status to homosexuality under the guise of same sex marriage or civil unions. Several members continue to use a variety of propaganda techniques to silence both Commissioners and the public who raise these issues¹³¹. The Commission is sensitive to attempt to not feed any bigotry, but at the same time discussing facts and having a debate is necessary to address policy issues at stake.

¹³⁰ <http://www.gencourt.state.nh.us/legislation/2005/HB0039.html> HOUSE BILL 39 AN ACT relative to sex education in public schools. SPONSORS: Rep. Albert, Straf 1; Rep. Cady, Rock 1; Rep. Souza, Hills 11, I. No pupil shall be required to take or participate in any class or course in comprehensive sex education if a parent or guardian submits written objection thereto. Refusal to take or participate in such course or program shall not be reason for suspension or expulsion of such pupil. Each class or course in comprehensive sex education offered in any of grades 6 through 12 shall include instruction on the prevention, transmission, and spread of acquired immune deficiency syndrome (AIDS). Nothing in this section shall prohibit instruction in sanitation, hygiene, or traditional courses in biology.

¹³¹ See Books “The Overhauling of Straight America” http://www.article8.org/docs/gay_strategies/overhauling.htm and ““After the Ball - How America will conquer its fear and hatred of Gays in the 90s”, 1989 by Marshall K. Kirk and Hunter Madsen, http://www.article8.org/docs/gay_strategies/after_the_ball.htm given to the Commission at Portsmouth Hearing 7/22/05.

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A. Private organizations such as Boy Scouts face ban for public access opposed to SSM.

4. Commissioner Fredyma submitted an executive summary of research (See Executive Summary Executive #5 submitted June 21, 2005¹³²) that listed a variety of cascade effects from persons opposed to legal status to same gender couples that are sexually intimate as equal to marriage under State policy.

The State Commission for Human Rights and public access has several deficiencies that may cause the loss of civil rights and availability of public access for persons, groups, and organizations that have a religious or moral objection to homosexuality or legal recognition of same sex unions. This effect is know as the “cascade effect” that is relevant to the Commission.

- New Hampshire RSA 354-A:7¹³³ codifies **religious creed** as a category for protection against discrimination and also **sexual orientation**.
- New Hampshire RSA 354-A:8¹³⁴ codifies sexual orientation as a civil right for equal housing opportunities but not religious creed.

¹³² Commissioner Fredyma **Executive Summary #5 - Review of Existing NH Law for Public Access and Effects on Private or Religious Groups Opposed to Homosexuality**, dated 6/20/05.

¹³³ **354-A:7 Unlawful Discriminatory Practices.** – It shall be an unlawful discriminatory practice: I. For an employer, because of the age, sex, race, color, marital status, physical or mental disability, **religious creed**, or national origin of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's **sexual orientation**. II. For a labor organization, because of the age, sex, race, color, marital status, physical or mental disability, **creed**, or national origin of any individual, to exclude from full membership rights or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer, unless based upon a bona fide occupational qualification. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's **sexual orientation**. III. For any employer or employment agency to print or circulate or to cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry or record in connection with employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, sex, race, color, marital status, physical or mental disability, **religious creed** or national origin or any intent to make any such limitation, specification or discrimination in any way on the ground of age, sex, race, color, marital status, physical or mental disability, **religious creed** or national origin, unless based upon a bona fide occupational qualification; provided, however, that nothing in this chapter shall limit an employer after the offer of hire of an individual from inquiring into and keeping records of any existing or pre-existing physical or mental conditions. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's **sexual orientation**.”

¹³⁴ **RSA 354-A:8 for Equal Housing as a Civil Right:** “The opportunity to obtain housing without discrimination because of age, sex, race, creed, color, marital status, familial status, physical or mental disability or national origin is hereby recognized and declared a civil right. In addition, no person shall be denied the benefit of the rights afforded by this section on account of that person's **sexual orientation**.”

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- New Hampshire RSA 354-A:16¹³⁵ codifies sexual orientation as a civil right for equal access to public accommodation but not religious creed.
- Case law, Evans v. City of Berkeley, 104 Cal. App. 4th 1 (2002)¹³⁶ for California involving the Boy Scouts of America involving a public access law similar to New Hampshire has required the Boy Scouts of America to be expelled from a public marina due to their opposition to allow homosexual members.
- Case law, Boy Scouts of Am. v. Wyman, 335 F.3d 80 (2003)¹³⁷ for Connecticut involving the Boy Scouts of America involving an anti-discrimination law similar to New Hampshire has required the Boy Scouts of America to be expelled from a public charity status due to their opposition to allow homosexual members.

The state singled out Connecticut Boy Scout councils that had participated in the campaign for 30 years, but still allowed a wide variety of other groups to participate, including gay and lesbian groups and numerous organizations that limit services to a particular sex, ethnicity, age group, or sexual orientation. In summary, groups such as the Boy Scouts of America or other charities could be denied access to (a) The White Mountains, (b) Town or City Halls that rent office space for functions, and (c) Public Universities that allow rental space of their facilities.

5. The Commission notes that research is available at such private groups such as the Boy Scouts that list the litigation past and present on these subjects¹³⁸. Their position is that the laws originally designed and intended for purposes of anti-discrimination based on “sexual orientation” are now being used to such exclude groups from the public forum and private membership activities in the public sphere because they have religious or secular objection to membership to gay and lesbians or same sex marriage through the soft powers of the law now, even though they have a constitutional protected right in Boy Scouts of America v. Dale¹³⁹, 530 U.S. 640 (2000),

3 Citizens face possible loss of speech rights or exercise of religious or conscious if opposed to SSM as either public or private employees.

6. Commissioner Fredyma submitted an executive summary of research (See Executive Summary #10 submitted July 22, 2005)¹⁴⁰ that listed a variety of cascade effects from persons opposed to legal status to same gender couples that are sexually intimate as equal to marriage under State policy that would effect private and public employers and their employers.

¹³⁵ RSA 354-A:16 for Equal Access Under Public Accommodation: “The opportunity for every individual to have equal access to places of public accommodation without discrimination because of age, sex, race, creed, color, marital status, physical or mental disability or national origin is hereby recognized and declared to be a civil right. In addition, no person shall be denied the benefit of the rights afforded by this section on account of that person's **sexual orientation**.”

¹³⁶ <http://login.findlaw.com/scripts/callaw?dest=ca/caapp4th/slip/2002/a097187.html>

¹³⁷ http://www.bsalegal.org/downloads/SECOND_CIRCUIT_FINAL.pdf

¹³⁸ <http://www.bsalegal.org/accessto-154.htm>

¹³⁹ <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=530&invol=640>

¹⁴⁰ Executive Findings and Summary #10 – Review of Same Sex Unions Cascade Effects, Part II Employment Law and Public Schools by Commissioner Fredyma, dated 7/22/05

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Vermont: www.wnd.com/news/article.asp?ARTICLE_ID=45073

Lesbians target innkeeper over same-sex 'wedding'. File complaint against Catholic family for reluctance to host civil union service

A lesbian couple filed a discrimination complaint against a family-run inn because the Roman Catholic owners said they would be reluctant to plan and host a civil union ceremony. The inn owners, identified only as Jim and Mary, are charged with violating Vermont's Fair Housing and Public Accommodations Act.

United Kingdom: <http://news.bbc.co.uk/1/hi/uk/4617849.stm>

The Co-operative Bank has asked an evangelical Christian group to close its account because of its anti-homosexual views.

The bank said the opinions of Christian Voice were incompatible with its support for diversity. It is now waiting for other religious groups with similar opinions to be asked to close accounts, it added. Christian Voice has held an account with the Co-operative Bank for about three years.

Illinois: http://www.wnd.com/news/article.asp?ARTICLE_ID=44961

Allstate terminates manager over homosexuality column. On own time, man posted anti-'gay' article insurance giant says didn't reflect its values

A former manager with [Allstate](#) has sued the insurance giant, alleging the company, which financially supports homosexual advocacy groups, fired him solely because he wrote a column posted on several websites that was critical of same-sex marriage and espoused his Christian beliefs. "I explained to Allstate that the article was a reflection of my personal Christian beliefs, and that I had every right to both write it and to have it published," Barber told WND. "I further explained that I had written the article while at home on my own time, that I never mentioned Allstate's name and that I neither directly nor indirectly suggested that Allstate shared my Christian beliefs or my views on same-sex marriage."

Tennessee: http://www.wnd.com/news/article.asp?ARTICLE_ID=38996

Letter to the editor gets man fired. 'Conservative libertarian' says 'no-life idiot' complained to his boss.

A computer consultant believes he was fired from his job after a newspaper published his letter to the editor espousing his "conservative libertarian" views. "To get somebody fired for the opinion they hold, yeah, I'm p---ed," said Bill Cisco of Franklin, Tenn. Cisco, who also hosts a [weekend radio talk show](#) was a contract worker for the [Russell Corporation](#), an Atlanta-based marketer of athletic apparel with 17,000 employees worldwide and annual sales of \$1.2 billion. His saga began June 10 when he wrote a letter to the editor of [the Tennessean](#), responding to a [commentary about the welfare of children in the Volunteer State](#).

New York: http://www.wnd.com/news/article.asp?ARTICLE_ID=29394

Kodak fires man over 'gay' stance. 23-year veteran of global film giant objected to pro-homosexual memo.

A 23-year veteran of the Eastman Kodak Co. has been fired after objecting to a pro-homosexual memo this month and is now looking to take legal action against the film giant. Rolf Szabo, who worked as a millwright at Kodak's world headquarters in Rochester, N.Y., was terminated for refusing to recant remarks officials say did not adhere to the company's "Winning & Inclusive Culture" designed to promote diversity among employees.

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ANALYSIS AND CONCLUSIONS:

7. The Commission's study of granting legal status to same gender couples and concerns about legal policies concerning the same sex couple extents both ways regarding public policies and the effects on the private and public institutions such as employers or employees, public educations, private groups, commerce, religion, and government. The issues of cascade effects are not to be dismissed. Especially when it involves general constitutional protected rights.

8. Hence, the Commission recommends the legislature include "religious creed" in RSA 354-A:1, RSA 354-A:8, RSA 354-A:16, and RSA 354-A:17 as similarly found in RSA 354-A:7 if legal recognition is given to same gender couples identified as gays and lesbians where protection for sexual orientation currently exist but religious creed does not. Finally, the Commission notes that religious liberty is deemed a fundamental right under the Federal and State constitutions while homosexuality or same sex marriage is not. See New Hampshire Constitution which gives legal protections for religious freedoms in Part I, Article 4, 5, and 6¹⁴¹:

[Art.] 4. [Rights of Conscience Unalienable.] Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience. *June 2, 1784*

[Art.] 5. [Religious Freedom Recognized.] Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace or disturb others in their religious worship. *June 2, 1784*

[Art.] 6. [Morality and Piety.] As morality and piety, rightly grounded on high principles, will give the best and greatest security to government, and will lay, in the hearts of men, the strongest obligations to due subjection; and as the knowledge of these is most likely to be propagated through a society, therefore, the several parishes, bodies, corporate, or religious societies shall at all times have the right of electing their own teachers, and of contracting with them for their support or maintenance, or both. But no person shall ever be compelled to pay towards the support of the schools of any sect or denomination. And every person, denomination or sect shall be equally under the protection of the law; and no subordination of any one sect, denomination or persuasion to another shall ever be established. *June 2, 1784 Amended 1968 to remove obsolete sectarian references.*

¹⁴¹ <http://www.state.nh.us/constitution/billofrights.html>

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V. CONCLUSION

The issues involved in reviewing the policies of legal recognition of same sex couples require us to look at a large number of complex issues. Many of these issues are legal and involve not only the laws of New Hampshire, but the laws of other States and also the Federal Government. This issue of the effects of other States and the Federal government were ignored by the decision of Goodridge vs. Department of Public Health, 440 Mass. 309 (2004) but cannot be ignored by the Commission. First, as stated earlier, the issue of legal recognitions of same gender sexual unions cannot be exported outside of New Hampshire due to the fact that 44 States have laws banning same sex marriage. 19 States have placed this prohibition in their State Constitutions, and as many as a dozen States have laws banning legal recognition of ANY same sex union whether classified as civil unions or domestic partnerships. In addition, those States that do have a legal recognition of same sex marriage, civil unions, or domestic partnerships, most are inconsistent regarding recognition of foreign same sex unions (see States of Massachusetts, Vermont, and Connecticut as an example). Thus, for all practical purposes, legal recognition of same gender sexual relationships can only be discussed in terms of New Hampshire residents within the borders of New Hampshire.

Second, it is important to clarify what is the legal recognition of same sex unions where the Minority Report sheds no light on the subject except to call persons who discuss these matters as homophobic or bigots. By definition, legal recognition of same sex unions as equivalent to marriage is about the recognition of homosexuality as an essential element for society by recognizing same gendered persons as sexual partners of each other. This is a social and culture issue with no prior precedent. In addition, it is also important to note that sexual mechanics of homosexuality need to be discussed if same sex marriage were made legal. These matters would have to be written into the culture and social fabric that the Minority refuses to address. When the Majority discussed issues such as how fault divorce laws are written for sexual intercourse and how the laws would need to be changed, the Majority was mocked. When the Majority referenced medical literature from the U.S. CDC and testimony of Dr. Diggs regarding male to male homosexual mechanics involving risks of STD's or diseases such as hepatitis A & B, the Majority was mocked. Finally, when the Majority referenced these topics being introduced in public schools, and gay themes introduced in kindergarten classes, the Minority continued to mock and attempted to silence the debate. Thus, the Minority continues to only see the issues of same sex marriage as about their rights and not of the consequences on other social or public policy issues.

Third, same sex marriage advocates cry equality for being denied legal recognition, but when confronted with other classes of persons who are not included in the right to marry or rights from marriage, they assert that such discussions are not relevant to the debate. For example, New Hampshire bars first cousins from marrying but NONE of the gay rights advocates claim their civil rights are being denied, though 25 States allow first cousins to marry, while only one State, Massachusetts has deemed same sex marriage as a fundamental right.

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In addition, when another class of persons regarding exclusion from marriage benefits such as those blood or kinship family households was mentioned, the Minority attempted to claim it is not under the scope of the duties of the Commission. Specifically, if a State is to offer a formal recognition of the relationship of two persons of the same gender that are sexually intimate for the purposes of accessing certain benefits that are reserved for married persons or persons related by blood, then why should other groups be excluded, and under what constitutional analysis? The Mooney Minority Report references this debate and cites the case of Moore v. E. Cleveland 431 U.S. 494 (1977). This case ruled that persons related by blood or kinship have a fundamental right to choose their living arrangement and the State cannot force persons to live solely in nuclear type families. Thus, the Minority citing the New Hampshire Constitution for Part I, Articles II and Article X as preventing classes of persons from being discriminated against, has no answer to why extended families related by blood or kinship as cited in Moore should not be included. The Mooney Minority Report took these questions seriously but the Minority often stated that reciprocal benefits are demeaning to gays and lesbians, because they did not recognize them as sexual partners of each other, independent of the rights that would flow from this proposed model. Hence, same sex advocates, when given the choice, want societal approval of their lifestyle first and the economic benefits second.

Fifth, the legal standard often cited by the Minority that there is no rational basis to deny extension of marriage to same gender couples, makes the mistake on the constitutional standard for the rational basis of marriage. The rational basis of marriage involving a male and female is related to (a) providing the optimum environment for raising and developing children for the next generation and (b) linking children to their biological parents. Since same sex unions can NEVER create children without borrowing from existing heterosexual unions or using reproductive technologies which are State regulated, the extension of marriage for same sex couples under the disguise of children is fatally flawed. Finally, as stated by several State Supreme and Federal Court decisions, the denial of same sex marriage is not the same thing as denial of interracial marriage.

Sixth, the Minority continues to ignore and downplay the cascade effects that have been reported in other jurisdictions such as Massachusetts, Vermont, Connecticut, California, Canada, and Europe. This matter falls clearly within the duties of the Commission and received public testimony in Portsmouth, Keene, and Nashua with these concerns. Many on the Minority attempted to attack the public who raised religious objections, often asking if they still owned slaves or flogged their wife, hoping to make persons with any religious beliefs feel small or belittled.

In summary, same sex marriage is a sociological arrangement and not a biological arrangement that is necessary for society. It is about redefining marriage and should be looked at for all the effects it has on society and not just the alleged benefits it may have on same sex couples.

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Respectfully Submitted,

Jack T. Fredyma

Public Member Appointee, Jack Fredyma