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A TURBULENT DEBATE IN THE OCEAN STATE

**AN IN DEPTH ANALYSIS OF THE SAME-SEX
MARRIAGE DEBATE IN RHODE ISLAND**

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**HPR 401/402
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MY OUR STAKE

OR: WHY 'GAY MARRIAGE?'

I was around seven years old when my Auntie Peg told me that she was going to Hawaii for vacation. I was excited for her – and more than a little jealous, as any seven year old would be – and asked who she was taking with her. She named a few of her friends that I knew, and, of course, the woman I had always known as “Auntie Patty.” I had known Auntie Patty for as long as I had known Auntie Peg. They were always together at family parties, holidays, and whenever I went over after school - it was rare to see one without the other. Knowing little of the gay rights climate at the time, I had always just assumed that Auntie Peg and Auntie Patty were married, just like Auntie Lynn was married to Uncle Bill. When I timidly asked my Mother how long the two had been married, she explained that because they weren't a man and a woman, they couldn't get “married,” but that they were committed to each other and like a married couple in every other way. I still saw the world through rose colored glasses, but after that a hint of jade crept in. I didn't understand why two people who loved each other and were committed to each other couldn't get married. At the time I couldn't really wrap my head around what was stopping Auntie Peg and Auntie Patty from getting married, and it is something with which I still struggle. I attended Catholic schools in my hometown of Pawtucket, Rhode Island, from kindergarten all the way through high school, and teaching about the church's stance on gay marriage isn't something that they make room for in their curriculum, especially not for the seven year olds in second grade. Adults always said that marriage was for two people who loved each other very much and wanted to be together to start a family, and I knew that my Aunts loved each other. Until I was four years old, my Mother and I lived in a three family house that we shared with my two Aunts – they still joke with me about all the times I marched over on

Saturday mornings to eat sugary cereals that my mom wouldn't buy – so I was around them often enough to know how much they truly loved each other.

As I grew up, I witnessed the relationship of Margaret Lynch and Patricia Gadaleta change before my eyes, but in many ways it stayed exactly as it had always been. In 1999 they made the decision to use in vivo fertilization in order to have children. While understandably hesitant to go into details, my mom explained to me the basics – Auntie Peg would get pregnant and I would have a new baby cousin. I was ecstatic at the prospect of having another cousin, and I was extremely happy for Auntie Peg and Auntie Patty because I could tell how much it meant to them, but I didn't realize until years later how much it meant for them to have the unwavering support of their family in this new endeavor. Again, knowing little of the gay rights movement, I assumed that everyone would be as excited and proud as I was, I didn't realize what they would go through over the next nine months and potentially for the rest of their lives – the stares, the whispering behind their backs, the condemnation from religious zealots and social elitists, hearing over and over again that their family was for some reason less worthy of respect than everyone else's. When Blaine Kathryn and Elizabeth Ann were born, I was asked by my Aunts to be Elizabeth's Godfather. I happily accepted.

As the girls grew up, my Aunts began a long process of filing for second-parent adoption and name change, which ended in the four becoming the Lynch-Gadaleta family. Everyone around them showered the legally recognized family with congratulations, but they still weren't married. It was obvious that a *marriage* was something that couldn't be matched by a separate type of union. In the words of the Connecticut Supreme Court in deciding *Kerrigan & Mock, et al. v. Connecticut Department of Public Health*, 289 Conn. 135, 957 A.2d 407 (Conn. 2008),

“the institution of marriage carries with it a status and significance” that civil unions simply can’t duplicate.

During my freshman year at the University of Rhode Island, Aunties Peg and Patty decided that they wouldn’t wait any longer for Rhode Island to legalize gay marriage, and went into Massachusetts where they could be legally married. Massachusetts became the first state in the country to legalize same sex marriage in the landmark case of *Goodridge v. Department of Public Health*, 798 N.E.2d 941 (Mass. 2003), and has since been joined by fellow New England states Vermont, Connecticut, and New Hampshire. Maine, which joins Rhode Island as the only other New England state without equal marriage laws, had equal marriage legislation pass its statehouse, but was overturned by voters in November of 2009. The ceremony was nice – a small crowd of around 30 or 40 friends and family members, and while I did miss an intramural basketball playoff game, I was happy to be there for my Aunts, my Goddaughter, and her sister. After that event three years ago, the Lynch-Gadaleta family moved forward as any other family would – after-school sports, gymnastics, holidays, parent-teacher conferences, birthday parties. They were exactly what they had always been, a family, but now they were legally recognized as such. They had two daughters, a puppy, a mortgage on their house, and they were married. In speaking with my Auntie Peg over lunch at one of our favorite restaurants in Pawtucket, she made the observation that the Lynch-Gadaletas were “the most traditional non-traditional family,” because of the course their relationship took and the life they now lead. They were together as a couple, moved in together, got married as soon as it was legally possible, decided to have children, and are now doing everything they can (and succeeding) to raise their children right. As my Auntie Peg put it, using a term often associated with those who oppose gay marriage, “we did things the traditional way.”

As I got ready to begin my final year at URI, life was moving along normally, as it always had. Thousands of lesbian and gay couples across the nation had married in various states and something amazing happened: nothing. The world did not end, society as we know it did not collapse, the institution of marriage did not cease to exist, and all was well in the Lynch-Gadaleta household. Then, one morning in December after I had already decided that I would do my Senior Honors Project on the subject of gay marriage in Rhode Island, I met my Auntie Peg for breakfast as we do every few weeks just to keep in touch, and she had some very disappointing and extremely enraging news. A little boy who attends school with Blaine and Elizabeth had been going to a bible study group run by his parents and had heard over and over again about the sin of homosexuality. He decided to take this new knowledge into school with him and spent a day berating and mocking ten-year-old Blaine and Elizabeth about the fact that their Moms were living in sin. Needless to say, that would be hard for anyone to take, especially two girls who had grown up in near-constant legal transition. The girls went home from school that day with more questions than my Aunts were prepared to answer and more tears than a box of tissues could wipe away. I was livid when I found out and was more than prepared to head by St. Thomas' school and demand that they refocus their religious education on the idea that Jesus loved everyone equally and the seemingly forgotten principle that everyone is equal in the eyes of God. Luckily for the St. Thomas Principal, Auntie Peg had pre-empted me and gone by on her own to speak with a few teachers and administrators. They assured her that it wouldn't happen again and that they would focus on the idea that Jesus loves everyone, no matter what. As is often the case, sometimes the most innocent questions prove the most powerful, and the conversation that Aunties Peg and Patty had to have with their daughters was certainly a difficult one. Question after question came up as my two aunts struggled to convince their two confused

daughters that they weren't living in sin, that they were the same as everyone else in God's eyes, and that they were legally the same as all the other married couples. "But then why did we have to leave Rhode Island to get married?" they asked, prompting my aunt to attempt to explain that Rhode Island didn't allow for same-gender marriages, but that didn't mean that they weren't as good as other marriages.

I was furious. No mother should ever have to go through that situation with their child. I had always been in favor of legalizing gay marriage, but now I had a new sense of purpose in taking on this project, I would still do everything in my power to see things from the other side of the issue, but I would not go into the interviews with questions that guided people into their usual talking points. I would enter with hard-nosed questions for both those opposing gay marriage and those in favor of equal marriage rights. If this issue was truly as much of a no-brainer as I thought, why hadn't it been legalized by now? If it was wrong and a sin, why couldn't I see it? I couldn't quite put my finger on what it was I was feeling – it was a mix of anger, frustration, motivation, and utter confusion.

This entire senior project now took on a great deal more meaning – I was no longer just doing this for myself as a political junkie and nephew of two wonderful women who happen to be lesbians – I would do this project for everyone who has (or claims to have) a stake in the outcome of the gay marriage debate in Rhode Island: homosexual couples, the Catholic church, my Aunts, Blaine and Elizabeth, politicians, activists. While I don't agree with those opposed to gay marriage, I respect the fact that they have made their stance clear. The Catholic Church, which holds the lion's share of Rhode Island's religious population, has made their belief that gay marriage is an abomination absolutely clear. Equal rights activists, who view this as the civil rights movement of the 21st century, are getting fed up with the government telling them that

some people are *more equal* than others under the law. Politicians in this state, with the exception of a rare few, have done exactly what politicians do best – sat on the fence. For the most part they have done seemingly everything in their power to keep any debate on this subject under wraps and avoid taking a definitive stance for or against gay marriage. Since I am heterosexual man of legal age, I will have no trouble getting a marriage license at some point in the future when I find the oft-sought-after Ms. Right. There will be no one staring out of the corner of their eyes at my spouse and me as we push strollers down the street or go to PTA meetings. No one will get to vote on whether or not my family and our love for each other is legitimate and worthy of equal protection under the law. From the outside, it may seem like I have no personal stake in the gay marriage debate, hence making it a strange choice for a six credit independent study, but I do believe I have a personal stake in this. In fact, I believe everyone in America has a great deal to gain or lose based on the course this issue takes over the next few years. If America comes down on the wrong side of yet another civil rights issue, it will be another blemish in our history books, another embarrassment that future generations will struggle to explain, and it will do a great deal of damage to everything that America is supposed to stand for – freedom, respect, and equality.

While I had already come to a decision about *why* I was doing my senior project on the gay marriage debate in Rhode Island, I was having trouble pinning down *what* I was going to say. I could have easily just chosen to write an opinion piece about why Rhode Island and the nation as a whole should legalize same-sex marriage, but that seemed like the easy way out. I had a unique opportunity on my hands – my last semester at the University of Rhode Island, six credits left to graduate, and an honors project I could design and execute in whatever fashion I chose. From the outset it seemed to be the semester about which I had dreamt during the first two hectic,

overworked, overtired, and unfulfilled semesters I spent in college. I wanted to take full advantage of the situation in which I found myself, and decided that I would do everything in power to prove my views about gay marriage wrong. I wouldn't just report the stance of the other side in order to disprove it with my own views, I would report the views of the anti-gay marriage camp with the intention of reversing my own opinion. While I knew that it would be an incredibly challenging task, I welcomed the opportunity. I started trying to piece together the argument made by those who opposed legalizing gay marriage so that I would have some basic knowledge before starting my interviews and more intensive research. I continually came back to the idea that it was a purely religious argument, and hence easily dismissed due to America's long standing tradition of the separation of church and state. Case closed. I had failed in my goal before I even started the project, but I assured myself that the case against gay marriage would become clearer as I did more research.

I was wrong. Try as I might to see things from the other side, I couldn't justify the view that gay marriage was wrong, immoral, bad for society, bad for families, or any of the other claims often leveled against it. In fact, the more I tried to absorb the anti-gay marriage camp's views and make them my own, the more they seemed ridiculously prejudicial and archaic. I am a Catholic, I have been a member of the Catholic Church as long as I have been on this earth, but I am also realistic. I believe that the bible is a wonderful guide for leading a life that is beneficial to yourself and those around you, but I recognize that it is most effective when adapted to modern day life. The bible's proclamations against gay marriage can be found in Leviticus 18: 22, "You shall not lie with a male as with a woman; it is an abomination," and in the New Testament's Romans 1: 26-32, where homosexuality is portrayed as a sin and those who act on their homosexuality deserve to die. Right about now is where, if I weren't trying so hard to

make his views my own, I would take a jab at Bishop Tobin of the Diocese of Providence, saying something snide about his views on gay marriage not being far from those described in Romans, but for the purposes of this project I'll pass. There are other references in the bible that pertain to homosexuality, I am not a biblical scholar and don't pretend to be, but they all seem to say the same thing: homosexuality is a sin against God. The more I looked into the idea that the bible prohibits same-sex marriage and so we as a society should do the same, the more I found it to be an utterly outdated and ridiculous statement. The bible, while containing passages that rail against homosexuality, also contains laws prohibiting eating rabbits and pigs, allows for the stoning of disobedient children and rape victims who don't cry out loud enough for help, and, in one particularly entertaining passage, has God send two bears to maul and kill forty-two children after they mocked an old man's baldness. These are all passages we as a society have chosen to disregard because we recognize that to do otherwise wouldn't serve the public good, and I felt (and continue to feel) that prohibiting homosexuality fell into the same category. This is a view that was supported by the United States Supreme Court in the landmark case of *Lawrence and Garner v. Texas*, 539 U.S. 558 (2003), which struck down a Texas law prohibiting intimate sexual contact between two persons of the same sex.

I went into this project with the intention of having a clean slate, and looking at the gay marriage debate in a whole new light, but I was unable to do so. I began to realize that the reason I couldn't change my view on the subject (beyond the legal and ethical reasons for supporting same sex marriage) was that I was too close to people who were adversely affected by the status quo. Maybe that was the whole reason that I had grown up seeing this issue as a no-brainer, and I slowly recognized that, try as I might, my views on this debate would never change. I was initially upset with myself for not being able to give this debate an unbiased view, and

thought my paper would suffer because of it. However, after some time thinking about it, I realized that it was a good thing that my support for legalizing same-sex marriage was set in stone, and maybe what those who oppose gay marriage need is some time with those directly affected by the state's restricted marriage rights. Perhaps since I had spent so much time growing up with Aunties Peg and Patty I was never able to see them as lesbians, they were just Auntie Peg and Auntie Patty. In the same way that I never looked at my Uncle Anthony and Auntie Lisa and thought, "there are my cousins' heterosexual parents," I never looked at Auntie Peg and Auntie Patty and thought, "there are my cousins' lesbian parents." My initial frustration wore off as I realized that with a little more exposure to homosexual people, those opposed to legalizing gay marriage might be able to recognize the common humanity we all share, and the desire to find a partner you love and start a family transcends sexual orientation.

What follows are a few sections of writing on various subjects important to the gay marriage debate. The tone of this paper is deliberately relaxed and conversational. The reason behind choosing this style of writing is equal parts convenience and necessity. When anything regarding an issue as personal as marriage is too rigidly worded it takes away from the real, hard-hitting impact this debate can have on all of us. While I realized fairly quickly that I wouldn't be able to convince myself that gay marriage should be outlawed, I did my best to give the anti-gay marriage view a fair shot. As I stated earlier in this piece, I believe that I have a stake in the outcome of this debate, as we all do. This issue is one about which I am very passionate, but passion alone is not the reason I feel the way I do. As this paper will show, legalizing same-sex marriage is supported by Supreme Court cases, the Bill of Rights, child welfare experts, and a majority of Rhode Islanders. Because of the political and social nature of this project's subject, it is constantly evolving and progressing (or devolving and regressing, depending on your stance).

Even now as I type these words the case of *Perry et. al. v. Schwarzenegger et. al.* (Civil Case No. 09-02292) is before the United States District Court in Northern California. The *Perry* trial, which is a challenge to California's Proposition 8 (to be discussed later in this paper), is widely regarded as a landmark civil rights case destined to reach the United States Supreme Court regardless of the lower court's decision. The fluid nature of the debate over gay marriage and the far-reaching implications of any legislative or judicial decision make it quite difficult to pin the issue down, but over the course of the following pages I have attempted to do just that, separating what I see as the most important aspects of the debate from those that are less relevant in Rhode Island at this time. In studying this subject I have chosen to focus on a few key areas, including the national frame inside of which Rhode Island's debate is occurring, the civil rights aspect of gay marriage, the continuing debate over the relevance and scope of the separation of church and state, the differences between civil unions and marriages, and finally a more in depth look at Rhode Island over the last few years and into the future.

The best way to get to know the various aspects of the gay marriage debate, I felt, was to do more than simply research policy positions and flip through archives of *The Providence Journal* (although the *Projo* was a great source). I wanted to meet face-to-face with all the people in the state who make their voice heard in the gay marriage debate. In doing so, I was able to schedule interviews with Speaker Gordon Fox, Father John Codega of Christ the King Church in West Warwick (to whom the Diocese of Providence directed me after I sought an interview from the Bishop himself or someone who could speak for the Bishop) Frederick Sneesby, who is a Senior Communications and Policy Analyst for Governor Carcieri, Marriage Equality Rhode Island's Executive Director Kathy Kushnir, and of course my Aunt, Margaret Lynch-Gadaleta. In an interview conducted over e-mail, since scheduling conflicts prevented us

from meeting, I was able to ask Senator Rhoda Perry all the pertinent questions I would have asked her in person. In addition to these first-hand sources, to whom I could not be more thankful for their time and input, I also reached out to Senator Leo Blais, Senate President M. Teresa Paiva-Weed, Representative John Brien, and the Director of the Rhode Island Chapter of the National Organization for Marriage, Chris Plante, but unfortunately I received no response (in Mr. Plante's case, we played a good amount of phone tag and he seemed more than willing to set up an interview, but suddenly stopped returning my calls).

As I stated previously, I had every intention of using this semester to change my views on whether or not gay marriage should be legalized, I thought that would be the only way for me to give the other side a fair shot. Can I guarantee that I entered every interview and looked at every point made for and against gay marriage without bias? No, but I can guarantee that I tried. So, without further rambling or pre-emptive excuse making, here is my take on this turbulent debate in the Ocean State.

DOMA & PROP 8

OR: REPEATING A LIE DOESN'T MAKE IT TRUE...EXCEPT IN CALIFORNIA

Before examining the status of the movement to legalize gay marriage in Rhode Island, it is important to understand the national landscape in which Rhode Island exists. Rhode Island is the only state in the country that has yet to make a decision on whether or not gay marriage should be legalized. Currently, Iowa and the District of Columbia are the only non-New England places in the United States where gay marriage is legal. California, Connecticut, Maine, Massachusetts, New Hampshire, and Vermont have legalized same-sex marriage, but voters in California and Maine repealed the laws allowing same-sex marriage. The California voter referendum, Proposition 8 (to be discussed more in depth later in this paper), was particularly controversial and is currently on trial in a Northern California District Court. When voters in Maine came out to the polls and defeated their state law which legalized gay marriage, a heavy-handed blow was dealt to the national campaign to legalize same-sex marriage, since Maine was known for its independent voting record. In all, 31 states have enacted laws that define marriage as between a man and a woman, and gay marriage has been defeated in every state that has put a referendum on the ballot. This fact alone explains the insistence of Rhode Island Governor Donald Carcieri – who is staunchly opposed to legalizing gay marriage – that if gay marriage were to be legalized, it would have to go through the voters. Later in this paper, I explain why the tide is turning on the Governor. The losses gay marriage has suffered throughout the country also help to explain why those in favor of legalizing same sex marriage, such as Speaker of the House Gordon Fox and Marriage Equality Rhode Island's Executive Director Kathy Kushnir, are vehemently opposed to putting this issue – which they see as a matter of civil rights – up to the voters.

The entire debate over gay marriage in Rhode Island is taking place in the confines of the Defense of Marriage Act (DOMA), which was passed in 1996 in response to indications that Hawaii would soon legalize same-sex marriage. The law was signed by President Bill Clinton in September 1996, and has two main provisions. The first provision of the law allows for any state to deny recognition of a marriage between two persons of the same gender, even if the marriage was legally performed in another state. This means that a same-sex couple who legally married in Massachusetts could be denied the rights and benefits of marriage in Mississippi. This law is in direct conflict with the full faith and credit clause found in Article IV of the United States Constitution, which states that “Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.” In issuing an advisory -opinion on whether or not Rhode Island should recognize same-sex marriages legally performed in other states, Attorney General Patrick C. Lynch referenced the full faith and credit clause, as well as the principle of comity, which extends the courtesy of recognizing the laws of another jurisdiction. Attorney General Lynch was the first Attorney General in America to assert that the laws of his state allowed for the recognition of same-sex marriage performed elsewhere. The only case in Rhode Island’s history in which the court applied the principle of comity to decide whether or not the state would recognize a marriage validly performed in another state dates back over a century, to a 1904 case that ironically also stemmed from a Massachusetts marriage. As Mark Twain is quoted as saying, “history doesn’t repeat itself, but it rhymes.” The case of *Ex Parte Chace* 58 A. 978 (R.I. 1904), the Rhode Island Supreme Court ruled that the state would extend the full faith and credit clause as well as the principle of comity to a marriage performed out-of-state, even though that marriage would have been invalid if performed in Rhode Island. Attorney General Lynch’s advisory opinion was issued in response to a request by the State

Board of Governors for Higher Education, after they had been asked to recognize three same-sex marriages legally performed out of state. While this opinion did not carry the full force of the law, it was regarded – as the Attorney General’s advisory opinions traditionally are – as legal precedent, and so same-sex marriages were officially recognized under Rhode Island law.

The second provision of the federal DOMA law was to officially define “marriage” as “the legal union between one man and one woman as husband and wife,” and restricted “spouse” to mean only “a person of the opposite sex who is a husband or a wife.” In defining marriage, the federal government took a step that it was previously hesitant to take. Although marriage had been referred to in the general laws of the United States as well as each state individually, marriage had never been legally defined. Fr. Codega, Pastor of Christ the King Church in West Warwick, R.I., used this fact to argue against legalizing same-sex marriage. Arguing his belief that gay marriage was unnatural, Fr. Codega said, “for thousands of years there was no need for civil laws deciding about marriage because marriage was simply a cultural norm.” It is overwhelmingly obvious that America has a sad history of maintaining morally repugnant and unconstitutional cultural norms, such as slavery, so the argument that *marriage has always been this way, and so it should remain* is baseless and mildly offensive. While I agree with Fr. Codega that marriage didn’t need to be defined for most of American history, I disagree with his use of that fact as an argument against same-sex marriage. One of the main arguments used by those who oppose legalizing same-sex marriage is that we shouldn’t “redefine” marriage. The section of “talking points” on the website of the National Organization for Marriage (NOM, an organization whose sole purpose is to block the legalization of gay marriage) mainly focuses on arguing against the “redefinition of marriage.” As I stated previously, my goal in this project was to try to prove my views on same-sex marriage wrong. I looked for ways that “redefining”

marriage would hurt or somehow diminish the value of the institution. I couldn't find any, and honestly struggled to see how legalizing same-sex marriage would redefine anything.

I spoke with Fr. Codega about the impact that same-sex marriages would have on heterosexual marriages, because I couldn't see any harm being done. While Fr. Codega didn't go as far as saying the institution of marriage as a whole would be devalued if same-sex marriages were legalized, he did say that gay marriage would have an impact on the institution. "I think when you broaden the definition of something to such an extent it does dilute it," Fr. Codega said, adding "why would a young couple want to be married if it means so little to them and society?" Fr. Codega's logic, albeit grossly flawed, is understandable. What he is saying is that a heterosexual couple that doesn't believe in same-sex marriage would see legalizing such a practice as society saying that the institution meant so little it could easily be altered from its present state, thus diluting marriage's prominence and importance. Like a country club membership, this logic turns the institution of marriage into a status symbol, which it must seem to be for gays and lesbians who are currently barred from joining. To use another symbol of status and superiority, consider the institution of marriage as a diamond. Why would wealthy men and women want to go around wearing something that anyone could attain? The worth of a diamond is relative to how many people have them and the more people with diamonds the more *diluted* its message becomes. I understand the way that the logic of those opposed to gay marriage works, but I think it is rather backwards when applied to something as alive as the institution of marriage. I would argue that legalizing same-sex marriage would not dilute or redefine the institution, it would merely open it up to more loving couples who wish to have their families publicly recognized.

The argument that allowing gay marriage would be dangerous because it “redefines” marriage deserves closer examination. The National Organization for Marriage’s website focuses a great deal of attention on this redefinition, even their “most effective single sentence” for arguing against gay marriage discusses the redefinition threat. “Gays and Lesbians have a right to live as they choose, they don’t have a right to redefine marriage for all of us,” the sentence reads, playing two of the most used cards in the fight against legalizing gay marriage – the threat of redefining marriage and the Us vs. Them mentality. While I have already made my case against the “redefinition” argument, there are a few things that are alarming about the NOM statement. Firstly, the statement is factually untrue. Gays and lesbians in this country certainly have a right to live as they choose, but they *do not* have the freedom to do so. This idea is crucial to the cases for and against gay marriage, and deserves a great deal more space than I have in this section of the paper, so the debate over whether or not marriage is a civil right will be discussed later. What I will discuss here is the use of the Us vs. Them mentality exhibited in the statement, and the fact that those who oppose gay marriage are forcing their definition of “marriage” onto the rest of the citizens of this country (many of whom do not share their definition) while simultaneously accusing those who favor legalizing gay marriage of attempting to do the same. The National Organization for Marriage has deliberately disregarded the fact that they are railing against their own agenda. They seek to keep marriage defined as between a man and a woman, which remains the federal definition under DOMA, and in doing so “define marriage for the rest of us,” to use their own language. As I will discuss in the last section of this paper, a recent national poll found that a majority of Americans favor legalizing same-sex marriage, which means that the “us” in this case doesn’t support the current definition of marriage. They – those

who oppose legalizing same-sex marriage – have defined marriage for Us – those who support legalizing same-sex marriage – and as the NOM statement said, they don't have a right to do that.

One of DOMA's main effects is that it bars married same-sex couples from receiving federal benefits awarded to heterosexual couples, such as social security survivor benefits and access to health care. In 2004, there were 1,138 federal rights, benefits and responsibilities associated with marriage, some of which can be devastating to any couple barred from marrying. Among the benefits that are different for domestic partners or couples in a civil union versus those of a married couple are family health insurance benefits, which are taxable when applied to a domestic partner, but tax free when applied to a spouse. Property and inheritance rights are also taxable for domestic partners, but not for those who are legally married. Unmarried couples also miss out on visitation rights in the event of a medical emergency and the ability to make medical decisions in the absence of a living will. These provisions in the Defense of Marriage Act, which are discriminatory by nature, hit Rhode Island hard in late 2009, when a man spent weeks trying to gain the rights to access his deceased partner's body to give him a proper burial. In the wake of the story, which fired up seemingly every Democratic elected official in the state, a bill was passed in the legislature which would have extended the right to make burial decisions to domestic partners. Governor Carcieri was widely criticized for his veto of the bill, which was eventually overridden when the legislature reconvened in early January.

Given Massachusetts' progressive history of extending equal marriage rights to gays and lesbians, it is not surprising that in July of last year the state Attorney General, Martha Coakley, filed a lawsuit against the United States alleging that DOMA is unconstitutional. In filing the lawsuit Coakley claimed that when DOMA was enacted, the federal government "overstepped its authority, undermined states' efforts to recognize marriages between same-sex couples, and

codified an animus towards gay and lesbian people." The lawsuit specifically targets the provision of DOMA that defines "marriage" as a union of a man and a woman for the purposes of federal law. Coakley alleges that this denies Massachusetts couples who are legally married in the state many of the federal benefits that come with marriage, and is hence discriminatory and unconstitutional. Massachusetts' case relies on the tenth amendment, which gives all rights to the states that are not specifically granted to the federal government.

President Obama, who received immense support from the gay community in winning his election, campaigned on repealing DOMA, and even issued an open letter to the gay community which read, in part, "Federal law should not discriminate in any way against gay and lesbian couples, which is precisely what DOMA does." As recently as last year, however, Obama's view of DOMA seems to have shifted since his Department of Justice (DOJ) has decided to defend the Massachusetts lawsuit in federal court. The President could have let the lawsuit go undefended, since he clearly sees DOMA as unconstitutional. Kathy Kushnir, who also sees DOMA as unconstitutional, believes that the "administration just doesn't understand" gay rights issues, which has led to President Obama's defense of DOMA. The Department of Justice's brief in defending DOMA went far beyond defending it on constitutional merit, however, which caused the President to take serious criticism from gay rights activists. This is not the first time the President's DOJ has decided to defend DOMA, as it previously filed an incredibly inflammatory brief in defense of the act against a lawsuit by a California couple. In the brief to dismiss that case, the DOJ took additional steps to draw connections between same-sex marriage and incest, as well as citing cases that compared same-sex marriage to child marriage. In the case of *Catalano v. Catalano* 170 A.2d 726, 728-729 (Conn. 1961), it was determined that the marriage of a man to his niece was invalid because it contradicted Connecticut law, even though

the marriage was legal in Italy, where it was performed. In drawing a connection between the *Catalano* case and same-sex marriage, the DOJ has used a tactic that is commonly used by opponents of same-sex marriage which is to claim that if gay marriage is legal, incest must also be legal. It is shameful for anyone to resort to this smear tactic, which has no legal standing, appeals to the worst in all of us, and is used to further separate homosexuality from what is seen as “normal,” and it is twice as shameful when used by a government agency.

While morally repugnant, the use of lies and fear mongering by those who oppose legalizing gay marriage is quite common. In *Perry v. Schwarzenegger*, California’s trial over Proposition 8 – by which the voters of that state voted to define marriage as between a man and a woman – much of the argument made by those in favor of enacting prop 8 was little more than distorting the truth to feed common misconceptions. The overarching themes put forth by those who advocated in favor of prop 8 seemed to revolve around a few basic ideas: first – gay marriage is wrong, second – gay marriage is bad for kids, third – gay marriage is bad for marriage. The first is evidenced by the NOM’s talking points, most of which end with the intentionally vague sentences, “that’s not right,” “it’s common sense,” or “don’t mess with marriage.” This vagueness directly appeals to a sense of discomfort and/or bigotry that goes largely undefined but certainly exists in those who oppose same-sex marriage. It is legally vacuous and has no business even being entered into the public debate over same-sex marriage. Since the first argument is based in nothing more than the discomfort of some and the animus of others, I won’t even spend more than a few sentences discussing it.

The second argument, which doesn’t hold any more water than the first, presents a much more precise tactic in the push to ban gay marriage in California. In one commercial run before the vote in November 2008 which was paid for by the yes on 8 campaign, a little girl comes

home from school to tell her mother that she learned that “a prince married a prince, and I can marry a princess.” The mother stares wide-eyed at a book that the girl apparently read, and shakes her head in disapproval. In another ad, a strong, stern, and slightly scared voice over says, “children will be taught about gay marriage unless we vote yes on proposition 8.” While not explicitly stating that they believe gay marriage – or even the knowledge of gay marriage’s existence – would be bad for kids, these ads make the point that it would be. I discussed this message with Fr. Codega, who believed that having kids read books that talk about gay marriage and allowing them to be taught about it in schools would encourage kids to be gay and that kids in elementary school were far too young to be learning about homosexuality. This is a belief that Fr. Codega and I share, although I would go even further and say that elementary school kids might be too young to learn about any sort of sexuality and especially any form of sex act. This is a view I share with Kathy Kushnir, who stressed that schools can teach kids about love and about family without getting into what goes on in the bedroom. The yes on 8 campaign went far beyond simply asserting that teaching kids about gay marriage would be bad for them, and expressed their belief that same-sex parents were less capable of being good parents than a heterosexual couple. Fr. Codega put forth the question, after admitting that he didn’t know the answer, “is there sort of a disservice to kids being raised by two moms or two dads?” This question, which reiterates the belief of those who oppose gay marriage that heterosexual parents are better for kids than same-sex parents, has an answer: no. Stephanie Terry, the RIDCYF’s Child Welfare Expert, did not hesitate to shoot that belief down, and emphasized that it is the stability and love of the home environment, not the gender of the parents, which matters most in raising children. In dismissing the idea that a person’s sexuality could have a negative impact on their children, Ms. Terry rhetorically asked, “The whole sexuality thing – you know, none of us

are having sex in front of our kids, and shouldn't be for that matter, so why is that an issue?"

The view that a same-sex couple can be just as successful at parenting as a heterosexual couple is supported not only by Mrs. Terry's 22 years of working with Rhode Island's children, but also by a national study published in the *Journal of Marriage and Family* in January 2010. The study by Timothy J. Biblarz from the University of Southern California and Judith Stacey of New York University was titled "How does the gender of parents matter?" The answer they found was that it didn't. The study concluded that basic stability was far more important than having one parent of each gender. They also found that most other studies which assert that "traditional" families are better for kids than "non-traditional" homes don't usually specifically cite same-sex households, since the data is too young for them to be included. Those studies, which usually include divorced parents and unwed parents in the "non-traditional" side, simply reinforce the fact that family stability is important for a child's wellbeing.

Fr. Codega, who believes that heterosexual parents are better for kids than same-sex parents, pointed to a study put out by the Witherspoon Institute, a supposedly independent research group with a serious religious bend, which he claimed confirmed his belief that "children raised by their biological parents are less of a burden on society." This claim turned out to be false, as the study, "Marriage and the public good: ten principles," which is more of a position paper than an examination of facts, speaks out against high divorce rates, illegitimate child births, co-habitation prior to marriage, and – of course – gay marriage. The paper calls decisions by courts to legalize gay marriage because it is unconstitutional to ban it "radical judicial experiments," and relies on the go-to line of advocating against redefining marriage. For the Witherspoon Institute to call itself independent is laughable, but for it to put forth patently

false statements about the wellbeing of children when raised by a mother and a father as opposed to two parents of the same-sex is tragic.

While we had our differences, Fr. Codega and I did agree that there were fanatics on each side of the issue whose views and opinions should be taken with a grain of salt, but Fr. Codega asserted that “the nasty, angry rhetoric is mostly from the proponent side of gay marriage, you know the mudslinging and the lying.” Admittedly, my view on this subject is biased, no matter how bad I try to fight it, but I found that the majority of the lying and the fear mongering came from those in favor of banning same-sex marriage. The prop 8 campaign and subsequent trial are evidence enough of the “mudslinging and the lying” done to prevent gay marriage from being legalized. While a great deal of the people from ProtectMarriage.com (the organization that is heading the defense of prop 8 in court), NOM, and other organizations opposed to gay marriage participated in using nasty, angry rhetoric, the worst of it came from Hak-Shing William Tam, secretary for the America Return to God Prayer Movement and fierce opponent of same-sex marriage. Mr. Tam testified at the prop 8 trial under questioning by David Boies, an attorney for the plaintiffs. Tam was a controversial figure in the campaign to pass proposition 8 and in the *Perry* trial because of his extremist views about homosexuality and gay marriage. Although he was enlisted by ProtectMarriage.com as an official proponent of the act and his name was on various pieces of campaign literature handed out by those who supported prop 8, they did their best to distance their organization from Tam and his views. During the trial, Mr. Tam was questioned about his connection to the yes on 8 campaign, which was established firmly by Mr. Tam himself and evidence presented by plaintiffs’ counsel despite the efforts of ProtectMarriage.com to distance themselves, and he was also questioned about his involvement with and reliance on a website called 1man1woman.net, which was started by his America

Return to God movement. The website makes absurd and offensive claims that link homosexuality to pedophilia, and Mr. Tam stood by these claims in court. He even stood by a line I would laugh at if only people didn't actually believe it to be true, "homosexuals are 12 times more likely to molest children." When he was pressed about what had formed his opinion in such a disgustingly baseless way, Mr. Tam was unable to recall any particular piece of research that supported his assertions. In addition to falsely claiming that homosexuals are more likely to molest children, Mr. Tam's website also advanced the claim that after legalizing gay marriage "on their agenda list is legalizing having sex with children."

In speaking about prop 8 and the mudslinging that came from the yes on 8 camp, Kathy Kushnir said the entire campaign was "very inflammatory, and it's a way to get people scared." This view was shared by Speaker of the House Gordon Fox, who claimed that "[the yes on 8 campaign is] trying to appeal to the base instincts, the worst instincts in people." Though the defendants' counsel objected several times about the relevance of Mr. Tam's testimony and disputed the connection between his organization and the yes on 8 campaign, the counsel for the plaintiffs and Judge Vaughn Walker agreed that his views were validly connected to the yes on 8 campaign. It was crucial for the prosecution to prove that Mr. Tam's views were influential in the yes on 8 campaign in order to prove that the passage of proposition 8 was motivated at least in part by an animus on behalf of those who voted yes. If Judge Walker deems that animus against gay people was the motivating factor behind the passage of prop 8, then the law fails to pass the rational basis test, and is deemed unconstitutional. The *Perry* trial testimony is awaiting review by Judge Walker, after which he will call the opposing sides back to deliver their closing arguments.

One side will win out over another in U.S. District court, but it is obvious that the case is destined for the United States Supreme Court. The idea of sending this case to the current Supreme Court is troubling for some gay rights activists, who fear that with the Court's conservative bend there is no hope of them ruling against prop 8. I asked Kathy Kushnir about her thoughts on whether or not it would be best to wait for another, more progressive court. Ms. Kushnir recognized that there is an accused homophobe on the court in Justice Antonin Scalia, who famously – or infamously – referenced a homosexual agenda in his dissenting opinion in *Lawrence v. Texas*, but felt optimistic about the court, saying, “you would hope that the court would rise to their best selves and create a place where we’re all treated equally.” While I don’t personally share Ms. Kushnir’s optimism, I do share her belief that if the court were to decide against prop 8 it would go a long way to “create a place where we’re all treated equally.”

ARE MARRIAGE RITES A CIVIL RIGHT? OR: ANTONIN TO THE RESCUE

The word “tradition” works its way into the debate over same-sex marriage quite frequently. Those who oppose legalizing same-sex marriage insist that it goes against what marriage has traditionally been for most of human history, while those in favor of legalizing same-sex marriage argue that one of America’s greatest traditions is the extension of civil rights to previously oppressed groups. Rather than take the former statement and bring up examples that broke the tradition of marriage as a man and a woman to procreate, I would rather delve into the debate over whether or not the right to marry is a civil right. Generally speaking, those who favor legalizing same sex marriage tend to view marriage as a civil right, and thus see the government’s denial of that right to same-sex couples as unconstitutional. The opposing side, however, does not see marriage as a civil right. As defined by Fr. Codega, “a civil right is granted by God and reinforced by the constitution and laws.” My initial reaction to that statement would be to say that Fr. Codega’s view of civil rights is a purely religious view, as is the Church’s stance on gay marriage, so both can be discounted due to the separation of church and state (another great American tradition), but that is a debate for later in this paper. In stark contrast to the Church’s view on whether or not marriage is a civil right, Speaker Gordon Fox and MERI Executive Director Kathy Kushnir both asserted their firm belief that marriage was a civil right. The debate over whether or not marriage is a civil right brings to the forefront a host of other issues, such as whether or not the movement to legalize gay marriage is in the same vein as past civil rights movements, whether this is an issue best left to the voters, and whether or not it is appropriate for the courts to declare bans on same-sex marriage unconstitutional and thus advance the cause of equal marriage rights. In trying to compare the gay rights movement to other civil rights movements of the past it is important to focus on a few key factors. Some of

the more important factors include whether or not the rights at issue are seen as fundamental, whether or not they are supported by the constitution, and whether or not the withholding of these rights serves a clear public good.

Before trying to answer the latter two questions, we must first discuss whether or not the right to marry is fundamental to our democratic society. Luckily, both sides of the debate over legalizing same-sex marriage agree that the institution of marriage is one that is fundamental and beneficial to society. As I discussed in the previous section, the anti-gay marriage side always insists that marriage strengthens communities and is beneficial to both society and the wedded couples because of the impact marriage has upon children. Those who oppose gay marriage recognize that marriage itself can be an incredibly good thing for the couple and the community in which the couple lives, they just don't believe that same-sex couples can reap – and provide – the same benefits from marriage. As was stated earlier, every study shows, as does the first-hand experience of child welfare experts, that a stable, loving environment is the best way to ensure the best outcome for a child, and there is no factual evidence that homosexual couples are somehow less capable of providing the kind of environment a child needs to develop physically and mentally. The benefits of stable, governmentally recognized and socially supported marriages are countless, ranging from a child's score in schools to his or her potential for criminal delinquency. To me, it seems obvious that extending the support and admiration of the national and state government to a class of citizens who have been ostracized from an institution into which they seek entry would benefit society. The children of these families would be able to say that their parents were married, which would lead to less confusion in the child's mind about the status of their family as compared to their neighbors or friends at school. Since limiting a

child's confusion is a top priority for those who advocated in favor of prop 8, one would think that they would support granting equal recognition to these families.

Now that the bilateral agreement on marriage's benefits to society has been firmly established, the question becomes whether or not the right to marry is fundamental in the United States. In the landmark case of *Loving v. Virginia* 388 U.S. 1 (1967), the United States Supreme Court deemed a Virginia law banning miscegenation unconstitutional, stating that it violated the equal protection clause of the fourteenth amendment. Chief Justice Warren, in delivering the opinion of the court (which was unanimous in its decision), stated that "the freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men." After establishing firmly that the right to marry was fundamental to a free society, Chief Justice Warren went further, citing *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), in which the court established that marriage is one of the "basic civil rights of man." Obviously the court's language can now be understood to mean men and women, but their concept of the fundamental importance of the right to marry being a civil right guaranteed to all Americans is just as true today as it was decades ago. When I brought up the Supreme Court's history of reaffirming marriage as one of the civil rights guaranteed to all Americans by the 14th amendment, Fr. Codega craftily deflected the argument, saying that it only reaffirmed the importance of heterosexual marriage. The Pastor saw the court's decisions as affirming the traditional definition of marriage being as important in modern times as it had always been. The argument can certainly be made that the court was only talking about heterosexual couples, and that their decisions should not apply to same-sex couples, but that is a rather narrow and rigid interpretation of their ruling. The court ruled in a progressive manner for the time in which they found themselves – a time that was bad for African Americans and worse for homosexuals. As a

counter-argument to Fr. Codega, I would simply claim that in 1967 times had changed from forty years before the *Loving* decision, and in 2010 things are very different than they were in 1967.

The United States as a whole – and especially Rhode Island – is more accepting of homosexuality in general and the majority of people support equal marriage rights. The medical technology and system of adoption has progressed to the point where same-sex couples can raise children in the same way that heterosexual couples can (and the data proves that they are no better and no worse as parents), so the argument that same-sex marriage should be outlawed because they can't contribute to the next generation is archaic and narrow minded.

As far back as 1923 in the case of *Meyer v. Nebraska* 262 U.S. 390 (1923), the Supreme Court recognized that the right to “marry, establish a home, and bring up children” was implicit in the due process clause. Same-sex couples are equal to heterosexual couples in their ability to do just that, but current laws prevent them from doing so with the protection, approval, and benefits of the state in which they live. Another argument put forward by those who want to find a loophole in the court's *Loving* decision is that the court only meant to strike down antimiscegenation statutes and advance the cause of African American civil rights. While that was undoubtedly part of the Supreme Court's decision, subsequent Supreme Court decisions broadened that view. In *Zablocki v. Redhail* 434 U.S. 374 (1978), the court put the *Loving* case in perspective, stating “although *Loving* arose in the context of racial discrimination, prior and subsequent decisions of this court confirm that the right to marry is of fundamental importance for all individuals.” The court could clearly see in 1978 that people would try to pin the *Loving* decision down to something more rigid than it was ever meant to be, and actively pushed back against that.

Since the courts decided as far back as the 1940's that marriage was a civil right and fundamental to American society, it is important to now focus attention on the constitution in which the Supreme Court based its decision. Fr. Codega, while still asserting (even though U.S. history says otherwise) that marriage is not a civil right, made the claim that civil rights were not something that could ever be extended to a suspect class of people in America. "What we're trying to do now is not just grant homosexual people civil rights, which I guess there's really no such thing – you can't grant them a civil right, it's either a civil right or it's not," Fr. Codega said, continuing, "you recognize it as being a civil right, but in order to do that we have to change the definition of marriage first." He may have stumbled over his words, but he gets the point across that civil rights are civil rights, and they exist whether or not the laws of this country recognize them or not. I agree with Fr. Codega that some rights exist when the laws of the country or the state – in this case, both – don't recognize them, but I think his logic is faulty in the last part of the sentence. He makes the claim that in order to recognize a civil right we have to first change the definition of marriage, but implies that it would be a negative to do so. Again, I agree that certain civil rights exist whether or not Rhode Island law recognizes them (as the United States Supreme Court does), and I think it would be more than appropriate to change the definition of "marriage" laid out in DOMA to recognize this civil right. In trying to transmit my thoughts from my head to the keyboard, I couldn't do any better than Justice Ruth Bader Ginsburg in the 1996 case of *United States v. Virginia* 518 U.S. 515 (1996), when she stated "A prime part of the history of our constitution...is the story of extension of constitutional rights and protections to people once ignored or excluded." This statement by Justice Ginsburg simultaneously affirms the need to extend full marriage rights to same-sex couples and defeats the argument that "tradition" precludes us from doing so.

Some who oppose gay marriage, such as Rhode Island's Governor Donald Carcieri, argue that the issue should be put to the voters on a ballot, not advanced by the courts. Their desire to put it on the ballot stems from many different beliefs, one of which is that marriage is not a civil right. Traditionally, marriage has always been a civil right, and it would be wrong to put a civil right up to the voters. Unfortunately, American voters have far too often found themselves on the wrong side of civil rights issues, and it would be a shame to repeat that mistake once again. The courts are incredibly important to this issue because they have consistently advanced civil rights causes – sometimes against the wishes of the public – and the United States Supreme Court agrees with equal marriage activists who see this as a civil rights issue.

Most of the significant gains in civil rights for same-sex couples have stemmed from court decisions. Three of the most recent are *Romer v. Evans* 517 U.S. 620 (1996), *Lawrence & Garner v. Texas* 539 U.S. 558 (2003), and *Goodridge v. Department of Public Health* 798 N.E. 2d 955 (Mass. 2003), each of which deserves more space and time than I have in this paper. The reason I have chosen these three cases in particular is because of how recent they are, how large a step forward they represent, and how they show a gradual trend towards legalizing same-sex marriage. The *Romer* case struck down an amendment to the Colorado constitution that prohibited any executive, legislative, or judicial action at any level of state or local government that would have afforded protection from discrimination to homosexuals. This amendment struck at almost every facet of life, including employment, education, public accommodations, housing, healthcare services, and welfare services. This law, as the Supreme Court determined, clearly created a second class of citizens without offering any protection, which was an obvious violation of the equal protection clause of the 14th amendment. The fact that Colorado would strip these protections from its citizens is disturbing, but it does present an opportunity to

emphasize the fact that those who advocate for gay marriage are not looking for any kind of special treatment, they just want to be recognized as equal to their fellow citizens. In striking down the amendment, the Supreme Court did not grant any special rights to homosexual citizens of Colorado, they simply granted them protections that lifted them to a level of equality with all of the state's other citizens.

The case of *Lawrence v. Texas* was an important step forward for equal rights activists, as a Texas law that prohibited intimate sexual contact between two people of the same sex was struck down. The Supreme Court found that the Texas law, which did not further any legitimate state interest, violated Lawrence and Garner's right to privacy and the due process clause of the 14th amendment. The *Lawrence* case is noteworthy due to the advance it represented for those supporting gay rights, and because of the fierce language used by Justice Antonin Scalia in his dissenting opinion. In his dissent, Justice Scalia referenced a "homosexual agenda," onto which he believed the Supreme Court had signed. The term "homosexual agenda" is one that is used by those who oppose gay rights to describe what they see as homosexuals trying to force their beliefs and lifestyle on everyone else in the country, and is an idea that would be laughable if it weren't so prevalent. In my conversation with Fr. Codega, he brought up the homosexual agenda many times, and though he admitted that he would sound like a conspiracy theorist, he refused to back down from his assertions that one of the prevailing reasons for gay rights advances was "a huge gay agenda." When I brought up the fact that studies by well respected medical and psychological organizations supported the fact that gay couples can do just as well raising children as heterosexual couples, he dismissed the findings saying that those organizations were mostly headed by homosexuals "because they don't have families, they're not married, they have a lot of time." One way to cut down on what Fr. Codega sees as the

prevalence of homosexual individuals in leadership positions of national organizations, something he clearly sees as a negative, would be to allow them to marry and raise a family, but that wasn't an idea to which he was receptive. The Lawrence decision was important because it brought to light Justice Scalia's inflammatory and baseless beliefs about homosexuality, but also because it broke down an archaic view of morality that labeled homosexual contact between two consenting adults as not only morally wrong, but criminal.

The most recent case dealing with same-sex marriage, which is also the most important, is the *Goodridge* case in Massachusetts. The court, in legalizing gay marriage, made two determinations: the first was that couples should have an equal ability to marry the person they love, and the second was that liberty and due process of law prohibits government intrusion or interference in this decision. The Massachusetts court determined that marriage was a fundamental right under the equal protection clause, and saw any law seeking to ban same-sex marriages as supporting inequality. One main inequality in banning same-sex marriage was based on sex, since a woman could marry a man, but another man couldn't. Another was based on sexual orientation, since denying same-sex couples the right to marry dramatically affected gay people. In issuing the court's opinion, Justice C.J. Marshall saw it as irrational that anyone who entered into a loving relationship with someone of the same sex should be "arbitrarily deprived of membership in one of our community's most rewarding and cherished institutions." And he saw this exclusion as "incompatible" with "equality under law." Massachusetts went against the definition of marriage established by DOMA, and many would argue that their state is better off because of it. While those who argue against legalizing gay marriage would not believe that Massachusetts is better for having legalized it, the argument can't be made that they are worse. Massachusetts has not slipped into hell, descended into anarchy, or stopped giving

marriage licenses to heterosexual couples. They simply expanded the definition of a word to support equality, and in doing so raised a challenge to the rest of the United States to do the same.

Gay marriage is only legal in a handful of states, and Rhode Island is not one of them. I believe that marriage is a civil right, a belief that has been affirmed by the United States Supreme Court, so denying that right to people simply because of their sexual orientation is odious and unjust. The idea that, as NOM put it, “gays and lesbians have a right to live as they choose,” while untrue, is often advanced by those who advocate against legalizing gay marriage. Fr. Codega advanced this belief during our conversation, saying “[same-sex couples are] free to do whatever they want, that’s not the point.” After hearing that, I interjected saying that they are not free to do whatever they want, since what they want to do is get married. Fr. Codega drew an analogy, saying “I’m not free to drive sixty-five miles an hour down this road. I can do it but I’d have to pay the consequences.” I’m not entirely sure what consequences would ensue for same-sex couples who seek a marriage license, other than denial of their civil rights. This idea that same-sex couples are free to do what they want is vehemently disputed by those who advocate for legalizing gay marriage. Ms. Kushnir had no problem sharing her honest belief on the subject, saying “I think that it’s shameful that they are even splitting hairs like that. I think it’s completely disrespectful of gays and lesbians as part of the human race.”

It is rare for me to ever differ to Justice Antonin Scalia when discussing gay rights, but since he has already said what I aim to say, I might as well allow some space for a quote of his. As I recently discussed, Justice Scalia drew a great deal of criticism for his dissenting opinion in the *Lawrence* case, but he did shoot himself in the foot a bit when he accidentally made a strong case for legalizing gay marriage nationwide. Speaking as if he had already accepted defeat, and noticing that homosexual sexual conduct could no longer be held as illegal, Justice Scalia

rhetorically asked, “what justification could there possibly be for denying the benefits of marriage to homosexual couples exercising the liberty protected by the constitution?” The obvious answer, Justice Scalia, is “none.”

CHURCH VS. STATE

OR: THE BISHOP'S ONE-WAY-WALL

One of the main points of contention at the center of the gay marriage discussion is the separation of church and state, or lack there-of. This principle's meaning, which is more open to interpretation than I once thought, traces its roots in America back to an 1802 letter from then President Thomas Jefferson to a group in Connecticut known as the Danbury Baptist Association. In the letter, which Jefferson edited several times before finally sending, the President described his belief that the constitution created "a wall of separation between Church & State." The fact that the letter was reworked several times is important because it shows just how deliberately the President chose his words since he realized that they might have staying power as a matter of public policy. In describing the "wall of separation," Jefferson was referencing the establishment clause in the first amendment to the constitution, which states in part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." When I took up this project I presumed that there was general public consensus with regards to the meaning of "the separation of church and state" and the establishment clause in general, but I would soon learn that not only is the scope of the clause open for debate, but there are some who doubt the existence of Jefferson's wall.

Supporters of legalizing gay marriage in Rhode Island often rely on a succinct tag line which has several variations but can be generally stated as, "we're knocking on city hall's doors, not the cathedral's." This line is incredibly powerful, even though it isn't as snappy or catchy as some of the other slogans and signs used by gay marriage advocates ("straight against hate" and "no more Ms. Nice Gay" are the best two I've seen). Marriage may mean something different from one couple to the next, but many couples find common ground in the inclusion of a religious element or ceremony. While some people choose to have their marriage inside a

church or performed by a priest, it is not a necessary element to assure that the union is legally valid. Rhode Island's general laws state that a marriage could be performed by a wide array of people including priests, however, priests are not the only people capable of overseeing a couple's vows – Judges, Magistrates, the Secretary of the Senate, and other state and federal employees can also perform marriages. The fact that church leaders can perform marriage works well for the public good since so many couples do choose to have their marriages performed by a priest in a church of their choice, but a religious ceremony is not a requirement for obtaining a marriage license. A couple seeking to get married by their local parish priest still needs to apply for a marriage license from city hall, but a couple seeking a civil marriage without a religious ceremony does not need approval from their local parish for the marriage to be valid. Because of this, many supporters of legalizing same-sex marriage make the claim that the church has no business imposing its views on the rest of society, but those opposed counter that they are simply doing their civic duty, supported by the constitutional right to free speech, and voicing their opinions. In an e-mail interview with Senator Rhoda Perry, D-Providence, I asked about the civil aspects of marriage. She pointed out that after obtaining a civil marriage license in Rhode Island, there are two tracts a couple can take: the first is to be married by a civil official, the second involves a religious official determining whether or not the couple is eligible to marry within a particular faith. "The first and only step needed to get married currently is having a license," Perry said, "the second step [seeking the approval of a religious faith] is an option that every couple can choose or not choose."

Father John Codega, the Pastor of Christ the King Church in West Warwick, Rhode Island, is also on the Board of Advisors for the National Organization for Marriage. In my time speaking with Fr. Codega, we discussed almost every aspect of the same-sex marriage debate

from the bedroom to the courtroom, and to his credit the Pastor had a great deal of patience when it came to explaining the Catholic church's stance in depth. Fr. Codega had a very different idea of the meaning and scope of church-state separation than I had expected to hear. I went into the interview expecting that he would put forth an argument detailing the reasons why allowing gay marriages would be an intrusion of state upon church, but instead of arguing that angle, which supports President Jefferson's idea of a wall between church and state, Fr. Codega made an argument that down-played the importance and historical existence of such a wall. Noting that the many people in favor of legalizing same-sex marriage feel that it would be a violation of the separation of church and state to define marriage as between a man and a woman, Fr. Codega said, "how it is being portrayed today is a gross misrepresentation of Jeffersonian views." I asked him how that was the case, when Jefferson supported the idea that the state should not interfere in religious matters and vice-versa, but he continued his argument, saying, "the constitution clearly states government should not interfere with religion, they never said people's religious voice doesn't interfere with government." The Pastor's argument is centered around people's first amendment right to free speech, which allows for views based on religious principles (or views not based in religion but mirroring those that are) to be presented and debated publicly with the hope of influencing the political and legislative process.

Father Codega admitted that priests are not legally allowed to speak from the pulpit for or against one candidate or another but they are allowed to speak about general religious principles that may or may not have political significance as well. He appreciated how vocal Bishop Tobin was on issues that blur the lines between religion and politics, and I shared his view that any healthy debate required input from all concerned parties. The Bishop's role, as Fr. Codega sees it, is to "motivate the people to be confident in what they're doing." Fr. Codega believes that the

church can best serve the faithful – and all the people of the state – when the congregation is informed and fired up to get involved in the political arena. He understands that the church and priests are not allowed to publicly take a stand for or against specific politicians in any race if they wish to maintain their tax-exempt status, but is wise enough to know that the same does not go for the lay people in his pews. The Pastor knows that the church has a legal right – a right I wholeheartedly supported before beginning this project and will continue to support after finishing it – to educate its people on issues that go with or against religious teachings. He carried himself well throughout the interview, but at this point I got a distinct feeling that he had craftily walked me into one of his talking points, and I was impressed by how smoothly he had done it. “The Church has always had an obligation to educate and inform its faithful,” Fr. Codega said, “with the mandate and the obligation that they in turn would take active roles in the Government.” This active role, he asserts, extends well beyond the voting booth and into the public forum where ideas are presented and debated on their merits. Whether or not ideas based solely on religious beliefs have enough merit to withstand public scrutiny and can be shown to serve the greater good of the public remains to be seen.

My conversation with Fr. Codega covered a wide array of topics, but he seemed the most passionate when discussing the role of religion in government. He was eager to note that “In God We Trust” was engraved in buildings all over Washington, D.C., and that any healthy debate should include viewpoints from every concerned party. The Pastor disregarded the idea that Jefferson’s wall of separation worked in both ways – keeping religion out of government and government out of religion – instead advancing the belief that “this separation of church and state doesn’t exist the way people think it exists. It exists as ‘the government shall not silence the voice of religious people.’” While this on the surface seems like another example of

someone molding a two-hundred year old statement by one of the founding fathers to fit his or her belief (which is exactly what Fr. Codega accuses the pro-gay marriage movement of doing), it is an idea worth delving into. This seemed like a great opportunity to explore an idea that I would reject as laughably ridiculous if I weren't doing this honors project. I began thinking more deeply about Fr. Codega's concept that Jefferson's wall of separation had a one-way gate, allowing religious ideas and policies to flow into civil law, but not vice-versa. It is undeniably true that all people in Rhode Island and the United States are allowed to voice their opinions on political issues, one of which is same-sex marriage. Regardless of one's faith, we are all granted the civil rights of free speech and freedom of religion.

What seems to have happened in the debate over same-sex marriage is a merger of the two, where people are exercising both their freedom of religion and their freedom of speech in arguing against gay marriage. While people can certainly use religious doctrine as a motivation for their political beliefs, the state is not free to do so in crafting policy. In establishing a law that is based on religious principles, or one that affects the establishment clause of the first amendment, the state must prove that it has a compelling governmental and social interest in doing so. This has worked out in Supreme Court cases dealing with the separation of church and state since *Reynolds v. United States*, 98 U.S. 145 (1879), where the court decided that religious beliefs were not a legally protected defense against a criminal indictment and found in favor of the state. Supreme Court cases have also been decided in favor of protecting religion from state laws, such as the much more recent *Church of the Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520 (1993), in which the court found that a Hialeah, Florida law banning the sacrifice of animals in religious practices unconstitutional because it violated the first amendment right to freedom of religion. The laws enacted by the city council of Hialeah were narrowly targeted to limit the

practice of Santeria, and the Supreme Court struck them down since the city had no compelling interest in banning the sacrifices performed by the church.

Father Codega's claim, that the separation of church and state exists only to block the government from interfering in religious matters, and not to block religious law from interfering in civil matters, while certainly arguable, is not the least bit impregnable. In *Edwards v. Aguillard*, 482 U.S. 578 (1987), the United States Supreme Court ruled that teaching creationism (a purely religious view of the origins of life on earth) alongside evolution (a secular but scientifically supported view) was unconstitutional. The court found that a Louisiana law requiring public schools to teach creationism if they taught evolutionary theory was unconstitutional because it violated the establishment clause, basically amounting to a state-sponsored view that God created people. In this case, the court made a clear and decisive step to limit the intrusion of religious teachings into public institutions. This flies in the face of Father Codega's argument that the separation of church and state exists merely to protect the former from the latter. While students in public schools are required to learn and understand the theory of evolution, the government may not compel them to agree with the theory. The students are still free to practice their faith and believe its teachings outside of school, but in the public sector religious law is subservient to laws enacted by the state or federal government for the public good.

In my opinion, this holds true not only for education in public schools, but the issuance of civil marriage licenses. Rhode Island's Speaker of the House, Gordon Fox, an openly gay catholic who has been in the legislature since 1992, and Fr. Codega may share many religious principles, but their views on the separation of church and state are vastly different. The two are in agreement that this country has long held that Jefferson's wall of separation is an important

American tradition, but they disagree about its application. While Fr. Codega asserts that influence can flow freely from church to state but not vice versa, Speaker Fox said, “[churches] are a private entity, government should not be imposing this upon religions, but guess what – it works in the reverse too.” When asked if he thought that a ban on gay marriage was an intrusion of church into matters of the state, he flatly said, “I absolutely believe it is.”

Speaker Fox takes a much more hard-line approach to the separation of church and state, believing it to be in the best interest of each to stay out of the affairs of the other. Both as a political means of appeasing the Rhode Island religious faithful and out of respect for the separation of church and state, Speaker Fox put in a provision in House Bill 7789 – which would legalize gay marriage – that states, in part, “No court or other state or local governmental body, entity, agency or commission shall compel, prevent, or interfere in any way with any religious institutions decisions about marriage eligibility within that particular faith’s tradition.” In addition to that statement, which frees religious institutions from any potential lawsuits stemming from the denial of marriage eligibility to a same sex couple, the bill also includes a provision applied specifically to “ordained clergy, ministers, or elders,” freeing them from the obligation of officiating any civil marriage which goes against their faith’s tradition. Gordon Fox is an incredibly smart legislator, and he chooses his words deliberately when crafting legislation, but he is also a man of faith who wants to do everything in his power to protect the freedom of religion established in the United States Constitution and the Rhode Island general laws. As both a public servant and a Catholic, Speaker Fox needs to find a comfortable middle ground between relying solely on the teachings of his faith when crafting legislation and abandoning those teachings altogether.

The separation between church and state and whether a publicly elected official should stand for one side against another took center stage in a dispute between Bishop Tobin of the Diocese of Providence and United States Representative from Rhode Island's first district Patrick Kennedy. In a series of public letters and addresses on talk radio which centered on a provision in the recent health care bill regarding abortion, Bishop Tobin settled on suggesting that Congressman Kennedy find another church more open to his views on a woman's right to choice. This generated a great deal of negative press for both Kennedy and the Bishop, each being criticized for publicly attacking the other, but public sentiment seemed to side with Kennedy who had recently lost his father, famed United States Senator Ted Kennedy. However, despite the criticism, the Bishop – not surprisingly – refused to back down.

The idea of trying to find a balance between one's personal faith and public duty is not taken lightly by the Catholic Church, as Fr. Codega stated, "if you can't embrace the church's teachings, perhaps you should look for another church." This sentiment is vastly different from what Speaker Fox claimed to feel, that he could find a balance between his personal faith and his obligations as a public official. Fox openly stated that "there are certain parts of the catholic doctrine, in terms of the marriage issue and the choice issue, which leave me wondering," referring to the church's teachings on homosexuality. Speaker Fox asserted that questioning one's faith was entirely natural, taking the stance that everyone's faith means something different to them than it means to the person sitting in the pew in front of you – an idea echoed by Governor Carcieri's Communications and Policy Analyst Frederick Sneesby. Speaker Fox felt certain that if the Catholic Church were to take a poll of its members and start purging those whom didn't fall exactly in line with every church teaching, Bishop Tobin would "probably have a bunch of empty pews." This idea was contested by Fr. Codega, who allowed that the church

might become smaller in the future, but asserted that it would “be a much stronger church in the years to come, because of its unwillingness to – I don’t want to use the word compromise, but it’s unwillingness not to continue to teach the truth.” This unwillingness to not continue in teaching the truth, for Fr. Codega and the rest of the Catholic Church in Rhode Island, means that there will be no recognition of same-sex marriages.

One of the most compelling constitutional cases against banning same-sex unions based on religious conviction comes from the case of *Lemon v. Kurtzman* 403 U.S. 602 (1971). The case, which found state funding for “church-related educational institutions” unconstitutional, established a three-pronged test (dubbed the “lemon test”) for laws dealing with religious institutions. The lemon test found that for a statute to be constitutional, it must have a secular legislative purpose, must not advance or inhibit any particular religion, and it must not foster “excessive government entanglement with religion.” The first question can be easily answered, as any law banning same-sex marriage would not serve a secular legislative purpose. Same-sex couples are as capable as heterosexual couples when it comes to raising children, and public recognition of their marriage would only strengthen their family, which in turn would strengthen their community. The second question, whether or not legalizing same-sex marriages would advance or inhibit any religion, has a great deal more grey area than the first. Those who advocate for legalizing same-sex marriage would say that marriage is strictly a civil matter and their ability to marry does not infringe on anyone else’s religious liberty, but those who oppose legalizing same-sex marriage would say just the opposite. As evidenced by the idea put forth by Fr. Codega, that the religious faithful would lose the right to define marriage for themselves and their children, many would see this as infringing upon religious liberties. I would counter this argument by stating that they can still define marriage as they would like, and teach their

children whatever they wish to teach them (as is already done in the case of evolution vs. creationism), and that granting a civil right to one group of people does not limit the rights of another. The final question of whether or not legalizing or banning gay marriage would foster excessive government entanglement with religion can be answered by looking at the bills currently before Rhode Island's General Assembly. Both the House bill and its twin bill in the Senate have provisions that excuse religious officials from having to officiate same-sex marriages. These provisions would protect the separation of church and state, and thus prevent any government/religious institution entanglement.

For Fr. Codega and the rest of the Catholic Church, the protections put forth in Speaker Fox and Senator Perry's bills are not enough to protect what they believe is the imminent and unavoidable violation of their constitutional rights as sovereign religious organizations. One of the main intrusions into the church's religious liberty was the idea that extending the right to marry to homosexual couples would alter the education children receive in the public school system. My knee jerk reaction to Fr. Codega's fear – I apologized afterwards, but it isn't easy to entirely disregard the way I've felt for the better part of my life – was to state that it was the *public* school system and hence not under the direction of the church. Calling it a "direct infringement on the religious liberties of a nation to teach their children their religious values," Fr. Codega took umbrage to the thought that children would learn one thing in school and something entirely different from their parents and their faith. "It's telling the students of catholic parents that they're wrong, that what they've been teaching their children for thousands of years is now wrong," the Pastor said, his voice taking on a noticeably worried tone. I brought the Pastor's fears up to Kathy Kushnir, the Executive Director of Marriage Equality Rhode Island, one of the leading gay rights organizations in the state. I expected her response to follow

a purely secular argument, that it was a *public* school, not a *catholic* school, so public law reigned. I was, as I had been several times already in my presumptions, wrong. When I posed the question of whether or not second graders were too young to be learning about homosexuality, Ms. Kushnir let out a brief laugh that seemed to scream, “this question again!?” She replied softly, describing the difference between “talking about who people love” and the actual sex that occurs. She put forth the idea that second graders were too young to learn about heterosexual sex as well, and stated that sex education was best decided by the educators, not by the courts. With regards to the discussion of actual homosexual sex in early-elementary education, which was one of the main lightning rod issues behind the prop8 campaign, Ms. Kushnir dismissed the idea as fear-mongering, saying, “They teach you about your body, they teach you about respecting yourself, respecting other people, and respecting other peoples’ bodies, and then you make your own decisions about your sexuality as you go along.” While I wholeheartedly agree with Fr. Codega that second graders are too young to learn about homosexual sex, I also agree that they are too young to learn about sex of any kind, which is why I appreciated the distinction Ms. Kushnir made between teaching about love and teaching about sex.

Recently, in Washington, D.C., a very public and very controversial conflict between the church and state – rather, district – ended with the branch of Catholic Charities in Washington, D.C. that handled adoptions terminating its contracts with the government to avoid having to place kids into homes with same-sex couples. This decision by Catholic Charities came in the wake of Washington, D.C. legalizing same-sex marriages, and was made because the archdiocese of Washington was not able to reconcile its beliefs about marriage with the new law. In a statement, Susan Gibbs, a spokeswoman for the Archdiocese, said that “Really the priority

was: How does Catholic Charities continue serving all the people it does now, while meeting the requirements and staying true to who they are as a Catholic organization?" Apparently for the Archdiocese of Washington, the best way for them to serve the people was to stop serving some of the most vulnerable people in our society – children in need of adoption. I asked Fr. Codega about this decision, which I understood on one level because of the Catholic belief that marriage was between a man and a woman, but could not understand based on the general unconscionable nature of what effectively amounted to the Archdiocese stamping their feet and walking out of a dodgeball game because someone wasn't letting them make the rules. Fr. Codega explained the decision plainly, saying that Catholics "can't violate our moral, ethical standards," when it comes to recognizing same-sex marriages. Fr. Codega then reverted – as he did several times during the course of our discussion – to a slippery slope argument. "If the church allows homosexual adoptions out of their agencies, what's to stop them from allowing a few abortions out of their catholic hospitals?" While I did my best to avoid ever bringing up the topic of abortion, since it is such a distractingly controversial issue and has absolutely nothing to do with my project on gay marriage, the Pastor did have a point, perhaps more in principle than in wording. While I can understand and clearly see how the church could allow same-sex adoptions and still not allow any abortions (different policies for different situations), I do see where he is coming from in that even one decision not based solely on catholic dogma would be too many for such a proud and staunchly catholic organization.

To gain a different perspective on this issue, I made sure to speak with the Rhode Island Department of Children Youth and Family's Stephanie Terry, who, as the Associate Director of Child Welfare, is as much of an expert on adoptions and children as you are likely to find anywhere. Ms. Terry sounded relieved in that the DCYF was not a religious organization, so

that they didn't have to worry about any church-state dilemmas. She calmly stated that they don't worry about theological aspects of families when considering adoptions, "we get into the legality and what we believe is best, or what we know is best in practice," relying on what they've seen as outcomes of various situations over the course of her 22 years working within the DCYF. The DCYF isn't designed in a way that would allow a situation like the one that occurred in Washington, D.C. to occur in Rhode Island, Ms. Terry plainly stated at the outset of our discussion that "as a department, we don't discriminate against same sex couples," when it comes to adoptions. Ms. Terry, given the fact that she has devoted her life to working with children, was saddened by the fact that there would be one less organization working for orphaned children. My initial reaction was also sadness for the kids involved. It seemed to me that the Catholic Church was abandoning some of the most vulnerable members of our society to stick to some archaic and misplaced sense of right and wrong. I brought these concerns up with Fr. Codega, and he mentioned the same idea that I was thinking. He said, "yeah, it's a shame," with which I agreed, but he was quick to point out that we thought it was shameful for different reasons. He thought it was shameful that the Catholic agency had to (or chose to, depending on your stance) close down its operations, I thought it was shameful that they would even consider that an option.

My discussion with Fr. Codega never got particularly heated, but there were several points where we butted heads and no matter how determined I was to convince myself otherwise, I couldn't get past my own views. Since my goal in this project was not to argue with a catholic priest, but to hear out his argument, consider it on its merits, and try to align my own views with those of his faith, I decided not to focus solely on church-state relations, but Fr. Codega had a great deal more to say about the separation of church and state, some of which I had never

previously considered. A hypothetical situation was presented to me: A same-sex couple gets married and wants to rent out a church hall – or a Knights of Columbus banquet hall – for their reception, but gets denied because their marriage goes against the beliefs of the church and those of the Knights of Columbus, which is a Christian organization. Would that denial of services leave the organization, be it a parish or a banquet hall, open to a lawsuit? It was a point I hadn't given much thought. The Fox and Perry bills would allow for religious leaders to refuse to officiate a marriage, but the bills say that no governmental body will "interfere in any way with any religious institutions decisions about marriage eligibility within that particular faith's tradition," but it doesn't make mention of anything occurring within facilities owned or operated by organizations based around that faith. While I agree with Fr. Codega that in the sue-away society in which we live, this could bring about a lawsuit, I disagree with him about the best way to prevent any future lawsuits from occurring. While he saw this hypothetical problem as reasonable ground to ban same-sex marriage entirely, I simply thought, "why not just add a provision to the law exempting religious banquet halls?"

After much consideration, I came away from my various discussions about the nature, intended purpose, and scope of President Jefferson's wall of separation realizing that there were far more cracks than I had previously believed. While I agree with Speaker Fox when he said, "don't impose your religious beliefs on everybody, because last I heard this state and this country was founded on the separation of church and state," I can't deny that there are certain as-yet-untouched legal grey areas which are sure to raise issues in the future. If a Catholic adoption agency would terminate its contract with the government to avoid placing kids in same-sex households, anything is possible. The separation of church and state, as well as the balance between the two, is constantly evolving to meet challenges presented by modern life. The law's

ability to bend in this regard might scare some, but I'm encouraged by it. While Supreme Court cases may sometimes support the state and others reaffirm the rights of churches, they consistently reaffirm the American principle of separation between the two for the benefit of each.

A MARRIAGE BY ANY OTHER NAME...
OR: THERE'S SOMETHING ABOUT MARRIAGE

In the wake of Governor Carcieri's highly controversial veto of a bill that would have given funeral planning and power of attorney rights to "domestic partners," known as the burial rights bill, the Governor expressed a willingness to sit down with gay rights leaders in Rhode Island and discuss his decision. After the closed-doors discussion, the Governor expressed a willingness to consider a bill that would grant many of the rights, benefits, and protections of marriage to same-sex partners, without granting them full marriage rights. While many saw this as a big step forward for a Governor who had spent his entire term in office as the arch-enemy of the equal marriage movement in Rhode Island, others were not satisfied with a piecemeal approach. Political Science Professor and Rhode Island aficionado Maureen Moakley remarked that the unwillingness of MERI and other gay rights organizations to accept a compromise bill was because they "sense that their time is coming." While it is certainly true that the future looks brighter than the past for gay marriage advocates in the Ocean State, it remains to be seen whether that optimism will be fulfilled. Mr. Frederick Sneesby, a Senior Communications and Policy Analyst for Governor Carcieri agreed that the pro-gay marriage side of the debate would not accept a compromise such as civil unions, saying, "they want gay marriage, that's the bottom line, and they're not going to be satisfied with anything less." Obviously, those who advocate in favor of legalizing gay marriage and those who oppose it rarely find any common ground, but each side agrees that the right to form civil unions is not the same as having the right to get married. "It's not the same and it shouldn't be the same and it will never be the same," Fr. Codega said, "by definition it can't be the same, according to the definition existing of marriage." Since it is clear that there is something drastically different about the institution of marriage that makes it more respectable, esteemed, and beneficial than civil unions could ever be, it is

important to explore why those who advocate for gay marriage think that civil unions don't go far enough, and why some who advocate against gay marriage think that civil unions go too far.

A good place to start this discussion is with the central unit that a marriage publicly and legally solidifies: the family. In my interviews about same-sex marriage with various concerned parties throughout the state, I made sure to ask for the interviewee's definition of the word "family." I was impressed by the diversity of definitions put forward, and it was interesting to see a divide emerge between the two sides. On the whole, I found that supporters of same-sex marriage had a much broader and more subjective view of what defined a family, whereas those who opposed same-sex marriage had make-or-break criteria for what did and did not constitute a family. In giving the Church's definition of a family, which is one they have traditionally held and are currently fighting to maintain as the legal definition, Fr. Codega repeatedly described it as "one man and one woman for the education and raising of children." In stark contrast to this definition, which has definitive criteria that a couple must meet in order to be considered a family, Stephanie Terry from the RIDCYF described a family as "who nurtures and cares for and meets the needs, protects, and makes this child be in a safe environment." Ms. Terry recognized that it is not only the people who conceived the child who are there for him or her, but it could be "a grandparent, it may be an aunt, it may be an uncle, it may be a sibling raising younger siblings, it may be a gay couple, it may be a single gay person," which shows the pliability of the family in the eyes of those who don't believe that gay marriage would be harmful to society.

In this vein, the first word that came to the mind of Ms. Kushnir when I asked her to define family was "love." The idea of love being the central motivation for marriage and the most important thing linking a family together received a great deal more attention from those who would like to see same-sex marriage legalized versus those who want to define marriage as

between a man and a woman. Ms. Terry, while acknowledging that love was one of the most important elements of a healthy family, criticized those who advocate against gay marriage for speaking out of both sides of their mouth. Through her work with the DCYF, Ms. Terry knows that stability is more important than gender in parents, and she has often heard the claim that children do better with heterosexual parents because those households are more stable. She found it ridiculous that people would accuse same-sex couples of being less stable because they weren't fully married (which meant it was easier for them to dissolve their relationship), while simultaneously not allowing them to marry and defeat the false assumption of instability once and for all. In response to my inquiries about what harm could be done by allowing two people of the same sex who were deeply in love to marry, Fr. Codega defended the Church's definition of marriage, saying, "two people in love is not the definition of marriage." In advancing this claim, Fr. Codega pointed out that the government does not grant marriage licenses to a whole host of relationships such as polygamous, incestuous, or those involving a minor. Using the slippery slope argument, which directly mirrors the scare-tactics used in the prop8 campaign, Fr. Codega has shifted the discussion of gay marriage to an irrelevant topic with which nearly every person in the country disagrees. He has attempted – as those in California succeeded in doing – to link gay marriage to something to which it has no ties, which is an utterly shameful tactic.

While many would agree that love is a major component of any successful, stable, and happy marriage, the definition of marriage for those who oppose gay marriage rests on the ability to conceive a child via sexual intercourse. When I pressed him on this issue, Fr. Codega stated that the church would deny marriage rites to a couple that was unable to have children due to old age or infertility, unless the couple received special permission for the marriage "without the goods of the marriage." Fr. Codega did draw a distinction, however, between a heterosexual

couple that was unable to conceive and a same-sex couple, saying that “infertility is not the same as the inability.” I brought up the idea that lesbian couples are able to conceive, thanks to advances in modern medical technology, but he dismissed that as “simply not the same.”

The Church’s insistence on focusing on differences between same-sex and heterosexual couples continues even as they launch their “Catholics Come Home” campaign to bring people who have drifted away from the church over the years back into the faith. I brought this up to Fr. Codega, since it seems that the church is sending a mixed message to its homosexual adherents that they should re-enter the faith even though the church is keeping certain aspects of the faith off limits. “Come back to the church,” the campaign says, but their ban on recognizing gay marriage seems to follow that up with, “but hold it right there, *that’s* far enough.” I was curious to see how the Church would reconcile their stance on homosexuality with the Catholics Come Home campaign, so I asked Fr. Codega if it was possible for someone to be a married and homosexual, and still be fully catholic. “The short answer is ‘no’,” he responded, and continued, echoing Bishop Tobin’s language in his debate with Representative Kennedy, “if you can’t embrace the church’s teachings, perhaps you should look for another church.” But, Fr. Codega was not willing to completely dismiss the faithful who also happened to be homosexual, as he nodded assent to those who have “reconciled their rational mind with their faithful soul,” and he finished with a smile, “good for them.” The Church’s stance on gay marriage, however, goes beyond simply denying certain religious rites to same-sex couples, as Fr. Codega stated, “from the church standpoint, there’s no such thing as homosexual marriage or gay marriage – it doesn’t exist.” Since same-sex marriage is a legal reality in several states, the Church’s position becomes one of denial. They are currently denying the existence of what has become a reality for thousands of couples, which – I believe – further alienates their position as one based solely

out of religious conviction without furthering any good for the state of Rhode Island, thus barring their position from being adopted legislatively.

As seemingly anyone could tell you, there is a great deal more to marriage than sexual intercourse for the purpose of procreation, and the institution of marriage carries with it many responsibilities and benefits than civil unions. On the national level, there are 1,138 federal benefits, rights, and responsibilities associated with marriage. Because of the definition of marriage established by DOMA, same-sex couples are barred from receiving these benefits. Some of the more important benefits include the ability to avoid the estate tax when leaving an inheritance to a spouse, file joint tax returns, hospital visitation rights, and family health insurance benefits. As was discussed earlier, a bill that would allow for same-sex couples to form civil unions that would cover most of the benefits associated with marriage was introduced in Rhode Island by Senator Leo Blais, but gay rights activists in the state were not interested in compromise. Senator Rhoda Perry, who introduced to the Rhode Island Senate a bill that would legalize gay marriage, believes that the civil unions bill would not pass but that it could be seen as a sort of stepping stone towards full marriage rights. People such as MERI's Kathy Kushnir do not believe that legalizing civil unions goes far enough, but people on the other side of the debate believe that would be going too far. Somehow simultaneously echoing part of Sen. Perry's language and part of the language used by Governor Carcieri, Fr. Codega said of civil unions, "the church would see that as kind of like a stepping stone toward the breakdown of marriage." Some rare common ground has clearly been found in the Ocean State over the fact that civil unions are just wholly different than marriage. Whether that means "less than" marriage or simply "different than" depends on which side of the debate you support.

One obviously important aspect of the debate over gay marriage and civil unions is insurance coverage. Coverage by insurance companies – or lack there-of – in many ways has a legitimizing effect on something, be it a new prescription, a new philosophy of medical care, or an institution such as marriage. One recent example of insurance coverage legally legitimizing something is the hospice movement of the 1970's and 80's. Hospice care, which was becoming more widespread in Europe throughout the 1960's and early 1970's, was not available in the United States until 1974. As society began to recognize the great benefits hospice care provides to those who are dying, the U.S. Department of Health, Education, and Welfare issued a report that praised the reduced cost of hospice care, as well as the comfort it brought to the patient and their family. In 1986 Congress made permanent legislation that was passed a few years earlier, the Medicare Hospice Benefit, which provided insurance coverage for families seeking hospice care rather than more traditional end-of-life treatments. The approval of the government and coverage of insurance companies legitimized the hospice movement in its early years and reassured the public that hospice was an acceptable form of care. Insurance coverage – or lack there-of – also plays a major role in the debate over gay marriage.

Beyond insurance benefits for the parents, marriage also has a huge impact on children. While the proponents of California's prop 8 and others who oppose gay marriage argue without factual evidence that it could be harmful for children, Stephanie Terry and other child welfare experts recognize that having parents who are legally married and socially accepted can be incredibly beneficial for kids. In presenting an Amicus Curiae brief in Connecticut's *Kerrigan* case, which legalized same-sex marriage in the state, a group of child welfare experts (including the American Psychological Association, and the Connecticut Chapter of the National Association of Social Workers) stated, "there is no scientific basis for asserting that these parents

differ from heterosexuals in their parenting skills or that children are adversely affected by having gay and lesbian, rather than heterosexual parents.” On the contrary, Kathy Kushnir sees legally acknowledging and socially accepting same-sex marriages as “the healthiest thing we can do” for the children of same-sex couples.

The benefits of marriage, as opposed to civil unions, are manifold and extend into almost every aspect of a couple’s life. From inheritance benefits in the event of one spouse’s death and hospital visitation rights in the event of sickness, to the less tangible mental wellbeing of their children, the benefits a couple and their children receive from a state’s legal recognition of their marriage make the institution one of great esteem and value. Civil unions may be able to provide all of the rights and benefits of a marriage, but they don’t provide the actual *marriage* to a couple. Marriage, which the United States Supreme Court assures us is a civil right, would still be denied to couples who were simply united by a legally binding contract. In trying to grasp the *je ne sais quoi* that separates marriage from civil unions, I will defer to the Connecticut Supreme Court and their *Kerrigan* decision: “Marriage has distinct tangible and intangible benefits that extend beyond the material necessities of life and have important implications for the psychological and physical health of married individuals.” The court also stated, capturing the spirit of what I have aimed to say in this section, that “the institution of marriage carries with it a status and significance that the newly created classification of civil unions does not embody.” Civil unions are indeed a second, lesser class of relationship, and establishing them as the norm in Rhode Island or in the United States would be an insulting violation of the civil rights of our citizens. America has been here before, we’ve already learned that separate is not equal, and it would be a shame to let history repeat itself.

THE RHODE ISLAND SCENE

OR: TURBULENCE IN THE OCEAN STATE

Margaret Chambers and Cassandra Ormiston were among the first eager couples to cross Rhode Island's border into Massachusetts in search of something they couldn't get in their home state: a marriage license. On November 18, 2003 the Massachusetts Supreme Judicial Court sided with the plaintiff in the case of *Hillary Goodridge, et al v. Department of Public Health*, 798 N.E.2d 941 (Mass. 2003), thus legalizing gay marriage in Massachusetts. Since Massachusetts was the first state in the country to legalize *marriage* for same-sex couples, a flood of people turned out to city hall in May of 2004 when they began issuing marriage licenses. Among those people were Margaret Chambers and Cassandra Ormiston, who left Rhode Island and went across the border into Fall River, Massachusetts. The married couple then returned to Rhode Island where they resided together. Unfortunately, the marriage did not last and in 2006 the couple sought a divorce in Rhode Island Family Court. The resulting court battle, which sadly made something of a spectacle out of the sadness of a family breaking down, thrust Rhode Island squarely in the middle of a debate that was heating up throughout New England and elsewhere in the country.

The Rhode Island Family Court, unsure of how to proceed with the divorce case, asked the Rhode Island Supreme Court whether or not they had jurisdiction to hear the case. Since Rhode Island is one of the few states in the country which until that point had made no definitive legislative or judicial move on same-sex marriages – for or against legalization or recognition – this was a landmark case. Both Rhode Island Attorney General Patrick C. Lynch, who had issued a 2004 advisory opinion stating that Rhode Island would recognize marriages validly performed in other states, and Governor Donald Carcieri, who is staunchly opposed to gay marriage, filed briefs to the court recommending that they grant the couple a divorce. The issue

the court faced was which question to answer – is it solely a question of whether or not the family court in Rhode Island can legally dissolve a marriage that was validly performed in another state? Or should the court go as far as to make a ruling on whether or not Rhode Island is required to issue marriage licenses to same-sex couples. The lawyers for both parties involved, as well as Attorney General Lynch and Governor Carcieri, urged the court to focus on the former issue, claiming that the latter had no bearing on whether or not this married couple could seek and receive a divorce decree in Rhode Island. In his brief to the court, as a means of answering the question of whether or not Rhode Island can grant a divorce to a couple that validly wed in another state, Attorney General Lynch cited R.I. General Law 15-5-1, which states that divorce can be granted “in case of any marriage originally void or voidable by law.” Lynch tried to steer the court away from getting bogged down in trying to tackle the entire gay marriage issue, and instead focused on the divorce case at hand, saying, “This is, again, a simple divorce case. The court need only decide whether Rhode Island will permit a couple, lawfully married in a sovereign sister state, to obtain a divorce in this state.” Governor Carcieri, while in agreement that the two should be granted a divorce, was emphatic that “by granting a divorce, neither the court nor the state endorses or lends validity to the marriage it is dissolving.” The two elected officials were in a rare state of agreement on the point that the Supreme Court did not need to recognize the marriage within the state in order to grant a divorce since the general laws allow for divorces to be granted in any instance where a marriage is “void or voidable” by law.

In accepting the case of *Chambers v. Ormiston*, 935 A.2d 956 (R.I. 2007), The Rhode Island Supreme Court saw the case differently than all the other interested parties (excluding religious groups) who submitted briefs. The Supreme Court determined that when the statute creating the Family Court was enacted in 1961, the term “marriage” wasn’t meant to describe

anything beyond the union of a man and a woman. In so doing, the Supreme Court determined that the Family Court had no jurisdiction to hear the divorce case between a same-sex couple, leaving Chambers and Ormiston in legal limbo. They were still legally married even though they no longer wanted to be, and although the state's chief law enforcement official issued an opinion that Rhode Island should recognize their marriage as valid, no defining legislative or judicial move had been made one way or another. Chambers and Ormiston now have to determine on their own the terms of their separation, including dividing property, assets, and debt. In addition to being stripped of the right to divorce, both Chambers and Ormiston were effectively stripped of their right to marry – in Massachusetts or any other state – since to marry anyone else would effectively constitute bigamy. By leaving this couple without the right to marry, and then stripping them of their right to divorce after they were legally married, the state of Rhode Island has created a suspect class of citizens within its borders. I spoke with Kathy Kushnir about the impact the *Chambers* case had on same-sex couples in Rhode Island. She said with disappointment that, “the legislature needs to fix it, number one, it's their responsibility to fix it and they should have fixed it years ago.” The only way for Chambers and Ormiston to dissolve their marriage would be for the two to take up residency in another state for one year, which is generally the length of time most states' residency requirement demands that you live in the state, before applying for divorce.

The *Chambers* case speaks volumes about the feeling amongst most politicians and judges over recent years in Rhode Island when it comes to the gay rights debate – avoid, delay, and deflect any chance at taking a stand. While a bill that would legalize gay marriage has been put forth every year since 1997, they have gone nowhere in the legislature due to what University of Rhode Island Political Science Professor Maureen Moakley sees as – and some

legislators admit is – an unwillingness to put their colleagues in a position where they have to make a controversial vote. Senator Rhoda Perry (D-Providence), who is a sponsor of this session’s gay marriage bill in the Senate, spoke to USA Today after her effort last legislative session stalled, and her tone was decidedly pessimistic. “Why make anyone even have to vote on something that at least some of their constituents will be upset about,” said Perry, “if you already know the votes aren’t there.” In an e-mail interview conducted with Senator Perry, she disputed the accuracy of the quote from USA Today and spoke optimistically about the legislature being “open to changes in opinion over time,” and about growing support for gay marriage within the state house. With the exception of a few of the more prominent politicians in the state, Rhode Island’s elected officials have been actively trying to prevent any solid move in favor of or opposed to same-sex marriages. Governor Carcieri, who was joined by former Speaker of the House William Murphy and Senate President M. Teresa Paiva-Weed in openly opposing legalizing gay marriage, spent the majority of his two terms in office claiming that he desired to see the issue go on a ballot. “This is such an important issue I think it should be put to the voters,” Carcieri said in a news conference after Vermont legalized same-sex marriages in April of last year.

While it may seem that Carcieri’s motivation to place this issue on the ballot and let Rhode Islanders decide stems from a desire to give the people a choice to decide for themselves how they want marriage defined, those familiar with politics in the Ocean State, such as Professor Moakley, recognize that it does not come from a strong republican desire. Rather, it is the political equivalent of the Governor having his ideological cake and eating it too. The Governor is able to say that while he is openly opposed to same-sex marriages, he wouldn’t stop it from happening if the people voted them into law. Since the Governor was first elected in

2002, he has been emboldened a lack of public support for same-sex marriage and the idea of a ballot initiative was his ace in the hole. A CBS News / New York Times poll from December 2003 showed that nationwide, only 34% of respondents favored legalizing same-sex marriages, while 61% opposed. In these numbers is the obvious reasoning behind Carcieri's insistence that any moves to legalize gay marriage go through the ballot, not the legislature: he knew that the majority of the public was on his side. As I will show later in this section of the paper, those numbers have steadily turned against the Governor. A referendum on a ballot for or against same-sex marriage is in itself a hotly contested issue, centering on whether or not marriage is a civil right. Speaker Fox calls the idea of leaving a civil rights issue up to the voters "troubling" because of Americans' popular sentiment landing on the wrong side of history in the past. As I previously showed, this is denied by those who oppose gay marriage because of the fact that they do not see marriage as a civil right.

While most of the legislature, for better or worse, stayed cautious about taking any real steps towards banning or legalizing same sex marriage current Speaker of the House Gordon Fox and Attorney General Patrick Lynch have openly supported same-sex marriages for several years. Speaker Fox – a man Professor Moakley sees as having enough visibility and credibility to increase support for same-sex marriage – surprised some of his colleagues by announcing that he was gay in 2004, two years after he was elected House Majority Leader. He is now the first openly gay and first black man to hold the title of Speaker in Rhode Island, and fully supports legalizing same-sex marriage. Lynch issued an advisory opinion in 2007 at the request of the state Board of Governors for Higher Education, which said in part "Rhode Island will recognize same-sex marriages lawfully performed in Massachusetts as marriages in Rhode Island." Lynch issued this ruling because Rhode Island prohibits discrimination based on sexual orientation and

has no law barring same-sex marriages. The Attorney General's opinion is not legally binding, but is traditionally recognized. This opinion drew a great deal of criticism from Bishop Tobin, who believes that homosexuality is "unnatural and gravely immoral." Bishop Tobin is rarely scared to add his voice to a public debate, which I believe is healthy in a democracy, and took to the local newspaper and airwaves to blast Lynch's opinion statement.

The threat of a veto by Governor Carcieri, the lack of support from President Paiva-Weed and former Speaker Murphy, as well as the low poll numbers in support of gay marriage and vocal opposition from the state's most powerful religious leader made for what Professor Moakley referred to as a "confluence of interesting circumstances" in Rhode Island over the last several years. The three most powerful elected officials in the state when it comes to shaping policy were openly opposed to legalizing same sex marriage, so no less powerful legislators were willing to team up and try to push past that very intimidating road block. Senator Perry downplayed the impact of the House and Senate leadership's opposition, and instead pointed to the Governor's office as having the biggest impact on keeping a gay marriage bill from passing, saying, "Even if we had success on the floor this year – the numbers would not be veto proof."

One sure sign that the tide is turning, however, is the general acceptance amongst people in Rhode Island – regardless of how they personally feel about the issue – that gay marriage's time is coming. Professor Moakley and Kathy Kushnir agreed that an obvious sign of the imminent passage of a gay marriage bill is the fact that gay rights groups around the state, especially MERI, would not even consider the compromise of a civil union or domestic partnership bill. Kathy Kushnir called Senator Blais' compromise bill a "total smokescreen," believing that Senator Blais' goal was to "codify discrimination in Rhode Island law." In my discussion with Frederick Sneesby, I asked if the Governor felt like he was trying to stop the tide

in his efforts to prevent gay marriage, or if he thought that over the next ten or twenty years the entire country would push back against same-sex marriage and he would be vindicated. “No, [Governor Carcieri’s] a very practical man,” was the succinct response I received.

One very vocal opponent of same-sex marriage who does not believe that it is imminent (and who could believe that their defeat was imminent when they believed without a doubt that God was on their side?) is Bishop Tobin. In his bi-monthly column in the Rhode Island Catholic entitled – you guessed it – “Without a Doubt,” Bishop Tobin has pulled no punches. While I do believe the Bishop steps way over the line every now and again, most recently in a series of very public criticisms of U.S. Representative Patrick Kennedy that were poorly timed and patronizingly worded, I respect the Bishop for speaking his mind. I may not agree with what he says, but I agree that he has a right to say it. In an article from April 2009, which he titled “Rhode Island, Most Catholic State, Welcomes Gay Marriage,” as a means of warning his flock of what might lie ahead, Bishop Tobin calls homosexual acts “unnatural and gravely immoral,” as well as “offensive to Almighty God.” He makes the case that the state of Rhode Island should never legalize gay marriage, or civil unions, because it would then be “approving such immoral activity.” While Rhode Islanders can be assured that because of article 1, section 3 of the Rhode Island General Laws, public laws will not be generated based solely on the Bishops outcries of immorality, it does paint an interesting – albeit hypothetical – picture for the future of the debate. While Catholicism still holds a majority share of the Rhode Island religious, religion on the whole across the country is on the decline, and this holds true in the Ocean State as well. The American Religious Identification Survey (ARIS) poll conducted in 2008 discovered some trends that could have those within Rhode Island hoping for a Catholic uprising to defeat gay marriage shaking in their vestments. The survey found that Rhode Island is the 13th most non-

religious state in the country by percentage of the population, with 19% of Rhode Island residents reporting as “nones,” which the study defines as atheists, agnostics, or persons with no particular religion. The study found that in Rhode Island, the percentage of Catholic adherents dropped from 62% of the population in 1990 to 46% in 2008. Barry Kosmin, a principal investigator for ARIS, called the decline of Catholicism in the Northeast “nothing short of stunning.”

The data also paints a clear divide between age groups. A 2007 poll conducted by the Pew Forum on Religion and Public Life found that 25% of Americans age 18 to 29 have no religious affiliation, which is in stark contrast to the mere 8% of those age 70 and over who have no religious affiliation. Over the time that religious affiliation and adherence has been declining, support for same-sex marriage has been on the rise, especially within the last five years. The decline in religious affiliation may not be the root cause of the rise in support for gay marriage, but it would be difficult to say that the two weren't correlated. As I pointed out earlier, as recently as 2003 nationwide support for gay marriage ranked at a meager 34%, but by 2009 that number had jumped to 49% according to a Washington Post / ABC News poll. The same poll also showed that those opposed to legalizing gay marriage fell from 61% in 2003 to 46% in 2009. These numbers are even more dramatic in Rhode Island, where a Brown University poll from May 2009 found that 60% of Rhode Islanders favor legalizing same-sex marriages, while only 31% say they are opposed. When looked at generationally, 87% of Rhode Islanders age 18 to 29 favor legalizing same sex marriages, as do 70% of people between the ages of 30 and 39. The support numbers begin to shrink as the ages begin to rise, with only 49% of people between the ages of 60 and 69 supporting the legalization of same-sex marriage, and a mere 32% support rate among Rhode Island residents age 70 and older. The same Brown University poll found that 77%

of Democrats favor same-sex marriage, compared to only 28% of Republicans. In a state as deeply blue as Rhode Island, the overwhelming amount of Democrats in favor of legalizing gay marriage could easily drown out any Republican opposition.

So, while Bishop Tobin preaches in his bi-monthly column that if “even ten percent of our Catholic population got actively involved in this issue – even five percent – we could have an enormous impact,” the numbers just don’t appear to be on his side. I don’t know the Bishop personally, although I did try to schedule an interview with him for the purposes of this project (I was directed to Fr. Codega, who was more than gracious, and I believe things worked out for the best), but I presume that if Bishop Tobin were to read this he would feel a surge of pride at being the underdog in a fight he’s convinced he can win as long as the faithful heed his calls to political action. The Brown University poll results were followed up by poll results from the Rhode Island chapter of the National Organization for Marriage. The poll – in which 68% of the respondents were over the age of 50 – found that only 36% of Rhode Islanders favored legalizing same-sex marriage, while 43% of R.I. residents opposed it. Of course, as Fr. Codega and I both agreed, and almost anyone will acknowledge, numbers can be bent. While the gap between the two polls – which didn’t survey every single Rhode Islander and so need to be taken with a grain of salt – is wide, the ARIS poll numbers surveyed a much broader section of the Rhode Island population, which still bodes ill for the Bishop and those who think as he does.

Governor Carcieri, who has been labeled as a “bigot” by Queer Action of Rhode Island (a leading gay rights group in the state), has made his stance on gay marriage abundantly clear during his two terms in office. In late 2009, Governor Carcieri drew the ire of gay rights activists and Democratic elected officials when he vetoed a bill that would have granted same-sex couples the right to make funeral planning decisions in the event of their partner’s death. In

his veto message, the Governor said the bill “represents a disturbing trend over the past few years of the incremental erosion of the principles surrounding traditional marriage.” While Mr. Sneesby redirected the Governor’s “erosion” claims to the broader picture of unwed parents, single parent homes, and divorce rates, it was clear that he included same-sex marriage in his list of forces eroding marriage. This view is not shared by Stephanie Terry, the Associate Director of Child Welfare for the Rhode Island Department of Children, Youth, and Families (RIDCYF). In Mrs. Terry’s opinion, which is backed by over twenty years of working with Rhode Island children and families, marriage is not eroding because of same-sex marriages, but she does recognize that “society in general is more complicated than it was a long time ago.” Mrs. Terry admitted that the pressures on families are far more pervasive than they were a generation ago, which isn’t helped by the recent economic crisis, saying that financial troubles as well as the more modern stresses that come with raising kids “makes it that much harder for a couple to stay together, gay or straight.” Carcieri’s November veto of the burial rights bill came in the wake of his keynote speech at the October 15, 2009, annual fundraiser for the Massachusetts Family Institute, a group that is staunchly anti-gay. This was another particularly controversial decision on behalf of the Governor, since the MFI’s views go above and beyond claiming that gay marriage is contributing to the erosion of marriage, putting forth the belief that homosexuality is “destructive to individuals, families, and society.” In addition to having that ridiculously offensive and factually baseless statement on their website, the MFI also advocates for the healing of gay people, whom they see as “plagued by same-sex attraction.” Governor Carcieri emphasized that his speech at the MFI fundraiser was about more than just same-sex marriage, it is hard to escape that topic when advocating for an institution that sees homosexuality as “an unhealthy practice.” In the speech, Carcieri put forth his belief that marriage is not a civil right,

and that excluding same-sex couples from full marriage rights was about a state's responsibilities to families and children, advocating the idea (which was previously disproven in this paper) that children are better off when raised by a mother and a father, as opposed to two people of the same sex. Even though Carcieri made time in his speech to point out that families are "the single most important public policy issue today," he didn't seem to mind the obvious insulting message he was sending to the thousands of homosexual couples and families in Rhode Island, or the implied devaluation of their families when compared to "traditional" families. In the aftermath of the controversy over the MFI speech and his vetoing of the burial rights bill, Governor Carcieri sat down in a closed-doors meeting with members of Queer Action Rhode Island. After the meeting, the Governor made a surprising shift in his position on same-sex unions, saying he would consider supporting an "anything-but-marriage" approach, which would provide most of the legal protections and benefits couples gain through marriage without the esteem and dignity that is inherent in the word "marriage." As was previously stated, most gay rights activists refused to compromise on the marriage debate, and most political commentators were not surprised.

After Governor Carcieri's two terms, those in Rhode Island who believe marriage is a civil right and favor legalizing gay marriage are extremely optimistic about the next administration to fill the Governor's office. Speaker Gordon Fox has made clear that while he finishes out former Speaker Murphy's term as arguably the most powerful politician in the state, he will not be pushing the gay marriage issue to the forefront. Instead, Speaker Fox has vowed to focus on tackling the steep economic challenges that Rhode Island faces, as well as continuing comprehensive education reform in Rhode Island's public schools. Both Senator Perry and Speaker Fox, two main sponsors of the twin gay marriage bills in the state house, recognize that

if any bill should pass the legislature it would face a guaranteed veto by the term-limited Governor. Speaker Fox spoke optimistically about the support his bill to legalize gay marriage was gaining in the House – as Senator Perry spoke of the Senate – but emphasized that their colleagues were reluctant to vote on a bill when it would surely be vetoed. A veto would mean a second vote, and, as Senator Perry stated, “even if we had success on the floor this year – the numbers would not be veto proof.” The potential – rather, definite – impact of a new, pro-gay marriage Governor in Rhode Island is something about which both Senator Perry and Speaker Fox are excited, as is Kathy Kushnir. Since those who advocate for same-sex marriage can sense that their time is coming there is a great deal of urgency in their advocacy. During my interview with Kathy Kushnir, she sounded at times as anxious and excited as a kid on Christmas Eve. This urgency, however, has to be tempered with political realities. Ms. Kushnir confessed that she does not believe Speaker Fox would try to push a bill to legalize gay marriage through the House this term. As a woman who spends a great deal of time at the State House, Ms. Kushnir recognizes that while Gordon Fox’s ascension to Speaker is a great step forward for the gay marriage movement in Rhode Island, his reelection is just as – if not more – important. “Keeping that job, holding that position, means political jockeying,” said Kushnir, and in this case political jockeying means not putting his colleagues in a position where they have to vote on a controversial issue.

In stark contrast to the feeling in and around the state house over the past few years that there was almost no point in trying to push for a bill to legalize gay marriage, all those in favor of legalizing same-sex marriage in Rhode Island have high hopes for the next Governor and the next legislative session. If MERI and the rest of Rhode Island’s gay rights supporters are successful in their goal to legalize same-sex marriage in the state, people on both sides of the

issue may look back on March 3rd, 2010, as an incredibly important day. Several hundred supporters, many of whom brandished signs with poignant slogans such as, “Civil Marriage = Civil Right,” and “Separate But Equal? Been There, Done That,” gathered at the State House and vociferously cheered on Ms. Kushnir and the days other speakers, among whom were state Representatives and Senators, members of the clergy, and statewide elected officials. At the rally, a quote from American civil rights icon Martin Luther King, Jr. was prominently draped from the second-floor railing overlooking the marble steps beneath the rotunda, “Injustice anywhere is a threat to justice everywhere,” it read, proudly declaring one of the themes on which MERI focuses their attention. MERI had organized the rally at the state house to advocate for what Ms. Kushnir called “*the* civil rights issue of the twenty-first century.” The crowd erupted into cheers as one-by-one the leading gubernatorial candidates stepped up to the microphone and pledged their support to the gay marriage movement in the Ocean State. General Treasurer Frank Caprio, former Senator Lincoln Chafee, and Attorney General Patrick Lynch, viewed as the front-runners in the race to replace Governor Carcieri, all vowed to sign an equal marriage rights bill as Governor, should the legislature send one to their desk. Caprio and Lynch each went a step further – Caprio promising to work with legislators to move a pro-gay marriage bill through the legislature, and Lynch vowing to veto any bill that would define marriage as between a man and a woman. Treasurer Caprio and Attorney General Lynch’s presence and enthusiastic support at the rally did not go unnoticed by those who oppose same-sex marriage. Bishop Tobin, pointing out that both Lynch and Caprio are Catholics, said in a *Projo* article that “it is extremely disappointing to see Catholic politicians abandon their faith for the sake of political expediency.” While the Bishop makes his point clear that Caprio and Lynch are on shaky ground in his eyes, his wording was poorly chosen. By implying that it supporting

gay marriage serves the goal of “political expediency,” the Bishop revealed that he recognizes that the majority of the public supports same-sex marriage. If a majority didn’t support it, it would be more politically suicidal than expedient.

The enthusiastic support of Caprio, Chafee, and Lynch – one of whom will likely become the next Governor of Rhode Island – is incredibly important for MERI and other gay rights organizations, especially after having hit a seemingly immovable barrier in Donald Carcieri. Admitting that his decision to delay pushing a gay marriage bill forward was part strategy and part policy, Speaker Fox stated that “it makes strategic sense to have this bill go to a governor who’s going to not only be supportive, but is going to sign it.” Senator Perry, who obviously shares Speaker Fox’s excitement over the prospects of what the next Governor’s administration could mean for the gay marriage movement, said in speaking of the gubernatorial candidates’ support, “they know that the voters of RI have indicated in multiple polls that they would accept marriage equality without any reservations.” It is clear that Senator Perry and the other Senators who support gay marriage have been paying close attention to the polling done over the recent years, and recognize the rising support gay marriage has throughout the state. Kathy Kushnir was particularly excited about the rising acceptance of and advocacy for same-sex marriage in Rhode Island, saying, “there is such a groundswell just coming from the neighborhoods, the towns, the streets, saying ‘enough already, let’s just do the right thing, it’s shameful that we haven’t done it already.’” Ms. Kushnir feels confident that that groundswell of support will reach the Governor’s office and make the passage and signing of an equal marriage bill that much more of an imperative.

The House of Representatives in Rhode Island enjoys a comfort that is not shared by the Senate – the person who is effectively in charge of their chamber unwaveringly supports same-

sex marriage. Senate President M. Teresa Paiva-Weed does not favor legalizing same-sex marriage, which could put a damper on Senator Perry's hopes of getting her bill to pass next legislative session. I asked Senator Perry about this, and whether or not she thought Senate President Paiva-Weed would stand in the way of any bill to legalize gay marriage. "When these bills have demonstrated to the leaders that their members have the votes," Senator Perry boldly stated, "there will be no stopping this legislation." Senator Perry's confidence is shared by Ms. Kushnir, who feels that the Senate operates as a whole, with each individual Senator "trying to see what their next door neighbor is doing." This unity amongst the Senators, Ms. Kushnir feels, will drive them to join together and pass a bill legalizing same-sex marriage. "I believe that when the time comes for the senate to make a choice they will have their huddle and they will absolutely make the right decision." If a bill should make it through the House and the Senate, it would likely head to the desk of a Governor who favors same-sex marriage. Republican candidate for Governor and former Director of Communications for the Carcieri administration, John Robitaille, is opposed to legalizing gay marriage, but has not been found at the head of early gubernatorial polling.

Since it seems likely that gay marriage advocates' best bet in Rhode Island lies within the General Assembly or the court system, I thought it would be important to look into Governor Carcieri's Supreme Court appointments. During his two terms as Governor, Donald Carcieri has made three appointments to the Rhode Island Supreme Court (Francis Flaherty, William Robinson, III, and Gilbert Indeglia) and promoted Justice Paul Suttell from Associate to Chief Justice. The appointments, all of which passed through the Democrat-dominated General Assembly, are "based on patronage and partisanship and very little on social/moral issues," said Professor Maureen Moakley. While Governor Carcieri is obviously more likely to nominate

conservative-leaning people to the bench, the argument can be made that the court system is Carcieri's ace up his sleeve. Professor Moakley did not see the issue as that crystal clear, and remarked that the Governor's promotion of Justice Suttell was not based on any social issue. Professor Moakley did, however, express some puzzlement over the Governor's appointment of Justice Flaherty, who is a Democrat, but tempering the confusion is the fact that Justice Flaherty is anti-choice. The argument can be made that the Governor, who recognizes that the tide is turning against him, may have made his last stand in the Judiciary, but it remains to be seen if that will be enough to stop the legalization of same-sex marriage in the Ocean State.

With rising poll numbers in favor of same-sex marriage, and some of the most powerful politicians in the state leading the charge, it seems almost inevitable that gay marriage will be legalized during the next legislative session. While the current Governor stands firm against what he perceives to be an erosion of marriage and the Bishop praises his efforts, more and more people are turning out in favor of legalizing gay marriage, even though it hasn't come down to a referendum on a ballot. If they fear a backlash from the public and losing their reelection bid, Legislators need only look to the 2004 elections in Massachusetts following the *Goodridge* case, where all gay marriage supporters won reelection and one gay marriage opponent was defeated by an openly gay candidate. Rhode Island is coming out of seven years with a Governor who stood as firm as red clay against legalizing gay marriage into an era with an openly gay, highly talented Speaker of the House, and the likelihood of a Governor who has promised to push for same-sex marriage. In my estimation, the state seems poised to realize the full meaning of equality under the law within the next few years.

WRAPPING IT UP

OR: ENDING WHERE I BEGAN

As far as gay marriage, Rhode Island politics, and religion goes, that's about all I have to say. After carefully examining the arguments for and against, Rhode Island's past, and its potential future, I have no option but to stand firm in the belief I had coming into this project: that same-sex marriages should – and will – be legalized in the Ocean State in the near future. In concluding this project, I would simply like to thank all of the people who contributed to what amounted to an incredibly enlightening semester for me. Obviously, I owe a great deal of thanks to all of the people who took the time to sit down and discuss gay marriage with me, especially those with whom I disagree. I would also like to thank Professors Al Killilea and Maureen Moakley, and the entire Honors Program at the University of Rhode Island for giving me the opportunity to pursue this independent study and giving me free rein to make – and correct – my own mistakes for a semester. Of course, I am happy to thank my Auntie Peg and Auntie Patty (as well as Blaine and Elizabeth Lynch-Gadaleta) for being such a central part of this project and my development as a whole. My only hope going forward is that one day soon I will be able to throw rice on my Aunts as they exit their local city hall, legally married in the state they call home. I recognize that I was unable to achieve my stated goal of changing my view on same-sex marriage, but as I stated in the introduction to this paper I am fine with that. Looking back on the views of those who oppose gay marriage, I don't doubt that their beliefs are genuine and that they stand by them wholeheartedly, but I can't help but feel that they stem from a misplaced sense of fear and moral superiority. I may not have been able to amend my views on same-sex marriage, but I certainly expanded my understanding of the subject, so I can't help but feel that this project – and semester as a whole – was a success.

Speaker of the House Gordon Fox is right in wanting to focus on the economy this year, rather than make a serious push to legalize same-sex marriage – Rhode Island has one of the worst unemployment rates in the country and its citizens are struggling. Many people would see that as reason enough to push a social issue such as marriage to the backburner, I don't. I have always felt, and continue to feel, that the debate over gay marriage is a no-brainer, and is a political red herring used by candidates who have little else on which to stand to polarize an election and fire-up their political base. Many credit George W. Bush's win in 2004 to his outspoken opposition to same-sex marriage which appealed to the basest fears in his political base and cranked up voter turn-out. This issue is a political red-herring because its legalization would do nothing to harm those who oppose it, but the threat of it being legalized is incredibly motivational. The use of gay marriage as a political tool to stir up fears in a candidate's political base is a disappointing, albeit effective, political reality and it remains to be seen if that will become a factor in the near future in Rhode Island.

The world in which we live has a tendency to take even the most basic, natural, and simple of life's wonders – love, for example – and make it so complicated that no one is even sure of what it means anymore. It is in times like these that the most powerful lessons can be learned from those whose minds have not yet been polluted by the prejudice and derision that unfortunately permeates nearly every facet of our lives – children. Towards the end of Antoine de Saint-Exupery's much beloved novella, *The Little Prince*, the title character imparts an important lesson, that "it is only with the heart that one can see rightly; what is essential is invisible to the eyes." Short, sweet, powerful, and true. Marriage is, in the end, a love story, and it is only right (as the United States Supreme Court affirms) that Rhode Island recognize and respect the love shared by the thousands of same-sex couples living within its borders.

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