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FEDERAL & STATE ANTI-GAY, ANTI-MARRIAGE LEGISLATION

When GLAD filed suit in April 2001 on behalf of seven Massachusetts couples seeking the right to marry, a reaction from a few extremists was inevitable. It came in the form of proposals to codify discrimination in our marriage laws; proposals to preemptively deny people in committed same-sex relationships the fundamental right to marry the people they love, and protect themselves and their children under state marriage laws. Similar measures have been enacted on the federal level and in other states, but so far the people and legislators in Massachusetts have successfully stood up against bigotry, in favor of basic principles of fairness, to defeat these efforts to undermine our families and our basic constitutional guarantees of liberty and equality for all.

Federal DOMA

The federal Defense of Marriage Act (DOMA) was signed into law in 1996. It creates a federal definition of marriage for purposes of all federal laws and programs. Under this divisive piece of legislation, marriage means only a legal union between one man and one woman. Additionally, DOMA attempts to exempt states from their legal obligation to respect marriages of same-sex couples under the constitutional rules of Full Faith and Credit, under which a state must recognize all public acts, records, and judicial proceedings of every other state.

DOMA does not ban marriages of same-sex couples, in fact, it acknowledges they will come to pass. But it does bar federal recognition of those marriages once they become legal in any state. This means that the lawful marriages of same-sex couples will be excluded from the protection of at least 1049 federal laws and programs in areas ranging from tax, to social security, to pension protections.

WILL DOMA LAST?

Once the federal government actually sees same-sex couples with valid marriages, the Congress may repeal some or all of the discriminatory provisions it rushed to enact in 1996. Even Vice President Dick Cheney has stated that the determination of what counts as a valid marriage should be decided by the states. For over 200 years, the federal government has accepted state law definitions of marriage. Courts and legislatures in various states will address these questions on a case-by-case basis.

State DOMAs

Following the passage of DOMA in the United States Congress, opponents of marriage for same-sex couples began passing similar laws in state legislatures. DOMA bills have been filed in every state. Thirty-six states currently have a "Defense of Marriage Act" either defining marriage and/or prohibiting the recognition of marriages of same-sex couples. Some go further and attempt to ban same-sex couples from receiving legal rights and benefits associated with marriage. Hawaii, Alaska, Nebraska, and Nevada have amended their constitutions to define marriage as solely the union of one man and one woman.

Recent Legislative Proposals in Massachusetts to Codify Discrimination

Proposals have been defeated in the legislature in 1999, 2001, and 2002.

Proposed Legislation 1998 – 2001: A series of bills filed in the Massachusetts House of Representatives from 1998 to 2001 sought to exclude same-sex couples from marriage *as well as* the individual legal protections, benefits and responsibilities associated with marriage. After hearings before the Joint Committee on the Judiciary in May 2001, the Committee ultimately did not act on that year's bill. Furthermore, as a result of considerable education about the real lives of gay and lesbian families, its primary sponsor, Rep. John Rogers, has said that he will not reintroduce it in the future.

Proposed Constitutional Amendment 2001 – 2002: A group calling itself “Massachusetts Citizens for Marriage” launched an attempt to amend the Massachusetts Constitution by referendum to make it impossible for same-sex couples to marry. In addition, the Constitution would have been changed so that neither the courts, nor the legislature, nor cities and towns could extend *any* rights and protections associated with marriage to any couple that is not married. This sweeping ban would have affected all unmarried couples – gay or non-gay – as well as any person seeking to obtain rights or protections simply to look after a friend or loved one. Following a protracted fight and an eleventh hour attempt to revive the measure, the legislature stopped the initiative in its tracks, acknowledging through their action the potential danger of putting minority civil rights to a popular vote. The victory was due in large measure to the efforts of thousands of Massachusetts residents, who stood up to tell the real stories of committed same-sex couples and their families. This marked the first time that a legislature has stopped a citizen-proposed anti-gay marriage amendment.

The Current Proposal

In 2003, Republican State Representative Philip Travis has proposed a constitutional amendment similar to the one described above for the 2003 – 2004 legislative session, which again seeks to deny gay and lesbian couples not only the right to marry, but also access to the benefits and protections that marriage provides.

Legal Implications of these Proposals

These anti-gay, anti-marriage laws do nothing to protect anyone's marriage, but *do* hurt families of same-sex couples. Since same-sex couples are already denied the right to marry, these laws merely reiterate that families of some citizens are considered second-class. In addition, some states have attempted to use anti-marriage laws to limit further the few existing protections for gay and lesbian families, restricting gay parents' custody of their own children, rescinding or challenging domestic partnership plans, and infringing on adoption rights.

The federal and state DOMAs will not likely stand the test of time because they are unfair and fail to promote any public good.