

fundamental and protected under state constitutional provisions that contain language similar to the New Hampshire Constitution.⁵⁵

These cases powerfully demonstrate that the mutual love, respect, commitment, and intimacy that define the marital relationship are integral to the dignity and happiness of couples and are valuable to society as a whole. Direct state intrusion into these core decisions inevitably impose an intolerable indignity on an individual. As both the U.S. Supreme Court and other courts have made clear, the constitutional right to privacy and autonomy, of which the right to marry is a part, is a recognition that some decisions are so intimate and so central to human dignity and individual identity that they must be protected from undue government interference.⁵⁶

4. Marriage is the Gateway to Tangible Rights and Responsibilities That Help Stabilize Couples and Families and Leave Families Without Access to these Protections Legally, Financially, and Socially Vulnerable.

Marriage is not just about ideals of love, commitment, and personal responsibility. It is an enormous legal institution -- it is our major legal institution for recognizing and protecting families. Marriage conveys a unique legal status recognized by governments and private entities around the world and is the gateway to tangible protections and responsibilities. At the federal level, there are at least 1,138 laws in which marital status is a factor.⁵⁷ Similarly, the State of New Hampshire treats married people different from single people when it comes to protections and responsibilities available under state law.

⁵⁵ For example, the Texas Appeals Court found a right to marry under a constitutional provision strikingly similar to Part I, Article 10. See Bailey v. City of Austin, 972 S.W.2d 180, 189 (Ct. App. Tex. 1998) (“Under both the federal and state constitution, the freedom to marry is recognized as a fundamental right.”). Similarly, a Louisiana Appellate Court ruled that the state and federal constitutions “recognize the fundamental liberty interest or right of personal privacy in decisions relating to marriage...” Reinhardt v. Reinhardt, 720 So. 2d 78, 79 (La. App. 1st Cir. 1998).⁵⁵ See also Beeson v. Kiowa County Sch. Dist., 567 P.2d 801, 805 (Colo. Ct. App. 1977) (finding public policy that “the creation of a ‘marriage relationship’ is a fundamental right in this jurisdiction”); Fabio v. Civil Service Comm’n of Pennsylvania, 489 Pa. 309, 323 (1980) (constitutional right to privacy encompasses activities relating to marriage);⁵⁵ In re Appeal of Alfie Coats, 849 A.2d 254, 262 (Pa. Super. 2004) (“It is settled that marriage is a fundamental right under both the United States Constitution and the Pennsylvania Constitution”); In the Matter of Baby M., 109 N.J. 396, 447 (1988) (referring to the “rights of personal intimacy, of marriage, of sex, of family, of procreation,” and declaring that “[w]hatever their source, it is clear that they are fundamental rights protected by both the federal and state Constitutions”);⁵⁵ Boynton v. Kusper, 494 N.E.2d 135, 140 (Ill. 1986) (“[f]reedom to marry has been recognized as a fundamental right”).⁵⁵

⁵⁶ See, e.g., Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 851 (1992).

⁵⁷ A report issued by the United States General Accounting Office on January 23, 2004 reported “a total of 1,138 federal statutory provisions classified to the United States Code in which marital status is a factor in determining or receiving benefits, rights, and privileges.” See GAO-04-353R, Defense of Marriage Act, at <http://www.gao.gov/>.

a. Analysis of the Rights and Responsibilities Granted to Married Couples in New Hampshire.

The New Hampshire Attorney General's Office provided the Commission with a list of over 800 sections or subsections in the New Hampshire statutes that contain terms related to marriage, spouses or parenting ("marriage", "husband", "wife", "relative", "family", "spouse", "parent", "father", "mother" and "divorce"). A substantive analysis of New Hampshire statutes provided to the Commission by Gay & Lesbian Advocates & Defenders (GLAD), a non-profit legal rights organization, reveals a total of 399 New Hampshire statutory provisions in which rights and responsibilities are contingent on marital status or in which marital status is a factor in the allocation of rights, benefits and responsibilities under state law.

The Commission has not undertaken its own study of New Hampshire laws as they relate to and affect same-sex couples. Though charged with the obligation 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, the Commission has not, and cannot, report on the full range of protections available to married couples or on the myriad of ways same-sex couples and New Hampshire communities are harmed by denying same-sex couples access to these legal protections and obligations. It has speculated, based upon GLAD's analysis, that only 250 or so New Hampshire statutes provide express rights, privileges, or restrictions that relate to marriage and/or kinship and that only 200 or so provide advantages to married persons.⁵⁸ Whatever the count, one thing is clear: the vast majority of New Hampshire's statutory protections and obligations are simply off limits to gay and lesbian couples and their children absent marriage, even though these same protections and responsibilities are good for all families.

While analysis of the full range of these protections has been beyond the scope of the Commission's work to date, the ways in which New Hampshire law

⁵⁸ In crafting various proposals to extend to same-sex couples only a small sliver of the rights and obligations available to married couples, the Majority stated that some areas of that law were "complex" and "required large-scale legislative review" before same-sex couples could be granted rights and obligations associated with such areas of law. See, e.g., Statement on Hawaii Model for Reciprocal Benefits for Classes Persons That Cannot Marry In NH (presented by Commissioner Maureen Mooney for discussion on October 31, 2005). Of course, this was precisely the purpose of the commission.

treats married people different from single people breaks down into three basic categories.

b. The Law Protects the Deep Emotional Attachment and Commitment of Married Couples.

First, many protections recognize that people who marry form deep emotional attachments to one another that make it inappropriate to treat them as mere acquaintances or strangers. Examples of these types of protections include:

- A spouse has priority in determining how to dispose of the remains of a deceased spouse.⁵⁹
- The right of a married person to bring a suit for loss of consortium against a person who has wrongfully injured his or her spouse for the loss of his or her companionship.⁶⁰
- The right of a married couple, if both spouses are in the same nursing home facility, to share a room (unless medically contraindicated).⁶¹
- The right to a spouse to learn of the circumstances of a fatal motor vehicle accident involving his or her spouse.⁶²
- The right of a surviving spouse to receive mental health services at the expense of the criminal defendant responsible for the spouse's death.⁶³
- A surviving spouse's place as first in priority in a list of persons who can decide to make an anatomical gift, recognizing both that the surviving spouse is the person having the strongest claim to the remains of the deceased and that the surviving spouse is the person most likely to know what the deceased would have wanted if the 5 spouse had expressed his or her wishes during his or her lifetime.⁶⁴

c. The Law Protects the Financial Interdependency of Married Couples.

⁵⁹ NH Rev. Stat. Ann. §§290:11, 16. If a person had contracted for disposal of his remains before death, or if a guardian or conservator had been appointed before death, then that contract or appointment would take precedence over the surviving spouse. NH Rev. Stat. Ann. §290:17.

⁶⁰ NH Rev. Stat. Ann. §507:8(a)

⁶¹ NH Rev. Stat. Ann. §151:21.

⁶² NH Rev. Stat. Ann. §264:26.

⁶³ N.H. Rev. Stat. Ann. §651:62.

⁶⁴ NH Rev. Stat. Ann. §291-a:4.

The second category of protections is those acknowledging that people who marry form integrated economic units that make it inappropriate to treat them as separate. Examples of these protections include:

- The right of spouses of employees injured or killed on the job to receive dependency benefits from the worker's compensation system.⁶⁵
- The ability of a married spouse to remain in the home following his or her spouse's death and to protect his or her spousal interest in the home from creditors.⁶⁶
- The duty that husbands and wives owe to third parties for the necessary expenses for food, shelter, and medical care.⁶⁷
- The assurance that pension and disability payments will continue for the spouses of state employees following the employees' deaths.⁶⁸
- The multitude of protections a surviving spouse receives upon his or her loved one's death, including that a surviving spouse is entitled to automatically receive wages due to the deceased at time of death;⁶⁹ that a surviving spouse may receive support from the estate if the assets are sufficient to so provide;⁷⁰ that after estate debts and obligations are paid, if any surplus remains in the estate, the surviving spouse is entitled to receive an automatic share of the real and personal estate of the deceased spouse including one-third of the total estate if there are children and up to \$20,000 plus one-half of the remainder if there are no children.⁷¹
- The divorce laws' recognition of both the intermingled financial relationships of married couples and the financial dependencies that often arise during marriage, including the requirement of equitable property division,⁷² and the provision of alimony when a spouse lacks sufficient income to provide for reasonable needs.⁷³
- Spouses have access to family health and auto insurance policies.⁷⁴

⁶⁵ N.H. Rev. Stat. Ann. §281-a:2 et seq.

⁶⁶ NH Rev. Stat. Ann. §§480:1-9, 477:27-29, 44.

⁶⁷ N.H. Rev. Stat. Ann. §§126-A:36, 165:19, 167:2, 167:28; 546-A:2, 639:4.

⁶⁸ N.H. Rev. Stat. Ann. §§ 100-a:1 et seq.

⁶⁹ N.H. Rev. Stat. Ann. §560:20

⁷⁰ N.H. Rev. Stat. Ann. §§554:19, 560:1.

⁷¹ N.H. Rev. Stat. Ann. §560:10.

⁷² N.H. Rev. Stat. Ann. §458:16-a.

⁷³ N.H. Rev. Stat. Ann. §458:19, 19-a, 21.

⁷⁴ N.H. Rev. Stat. §§ 21-I:26 (group insur.); 415:5 (accident and health insur.); 100-A:52 (retiree medical benefits); 407-B:3 (motor vehicles); 415:21 (catastrophic loss insur.); 420-A:1 (health insur.).

d. The Laws of Marriage Can Bring Additional Security to Children

The third category of marital protections recognizes that marriage is often the setting in which children are raised, and that the law should take account of that to assure the well being of children. While many of the benefits and responsibilities of parenting turn not on a person being a married parent but simply on being a biological or adoptive parent (whether or not the person is married), marriage establishes a framework through which spouses may secure their legal status as parents to a child, and provides economic and social stability that inure to the children of the marriage as well as to the spouses themselves.⁷⁵ The protections marriage provides include a married stepparent's ability to adopt a spouse's child,⁷⁶ which allows a legal relationship to form between the child and step-parent with concomitant protections to the child in the event of the death or disability of the stepparent, or in the event of divorce.

Beyond the establishment of a legal parental relationship, however, children of married parents benefit from employment benefits of their non-biological or non-adoptive parents, such as the ability of that parent to take leave to care for the child in times of illness, and the ability of that parent to obtain health insurance for the child.⁷⁷ Being married can also enable a parent who wishes to remain at home with the children to do so by providing access to health insurance for that parent through his or her spouse's employer.⁷⁸ A child born to married parents may gain inheritance rights upon the death of his or her non-biological parent, as well as access to social security survivor benefits.⁷⁹ Other laws provide survivor benefits to the spouse as well as the children of a marriage. Children of married parents have the security of the divorce laws, which guarantee a forum for determination of child support, as well as custody and visitation by the non-biological or non-adoptive parent.⁸⁰ Finally, children of married parents know that their family fits

⁷⁵ N.H. Rev. Stat. Ann. §168-b:3, 4 and 9.

⁷⁶ N.H. Rev. Stat. Ann. §170-B:4. The same provision requires that when a married person petitions to adopt a child, the spouse must also consent to the petition. This provision appears to be designed to protect both the child (by making sure both adults in the home are welcoming) and the other spouse (to ensure obligations are not imposed upon him or her unwillingly).

⁷⁷ N.H. Rev. Stat. Ann. § 21-I:26 (state employees' families' access to group insurance); N.H. Rev. Stat. Ann. § 21-I:30-d (same); N.H. Admin. R. (Per.) 1204.05 (state employees' use of sick leave to care for dependent child).

⁷⁸ Id.

⁷⁹ N.H. Rev. Stat. Ann. § 561:1 (distribution upon intestacy); 42 U.S.C.A. § 402 (social security benefits).

⁸⁰ N.H. Rev. Stat. Ann. §§ 458:35 (orders for support, custody); 458-a:2 (divorce actions as custody proceedings).

within the common vocabulary of love and commitment that permeates our society. They know that their parents love each other just as much as their friends' parents, and are secure about their family's future.

e. Same-Sex Couples Cannot Obtain These Rights and Responsibilities In Other Ways.

Any two people, including gay and lesbian families, can protect themselves in part by executing certain legal documentation between the partners (e.g., wills, durable powers of attorney, medical authorizations, burial instructions). Carrying a briefcase of documents, however, fails to substitute for the automatic protections and peace of mind that a marriage certificate confers. People cannot contract their way into pension laws, survivorship rights, worker's compensation dependency protection, or the tax system, to name just a few. It is only through marriage that New Hampshire citizens can secure critical economic and legal protections for their families. In addition, the testimony before the Commission revealed that gay men and lesbians pay -- on average -- approximately \$1,500 to obtain legal documentation that grants them only a handful of the protections available to married couples automatically.⁸¹

f. New Hampshire's Marriage Restrictions Places Federal Marital Rights and Obligations Off Limits.

By controlling access to marriage, the state of New Hampshire also controls access to federal benefits for married couples since the federal government generally defers to state laws on that point.⁸² Though marriage for same-sex couples would not presently result in the extension of these rights and obligations under federal law because of a discriminatory law at the federal level,⁸³ it is also true that New Hampshire's refusal to allow same-sex couples to marry closes the

⁸¹ Moreover, many couples testified that the existence of a valid Health Care Power of Attorney or Medical Authorization were of little assistance to them when they needed access to their loved one in a medical emergency either because the forms were not immediately available during the unexpected medical crisis or because medical personnel were inconsistent in recognizing the legal authority conveyed by the documentation. See Section III (C) (1) below.

⁸² See, e.g., 29 C.F.R. § 825.113 (providing family medical leave to spouse recognized by law of employee's state of residence); 20 C.F.R. § 404.345 (looking to state law to determine Social Security claimant's status as insured's husband or wife); 20 C.F.R. § 416.1806 (determining whether someone is married for purposes of Social Security Insurance based on law of home state).

⁸³ This discriminatory marriage law, known as the Federal Defense of Marriage Act, is now codified at 1 U.S.C. § 7 (definition of "marriage" and "spouse") and 29 U.S.C. § 1738C (purporting to exempt states from obligations under full faith and credit clause of U.S. Constitution). Many people believe that the federal law is unconstitutional and vastly exceeded the powers of Congress.

door on New Hampshire resident same-sex couples' abilities to access these federal marital rights and obligations at some point in the future. By denying marriage, the state places same-sex couples in a more disadvantageous position vis-à-vis federal law. As the Commission heard, the harms encountered under federal law include bread and butter issues like access to social security survivor benefits, immigration spousal sponsorship rights, the ability to transfer property between partners without tax consequences, the right to file joint tax return, access to the marital tax deduction for inheritance, and many others.

III. NEW HAMPSHIRE'S GAY AND LESBIAN FAMILIES: A PORTRAIT.

Today, we find ourselves in a debate about real families, real people, and real lives. From Census 2000, we know that same-sex couples live in 100% of all counties in New Hampshire (and in 99.3% of all counties in the United States).⁸⁴ See Testimony of economist M. V. Lee Badgett, Ph.D., University of Massachusetts Amherst, on September 19, 2005. There are at least 2,703 same-sex couples in New Hampshire, and one in four of these same-sex couples are raising a child under the age of 18 in their homes. *Id.* Though experts agree that the Census data undercounts the quantity of same-sex couples and their children,⁸⁵ at a minimum, more than 1,600 New Hampshire children live with parents in same-sex couples and that number is only expected to grow.⁸⁶

⁸⁴ David Smith and Gary Gates, Gay and Lesbian Families in the United States: Same-sex Unmarried Partner Households, (Wash., DC 2001), Human Rights Campaign Foundation, available at <http://www.hrc.org/content/contentgroups/familynet/documents/census.pdf>.

⁸⁵ It is estimated that the U.S. Census Bureau missed at least 16 to 19% of all gay or lesbian couples in the 2000 count. Badgett, MV L, & Rodgers, MA, Left out of the count: Missing same-sex couples in Census 2000, (Amherst, MA 2003), The Institute for Gay and Lesbian Strategic Studies. Available online at: http://www.igless.org/media/files/c2k_leftout.pdf.

⁸⁶ "Lesbian and gay adults choose to become parents for many of the same reasons heterosexuals do," including because "[t]he desire for children is a basic human instinct and ... may satisfy people's desire to provide and accept love and nurturing from others." See Ellen C. Perrin, M.D. & the Committee on Psychosocial Aspects of Child and Family Health, American Academy of Pediatrics, Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents 109 *Pediatrics* 341, 341 (February 2002) available at <http://www.aap.org/policy/020008t.html>. The increase in the number of children raised by lesbians outside the context of heterosexual relationships has been well documented. See, e.g., Charlotte J. Patterson, Ph.D., Children of the Lesbian Baby Boom: Behavioral Adjustment, Self-Concepts, and Sex-Role Identity, in Contemporary Perspectives on Lesbian & Gay Psychology: Theory Research, & Application 156, 156 (B. Green & G. Herek eds., 1994) (citing numerous studies and noting that the numbers of lesbians bearing or adopting children in the context of their lives as lesbians are consistently described as growing); Charlotte J. Patterson, Ph.D., Family Relationships of Lesbians and Gay Men 1053, 1058 (2000).

Fortunately, New Hampshire has a history of recognizing the reality of its gay and lesbian citizens. See Section III (A) below. Moreover, this Commission's proceedings have revealed an even richer portrait of our fellow citizens. See Sections III (B) and (C) below. The composite picture that has emerged is this: New Hampshire's present law, including its on-going exclusion of same-sex couples from marriage, has worked a deep and scarring hardship on a segment of our society that has persevered in establishing strong, loving, and committed families in the face of a legal system that pretends they are legal strangers to one another. Sound public policy -- including our commitment to help and strengthen New Hampshire's families -- commands that New Hampshire remove the legal obstacles that create instability and stand in the way of these gay and lesbian families. Of course, our commitment to the constitutional principles of equality and liberty commands the same.

A. New Hampshire's Recognition of Its Gay & Lesbian Citizens.

Even a cursory review of how New Hampshire has interacted with its gay and lesbian citizens reveals that New Hampshire citizens know and embrace their gay and lesbian family, friends, and neighbors. Indeed, same-sex couples would not have fared as well as they have in the University of New Hampshire's polling on the extension of legal protections for same-sex couples but for the support of the New Hampshire citizens who have borne witness to the contributions these gay and lesbian citizens have made to our communities. For example, in 2004, a University of New Hampshire poll revealed that 55% of New Hampshire residents favor a law extending marriage rights to same-sex couples and, alternatively, 64% oppose a constitutional amendment banning states from issuing marriage licenses to same-sex couples. See University of New Hampshire Survey Center Poll, Residents support gay marriage, Associated Press (February 26, 2004); see also <http://www.nhftm.org/news/poll04.html>.

A similar University of New Hampshire poll in 2003 also revealed that 88% of New Hampshire residents believe that same-sex couples should have the same hospital visitation rights as close relatives; 85% say that a same-sex spouse should be allowed to make medical decisions for an incapacitated partner; 70% say that same-sex couples should have automatic inheritance rights without inheritance taxes; 68% say that same-sex couples should have the same pension and social security benefits as married couples; and 78% say that same-sex couples should be allowed family medical leave time for each other and their children. See University of New Hampshire Survey Center Poll, New Hampshire Residents

Favoring Law for Same-Sex Marriages, The Associated Press (May 23, 2003); see also http://www.nhftm.org/news/PR_Poll_May03.htm.

Certainly, the New Hampshire Legislature has long recognized the reality of gay and lesbian people, and it has taken steps to end discrimination in discrete areas for these individuals. In 1990, New Hampshire became one of the first states to enact a law that imposed stiffer penalties on those convicted of a hate crime on the basis of sexual orientation. See HB 1299, An act relative to enhanced sentences for "hate crimes," Act 1990, ch. 68. In 1997, the Legislature enacted a comprehensive law that prohibited discrimination based on sexual orientation in employment, public accommodations and housing. See HB 412, "Amending the law against discrimination to prohibit discrimination on account of a person's sexual orientation," Acts of 1997, ch. 108. In 1999, the Legislature enacted a law to repeal the then-existing prohibition on gay men or lesbians acting as adoptive or foster parents. See HB90, "Removing the prohibition on adoption and foster parenting by homosexual persons," Acts of 1999, ch. 18.

In addition, the Legislature has not completely shut the door on the ability of non-married persons to obtain -- through admittedly cumbersome means -- a handful of the rights and responsibilities that are automatically extended to married persons. For example, same-sex couples can execute (1) a durable power of attorney for financial decision-making authority, under R.S.A. 506:6, to ensure that they can care for each other in the event that one of them becomes incapacitated; (2) a durable power of attorney for health care decision-making (and a living will), under R.S.A. 137-J and 137-H, to allow them to make medical decisions for each other when one of them becomes incapacitated, and (3) a declaration of final burial arrangements, under RSA 290:17, to allow the surviving partner to maintain custody and control of their partner's body and make final funeral arrangements.⁸⁷ In addition, with respect to parenting, a legal parent can pursue a co-guardianship proceeding, under R.S.A. 463:10, to enable the non-biological co-parent to act as

⁸⁷ Without these documents, New Hampshire law will ignore the reality of the partner's relationship to the incapacitated or deceased person and instead allow the legal "next of kin" or "family" to make the decisions. To further help establish their intentions vis-à-vis each other and the rest of the world, same-sex couples may choose to hold property as joint tenants with right of survivorship and may execute other documents like: (1) a "Nomination of Guardian" form to pre-empt guardianship proceedings by other family members under R.S.A. 506:7; (2) a "HIPPA Release" and "Medical Visitation Authorization" form in the hope that medical professionals will utilize their discretion to allow one partner to visit the other and talk with their health care providers about their non-incapacitated partner's care; (3) a co-parenting agreement to set out their intentions in providing for their child, even though there is no statutory basis for this agreement and it may not be given effect by a court; and (4) a will to work around the lack of intestacy rights and divergent preferences found in the probate statutes.

legal authority for the parent (on a non-permanent basis and subject to court-reporting requirements).⁸⁸

This rich history reveals that New Hampshire has rightfully taken into account the legal, economic, and social harms that have befallen New Hampshire's gay community in the past. The Commission's present inquiry into how gay and lesbian families are faring in the state in the absence of marriage rights is simply the next chapter in that history.

B. The Portraits of LGBT Citizens.

Citizens of New Hampshire from all walks of life and from all parts of the state came forward to testify in support of recognizing the relationships of same-sex couples. Some testified as individuals -- whether gay or straight -- and some testified from the perspective of a couple -- whether same-sex or different-sex. Others who testified were parents of gay children. Several ministers spoke in support of their gay and lesbian parishioners. The commitment of New Hampshire's citizens to fairness was clear.

1. Couples – Gay and Straight.

a. Married Heterosexual Couples.

Some of the strongest testimony the Commission heard came from heterosexual, married couples. They spoke to the genuine meaning of marriage as a lifetime commitment of love, respect, and care between two people. A persistent argument against allowing same-sex couples to marry is that this would somehow threaten or erode the institution of marriage. Many who testified disputed this perspective.

Bill Bilodeau of Keene testified:

Personally, I see no way in which my family would be harmed if the gay pair down the street or two towns away that already live as a couple were suddenly allowed to marry or join civilly. My kids aren't going to come racing home from school in a

⁸⁸ For the reasons set forth in Section II (B)(4)(e) above, the availability of these limited opportunities to "lawyer" around some of the legal disabilities imposed on same-sex couples by virtue of their exclusion from marriage do not come close to rectifying (or justifying) that exclusion.

tizzy or question the meaning of their existence because people they don't know (or maybe some they do) have a piece of paper saying their union is recognized by the state. They've been raised to know people are different in all sorts of ways, and that doesn't make any of them better or worse than others-just as they themselves aren't better or worse for their own unique qualities.

My marriage certainly isn't going to become devalued because someone else is admitted to the "club" whose sexual orientation is different than mine. It suffers far more from those who treat marriage as a convenience to be discarded the first time it becomes work.⁸⁹

Sandra Van de Kauter agreed:

I am a middle-aged, married, churchgoing mother of two. Anyone who says his or her marriage is threatened or devalued by same-sex marriage either has an incredibly unfortunate, unstable marriage or he/she is lying.

Churchgoing and other people who are concerned about the sanctity of marriage have legitimate concerns. But those of use who are truly concerned about the sanctity of marriage should not be seeking to harass those who want to contribute to the sanctity by voluntarily shouldering and upholding the responsibilities of marriage.⁹⁰

Other married people testified that to them, it is a matter of simple fairness to extend all the benefits, rights, and responsibilities of marriage to same-sex couples.

Patrick D. Boswell of Chocorua testified:

I am a 37-year-old white guy, happily married, with one stepson. I'm independent, perhaps more "conservative" than "liberal" on most issues, so I tend to vote Republican more than

⁸⁹ See Testimony of Bill Bilodeau on July 25, 2005.

⁹⁰ See Testimony of Sandra Van de Kauter on July 27, 2005.

Democrat, but I do not vote party line. I'm a five-year Navy veteran (First Gulf War era), and a lifetime member of the NRA, a hunter and an angler.

However, neither I, nor my government has any right whatsoever under our Constitution to deny ANY segment of the citizenry equal treatment under the law. The fact is, gay couples victimize no one by choosing to marry, and we have no business victimizing them by denying them the right to marry any consenting adult they choose. In fact, you and your colleagues, as elected lawmakers, have an obligation to work to preserve the rights of gay people every bit as diligently as you have sworn to protect mine. You are the front line defense against such infringements of individual rights.⁹¹

Some likened the unfairness to that experienced by mixed-race couples in the past.

Joe Lane and Stacy Luke testified:

In the early 1960's when my parents (Stacy's) met, there were still states in which they could not legally marry or, if they were married, legally live together. Luckily, New Hampshire was not one of those states. My father is Chinese and my mother is of French-Canadian descent. In the end, they had four children and were wonderful parents. Back then, the same arguments were made against inter-racial marriage as is being made now against gay marriage. I've read and studied the vague parts of the Bible that say marrying another race is bad, about as vague as the Leviticus passage and about as easy to interpret in many ways. My parents were also told that their children wouldn't be well adjusted, would be picked on, and not fit in to society. I believe on all counts the naysayers were wrong, just as I think they are wrong now.⁹²

Jeanne B. Eaton of Peterborough echoed this point in her testimony:

⁹¹ See Testimony of Patrick D. Boswell on July 29, 2005.

⁹² See Testimony of Joe Lane and Stacy Luke on October 4, 2005.

I would like to point out that during my lifetime (I am 79) it was illegal for a white person to marry a black person. When we adopted our Chinese daughter in 1962, it was illegal for white couples to adopt black children and it was illegal below the Mason-Dixon line for white couples to adopt Oriental children. We change and then we change the law. Think of slavery, think of women's right to vote, to own property.

b. Same-Sex Couples.

The Commission heard from same-sex couples who have been together for anywhere from 5 to 28 years. Couples were from towns all over the state, including Brookline, Keene, Portsmouth, Easton, Tilton, Bedford, Jaffrey, Bethlehem and Nottingham. Among those who testified were professors, a state representative, a teacher, a social worker, state employees, a nurse, a stay-at-home mom, a nurse, an airline worker, a lawyer, and small business owners. The portrait that emerged showed the couples to be, in significant ways, typical New Hampshire residents with deep roots in the state.

Pauline Chabot testified:

My name is Pauline Chabot, daughter and granddaughter of French-Canadian Americans all born in Manchester. I grew up in Wilton, NH where my Republican father, Paul Chabot, worked for Whiting Milk and Abbot's Woolen Mill and my mother raised 9 kids. I had a large Union Leader paper route with my siblings and learned how to work hard from both of my parents (now 88 & 87). All of my relatives in Manchester had large families. No one got divorced or admitted they were different back then. Because of my education at Rivier College, I learned to make honest choices with my life.

On April 1st, Gail Morrison and I celebrated our 23rd anniversary of our life together. I now live in Tilton, NH, where Gail and I have owned a home since 1986. We have helped raise each other's children, all four of whom are grown and married. We have helped plan and have participated in all

four weddings in the manner of blended families. Gail was the Justice who married my son Eric Tanguay and his wife, Liza.⁹³

Jean Kennard of Easton is similarly grounded in New Hampshire:

My name is Jean Kennard and I've been a resident of Easton for 23 years. I'm retired now but I was a professor at UNH for 32 years. I taught your children, your sisters and brothers, some of you I expect and probably some of your mothers and fathers. My partner taught Governor Lynch. He got a B+ by the way but that was in the days before grade inflation.

I have been in a committed relationship for the last 28 years. We have been each other's best friend, lover, supporter...we have honored and cherished each other. There have been good times and bad as in any relationship, successes, failures, better and worse. We have seen each other through accidents, loss of vision, cancer...sickness as well as health. In all the ways that matter, we are truly married whether the state acknowledges it or not. But I should like my civil rights.⁹⁴

Couples testified about all the ways in which they contribute to their communities, as workers, good neighbors, and volunteers.

Neil Blair and Jeffrey Burr of Easton testified:

We are a committed couple, who own a small local business together and are residents of Easton, NH. We pay our taxes, support our community and local businesses, and live lives like everyone else around here.⁹⁵

Maria Doyle of Bethlehem testified:

I moved here nearly 4 years ago in order to be with my partner, Grace Newman. We have been together for 8 years as committed partners. We have come to consider each other

⁹³ See Testimony of Pauline Chabot.

⁹⁴ See Testimony of Joan Kennard.

⁹⁵ See Testimony of Neil Blair and Jeffrey Burr on May 31, 2005.

family and love our life here in New Hampshire. Grace moved here 22 years ago and took an uninhabitable building and turned it into a thriving business that has contributed to the economy and vitality of this community for 22 years. When I moved here 4 years ago, I became a social work supervisor in a private child welfare agency and helped to establish the agency's presence in North Country to work on behalf of some of our most vulnerable children. We'd like to think we are doing our part to make the community a better place.⁹⁶

Many of the same-sex couples who testified are raising children – like many of their non-gay neighbors, friends and relatives.

Karen A. McCarthy of Portsmouth testified:

My partner and I have been together for eleven years. For the first nine of those years we both worked professionally in the public education system. Two years ago, I left my career to stay home and raise our daughter. Because, as a lesbian, I do not have the rights afforded by civil marriage, I do not qualify for insurance under my partner's policy. As a result, we have extra financial burdens when trying to provide for our daily well-being, our future, and the future of our child. These burdens do not exist for heterosexual and would not exist if we were allowed to engage in civil marriage.⁹⁷

Those with children expressed how hard they work -- like all parents -- to provide their kids with love and stability. They contend with the additional burden of the state's non-recognition of their families.

Jennifer Saylor of Charlestown testified:

My name is Jennifer Saylor and my wife, Shelly Saylor and I stand before you today to convey our meaning of family. We have two children ages fourteen and five. They are fortunate in many ways to be surrounded by love and strong commitment to family which is conveyed to them through our parenting. Our

⁹⁶ See Testimony of Maria Doyle on May 31, 2005.

⁹⁷ See Testimony of Karen A. McCarthy.

children have formulated their own definition of family. They see two individuals who love each other deeply and convey the meaning of family not only through their actions but through words.⁹⁸

Shelley added:

I feel so fortunate in my life. I have two wonderful, beautiful kids and the best wife in the world. We have so much love in our family. Our youngest son says, “That’s why we have hearts right mom? To hold all the love.” I only wish the state could recognize that we are no different than any other couple and that we deserve the same rights as any married couple.⁹⁹

The thoughts of other, older couples, are turned toward retirement and end-of-life issues.

Carrie Blake and Didi Wallace of Portsmouth testified:

My name is Carried Blake and this is my partner of 22 years Didi Wallace. For the past 22 years we have accepted and live up to all the responsibilities of marriage. We promise to care for, love, and honor each other until our death, and we renew this vow daily knowing that at any moment, one of us, or our happiness, could be swept away.

In 1984, a year and a half after we met, we purchased our Portsmouth home and settled in to build a wonderful life together.¹⁰⁰

2. Parents of Gay & Lesbian Children.

⁹⁸ See Testimony of Jennifer Saylor on April 4, 2005.

⁹⁹ See Testimony of Shelley on April 4, 2005.

¹⁰⁰ See Testimony of Carrie Blake and Didi Wallace on June 22, 2005.

The Commission heard from many parents of gay men and lesbians, who testified in support of equal rights for their children.

Joan D. Reed of Bethlehem submitted written testimony which read in part:

I am writing this as a mother. I have been blessed with three daughters and a son. We all grew up in a family that experienced prejudice. About seventeen years ago, one of our daughters came to us individually and told us she was a lesbian. I think we probably all knew in our hearts. As her 80+-year-old grandmother said to us at the time, “is she any different today than yesterday?” For us all, she was and is our remarkable daughter, granddaughter, sister and friend whose life has been dedicated to the service of the handicapped and retarded populations. However, it was at this time that we all knew what prejudice meant.¹⁰¹

Gordon R. Sherman, Jr., of Concord testified about his son:

As the father of 3 children, all in their 40’s, all I demand is equal treatment for all of them! The right to marry with its attendant rights from the State and Federal Governments; rights the other 2 can take for granted because they enjoy them. My gay middle son, however, must not only put up with wise cracks and fear of harassment and the lack of 100’s of protections under the law, so that he and his partner in a beautiful and harmonious relationship of 11 ½ years sought the “thinking” country of Canada to marry in safety.¹⁰²

Leonard F.B. Reed of Bethlehem, spoke on behalf of his daughter and as a veteran with 25 years of service in the Army:

I am an American. I am a husband, father and grandfather. I love my family and I love my country. My wife and I have three daughters and one son. We have eight grandchildren. They all love each other. The families are to close to each other... One of our daughters is a lesbian. She did not choose

¹⁰¹ See Testimony of Joan D. Reed.

¹⁰² See Testimony of Gordon R. Sherman.

to be, but she is. She is also the mother of two beautiful and talented daughters. She is a devoted partner in a civil union. She is a leader in her church, in the school where she works and in her neighborhood where she lives.

I believe that all human beings are born to be respected and to be treated equally. All Americans are meant to have the same rights and responsibilities. My life was dedicated to public service. I was in the Army from 1950-1975. For 25 years, I was proud to have served and to have protected those rights from threats and attacks by hostile neighbors elsewhere in the world. I am here now to say that I served and fought so that all Americans will share all rights and responsibilities.¹⁰³

3. The Support of Ordinary Citizens.

Many ordinary citizens stepped forward to speak up for fairness for their gay & lesbian neighbors, co-workers, friends, and relatives.

Wendy Scott Keeney of Marlborough testified:

Gay Americans serve in the military, keep our communities safe as firefighters and police officers, staff our hospitals, build our cities, and pay taxes. Denying gay couples the right to legally marry takes away legal rights in pensions, health insurance, hospital visitations, and inheritance that other long-term committed couples enjoy. We should end this discrimination.¹⁰⁴

Some referred to cherished American values -- and New Hampshire values - - in expressing their support for same-sex couples.

Susan Forman of Intervale said in written testimony:

Our state motto, Live Free or Die, is a source of Pride to me. My husband and I raised our four children to believe they were fortunate to grow up in a country that, in theory, cherishes equal

¹⁰³ See Testimony of Leonard F.B. Reed on May 31, 2005.

¹⁰⁴ See Testimony of Wendy Scott Keeney on July 25, 2005.

rights. However, denying gays and lesbians the right to marry makes it clear that equal rights, at this point in time, exist only in theory. I would be ashamed of myself if I did not speak out in favor of gay marriage; and I mean the truly equal right of marriage, not civil unions which are in no way equal to marriage.¹⁰⁵

In fact, the views of some people, like 64-year-old Frank Murphy of Keene, have changed over time. He testified:

I grew up in a far less tolerant time and community. Gays were not hated but they were looked down upon. Verbal slurs were common and nobody, including myself, rushed to protest them as unfair...As the years went by, I've known gay people who were friends, co-workers, employers and public figures...I benefited from what some of them had to offer as human beings both to myself and society. In my view, America's a better place for having moved away from the poorly informed prejudices of my youth.¹⁰⁶

Carrie Doyle of Dover, argued that strengthening gay & lesbian families is a benefit to everyone in society:

This is a very good thing for the people involved and if their lives are enhanced in a positive way, this can only be a positive for their families, children, workplaces, organizations, churches, etc.¹⁰⁷

Jeffrey A. Jones of Lisbon concurred:

...All families contribute to society and, therefore, strengthening any family strengthens society...Same-sex couples should bear the same responsibilities to each other and to their families as straight couples. And their families deserve equal benefits.¹⁰⁸

¹⁰⁵ See Testimony of Susan Forman on May 31, 2005.

¹⁰⁶ See Testimony of Frank Murphy.

¹⁰⁷ See Testimony of Carrie Doyle on June 22, 2005.

¹⁰⁸ See Testimony of Jeffrey A. Jones on May 31, 2005.

C. The Realities: Same-Sex Couples Who Cannot Access the Protections of Marriage Are Harmed, Both Tangibly and Intangibly.

In the course of its six public hearings and two expert hearings, the Commission learned an incredible amount about how living outside of marriage harms law-abiding, tax-paying same-sex couples and their children, in both tangible and intangible ways. Given the degree to which New Hampshire uses marriage as a vehicle to provide a comprehensive economic, legal, and social safety net for committed couples and their children, it is no wonder that the absence of this safety net exposes families to legal, financial, and social instability.

The testimony before the Commission so clearly demonstrates the harm from being denied the legal rights of marriage that even the Majority makes no effort to dispute it. Yet, the Majority also makes no effort to identify the specific harms endured by New Hampshire's gay families (aside from acknowledging that gay families suffer when they are denied the right to visit each other -- and their children -- in the hospital). The Majority has seemingly concluded that all or most of the problems experienced by gay families are not worthy of consideration given the Majority's single-minded goal of using the constitutional amendment process (beyond what has already been done in statute) to restrict marriage to different-sex couples only. Because New Hampshire's Legislature and its citizens may strike a different balance between the real harms experienced by gay and lesbian families and the ideological preferences of the Majority, what the Commission learned from New Hampshire's citizens during the life of the Commission should not have been given short shrift.

Here is what the Commission actually heard about how New Hampshire citizens are being affected by the marriage ban on same-sex couples:

1. Disrespect of Same-Sex Relationships During Medical Emergencies and Interventions.

Many gay and lesbian families relayed the extreme difficulties they encountered when interfacing with a healthcare system that, by most accounts, repeatedly fails to acknowledge relationships that are not based on blood or marriage. At a time of emergency, the trauma of a loved one's injury or illness is thus compounded by having to search for a piece of paper -- the Medical