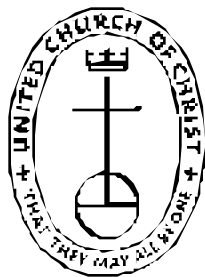


SAME SEX MARRIAGE RIGHTS:

A TIMELINE

1970 - 1998

This is an Equal Marital Rights for Same Gender Couples educational/advocacy resource of the United Church of Christ, Wider Church and Justice and Witness Ministries. United Church of Christ congregations have permission to reproduce this resource for use in the local church.



For additional information contact:

**Equal Marital Rights for Same Gender Couples
Office of Lesbian, Gay, Bisexual & Transgender Concerns
Wider Church Ministries
700 Prospect Avenue
Cleveland, OH 44115-1100**

Same Sex Marriage Rights:

A Timeline

1970

The Los Angeles County Clerk requests the California legislature to tighten its laws on marriage after receiving many inquiries from gay couples wanting marriage licenses.¹

1971

In Baker v. Nelson, in Minnesota², the first same-sex marriage case brought in the United States, the court rules against plaintiffs Richard John Baker and James Michael McConnell. Plaintiffs contend that an absence of a specific prohibition on same-sex marriage signifies a legislative intent to recognize them. They also argue that the state marriage statute, as interpreted to provide only for opposite-sex marriages, is unconstitutional on several bases: it “denies petitioners a fundamental right guaranteed by the Ninth Amendment to the U.S. Constitution, arguably made applicable to the states by the Fourteenth Amendment, and petitioners are deprived of liberty and property without due process are denied equal protection of the laws, both guaranteed by the Fourteenth Amendment.”

In its remarkably short (two-page) decision, the court comments: “We dismiss without discussion petitioners’ additional contentions that the statute contravenes the First Amendment and Eighth Amendment of the United States Constitution. . . The institution of marriage as a union of man and woman, uniquely involving the procreation and rearing of children within a family, is as old as the book of Genesis.” In responding to plaintiffs’ argument that lack of ability to procreate constituted no bar to marriage for opposite-sex couples, the court holds: “. . . abstract symmetry’ is not demanded by the Fourteenth Amendment.”

Further, the court rejects plaintiffs’ contention that the Loving [v. Virginia] miscegenation case, through which a “same-race” restriction on marriage was overturned, provided precedent for overturning a similar “same-sex” restriction: “. . . in commonsense and in a constitutional sense, there is a clear distinction between a marital restriction based merely upon race and one based upon the fundamental difference in sex.” (Precisely why sex constituted a “fundamental” difference, while race did not, is left unexplained by the court.)

1973

In Jones v. Hallahan³, a Kentucky case, the court rules against the two lesbian plaintiffs. Petitioners rely on constitutional claims: a fundamental right to marry (as ruled by U.S. Supreme Court, but applied only to opposite-sex marriages), the right of association, and the right to free exercise of religion (both under the First Amendment), and the contention that the refusal of a marriage license subjects them to cruel and unusual punishment (as forbidden by the Eighth Amendment). In an even shorter decision than in the Minnesota case two years earlier, the court refers to the dictionary definition of marriage as existing between two persons of the “opposite sex.” The court writes: “It appears to us that appellants are prevented from marrying, not by the statutes of Kentucky or the refusal of the County Court Clerk of Jefferson County to issue them a license, but rather by their own incapability of entering into a marriage as that term is defined.”

1974

In Singer v. Hara⁴, a Washington state case, the court similarly rules against plaintiffs Singer and Barwick. Plaintiffs argue that Washington marriage statutes do not prohibit same-gender marriages; therefore a license must be issued. Unlike the previous two cases, however, plaintiffs also argue that the state’s Equal Rights Amendment (ERA) forbids discrimination on the basis of sex [gender], which, they argue, occurs in the denial of a marriage license to a same gender couple. Plaintiffs also argue violations of their Eighth, Ninth, and Fourteenth Amendment rights. Through some tortuous logic, the court held that because an exception to the absolute prohibition on sex discrimination exists—that of unique physical characteristics of each of the sexes rather than gender per se—this case falls within that exception because two males cannot produce children. The court concedes that many heterosexual married people cannot produce children, but, echos the court in Baker calling that merely an imperfection in the law. This conclusion directly contradicts the courts above claim: Now, the court argues, physical characteristics are not dispositive. { 1 } This time echoing Jones, the court argues: “Appellants were not denied a marriage license because of their sex; rather they were denied a marriage license because of the nature of marriage itself.”

In a separate case in Ohio, two black lesbian mothers from Dayton sue for the right to marry, although they lack both legal representation and support from the local gay community. The court rules they cannot marry.⁵

1975

Two men from Phoenix are granted a marriage license by a county clerk. Their license is later revoked.⁶

On recommendation of the Boulder, Colorado city district attorney, County Clerk Cela Rorex issues Dave Zamora and Ave McCord a marriage license. This causes a month-long rush on the clerk's office by same-gender couples seeking marriage licenses, until the state Attorney General voided the D.A.'s recommendation. A court later revokes all of the licenses.

In April, the Arizona Supreme Court deems gay marriage attempts unconstitutional, paving the way for the state legislature to pass an emergency bill defining marriage as possible only between a man and a woman.⁷

The Maryland Attorney General's office rules that the Montgomery County Clerk has no legal basis on which to challenge the validity of the marriage of two women, Michele Bernadette Bush and Paulette Hill, to whom the clerk's office issued a marriage license. The license is later revoked.⁸

The Washington, D.C., City Council considers a bill that would provide for gay marriage.⁹

Two lesbians, Nancy Davis and Toby Schneiter, are arrested after a five hour sit-in at the county's marriage license bureau to protest refusal of a license. They vow to go on a hunger strike in jail but the charges are dropped.¹⁰

1977

Mikhail Itkin and Larry Lawrence are denied a marriage license by the Los Angeles County Clerk's office. That office indicates that theirs was not the first such application and that such requests come "three or four times a week." Itkin and Lawrence indicate an intention to sue the state, but no litigation results.¹¹

Both chambers of the California legislature passes bills banning same-gender marriage, but the bills are never signed into law by Governor Jerry Brown.¹²

1978-1985

No significant activity related to same-gender marriage.

1986

The American Civil Liberty Union's Executive Director and Board of Directors say the ACLU will seek to eliminate legal barriers to same gender marriage.¹³

1989

The Bar Association of San Francisco calls for the legalization of gay marriages.

In Chicago, two journalists for gay publications, Rex Wockner and Paul Varnell, file complaints with ^{1,2,3}the Illinois Department of Human Rights charging the state with sex discrimination because it refuses to allow same gender marriages.¹⁴

In a poll, 69% of respondents say they disapprove of gay marriages; 23% approve, 8% are unsure.¹⁵

1990

Several gay couples, including Jeff Graubart-Cervone and Frank Cervone-Graubart, apply for and are denied marriage licenses at the Cook County clerk's office in Chicago.

A bill is filed in the California Legislature allowing for gay marriage. It is endorsed by the California Bar Association and the Bar Association of San Francisco.

1991

The Massachusetts Coalition for Lesbian and Gay Civil Rights launches a campaign to pass a gay marriage bill. The group finds a handful of Democratic co-sponsors.¹⁶

In Dean v D.C.¹⁷, a District of Columbia same-sex marriage case, the court rules against plaintiffs Craig Dean and Patrick Gill. No constitutional issues are raised. Plaintiffs argue that the D.C. Marriage and Divorce Act authorizes gay marriage, and that the D.C. Human Rights Act forbids discrimination in issuance of marriage licenses. In its ruling, the court cites previous cases as well as the bible, and alleges a legislative intent to disallow gay marriages.¹⁸ The D.C. Human Rights Commission sides with the couple, contending that the marriage bureau violates city law by discriminating on the basis of sexual orientation. The author of the city's Human Rights Act testifies that the D.C. City Council did not intend to forbid gay marriage. However, the court notes that two years prior to adoption of the act, the District did reject a proposal that would have explicitly recognized gay marriage¹⁹. An appeal to the Circuit Court of Appeals (the highest court in D.C.) also results in a loss. Plaintiffs ask for an en banc (full court) hearing; the court does not respond.

1992

In another poll, 58% of respondents disapprove of gay marriage; 35% approve, and 7% are unsure. This represents a significant change in attitude from the poll conducted three years earlier (see above). Because the margins of error in the two polls are 3% and 5% for 1989 and 1992 respectively²⁰, there is a statistically significant increase in support for same gender marriage of between 4% and 14%.

1993

Gay couple Benjamin Cable and Marcial McCarthy try to submit a marriage license application to the Los Angeles County Clerk's office, but are refused. Represented by Lawyer Paul S. Marchand, the couple file a lawsuit in the 2nd District Court of Appeal for Los Angeles.²¹ The case is put on hold, at the request of the plaintiffs, pending a final outcome in Baehr in Hawaii (see below).

In Baehr v. Lewin²², a same-sex marriage case in Hawaii, the State Supreme Court rules that the state's refusal to issue marriage licenses to three same sex couples, Joseph Melilio and Pat Lagon, Genora Dancel and Ninia Baehr, and Tammi Rodrigues and Antoinette Pregil, presumptively violates Hawaii's Equal Rights Amendment (ERA) barring discrimination on the basis of gender. The plaintiffs argue their case on the claim of a violation of their right to privacy. But the court takes a very minor point made in plaintiffs arguments—literally a footnote regarding ERA—and makes that the basis of its decision. The court writes in part: “The facts in Loving [v. Virginia]...on the one hand, and the United States Supreme Court, on the other, both discredit the reasoning of Jones and unmask the tautological and circular nature of [defendant's] argument.” About Singer it comments brusquely: “As in Jones, we reject this exercise in tortured and conclusory sophistry.”

The court, however, rejects plaintiffs' claim to a “fundamental right” to marriage.²³ This holding may prove useful in states lacking ERAs that wish to ban same gender marriage. Because no federal Constitutional issues are raised in Baehr, state courts have the last word.^{24, 25} If the final outcome of Baehr is in favor of the plaintiffs, because the ruling was based on the state constitution, only an amendment to the constitution could allow the continued denial of same-sex marriage licenses (requiring a two thirds vote of the legislature plus ratification by a popular vote, or a constitutional convention). The case is remanded to the lower court. Unless the state can, under “strict scrutiny” analysis demonstrate a “compelling state interest” in denying the issuance of licenses, it will have to issue marriage licenses to these and all other same-sex couples who otherwise qualify.

A same-sex marriage case is brought in Wisconsin, but it is put on hold, pending a final decision in Baehr. No case number is assigned.

Washington Post poll finds that 70% of Americans oppose gay marriage.²⁶

Hawaii poll found that about 60% of the citizens of Hawaii oppose same gender marriage.²⁷

1994

Another poll finds that 62% are opposed to same gender marriage. Presumably those in favor were 38%, although precise figures for that as well as “undecided” are unavailable. The margin of error is also unknown.²⁸ (It is interesting to note that despite the legality of inter-racial marriage since 1967, its acceptance by 1983 had risen to only 40% (only marginally greater than that for same gender marriage).)²⁹

Historian John Boswell's landmark book Same-Sex Unions in Premodern Europe is released. In it, he provides evidence that the Christian church performed gay unions in Europe throughout the medieval period, and that same-sex unions were ritualized by the church before other-gender marriages were liturgically celebrated. {2}

In an Orlando, Florida court, Shawna Underwood and Donia Davis bring a same-sex marriage lawsuit. This case is not assigned a case number. It is put on hold pending a final decision in Baehr.

In Callender v. Corbett³⁰, an Arizona same-sex marriage case brought by plaintiffs Jerry Callender, Antonio Muniz, John Duran, Stephen Baker, Eileen Maura Jutras, Lizbeth M. Petrucci, Kathy Greaves, and Aileen McMurrer, the Superior Court rules against plaintiffs. As had been cited in some previous cases, the court holds that any change in marriage law is a matter for the state legislature. Plans for appeal are put on hold pending a final decision in Baehr.

Three lesbian couples seeking marriage licenses are turned away by the County Clerk's office in Green Bay, Wisconsin.³¹

1995

An Ithaca, New York couple, Toshav and Philip Storrs, request a marriage license from the Ithaca City clerk, Julie Newcomb. Mayor Benjamin Nichols, as well as the full City Council, endorse the concept of issuing marriage licenses to same-sex couples who apply and are otherwise qualify. The city is prepared to issue a license, but the Storrs request a delay, pending consultation with legal experts to determine the possible ramifications of issuance. Officials of the City of Ithaca announced that, though they are supportive of the right to marriage for gay couples; they are concerned that issuance might have a negative impact on the long-term ability of same-sex couples to achieve equal marital rights. The city decides it will not be issuing marriage licenses to same-sex couples at this time. The decision is based on legal as well as strategic factors. The couple indicates they may bring a lawsuit.

Utah passes anti-marriage bill.

South Dakota introduces anti-marriage bill, but it dies in committee.

In Alaska, a case is filed by Jay Brause and Gene Dugan. A trial date is not set, nor does the court respond officially.

Hawaii's Commission on Sexual Orientation votes 5-2 to recommend equal marital rights for same-gender couples. This represents the first time that an official state body has endorsed marriage rights for gay and lesbian couples.

1996

Anti-marriage bills are introduced in the following states: Alabama, Alaska, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, and Washington. Executive Orders forbidding same-sex marriages are issued by the governors of Mississippi and Alabama. These are of particularly dubious legality because such power may “properly” reside only with the legislature.

A host of conservative groups band together, with support from Republican candidates for President, to launch a “National Campaign to Protect Marriage” to make sure gay couples never obtain the right to legal marriage. A pre-election rally is held in Des Moines, Iowa.

A poll conducted during the New Hampshire Republican Presidential Primary finds the following: Prior to being told about the anti-gay marriage rally in Des Moines, Iowa, 22% say they would be less supportive of a candidate who opposed gay marriage. Nearly half say it made no difference to them, and 28% say they would be more supportive of such a candidate. After being told of the rally, 33% say they would be less supportive of such a candidate, 45% say it would make no difference, and only 18% say they would be more likely to support such a candidate. Nearly two-thirds had strong misgivings about the rally.

A lawsuit is filed by the Storrs (see above—1995) in the state of New York.

The so-called “Defense of Marriage Act” (DOMA) is introduced and passed by wide margins in both houses of Congress. DOMA purports to allow any state to deny recognition of a same-gender marriage legally contracted in any other state, and defines marriage for federal purposes as a union between one man and one woman only. President Clinton signs the bill on September 21.

On September 10th, Baehr v. Miiike (the renamed Baehr case) recommences in the Hawaii Circuit Court of Appeals. Under a “strict scrutiny” standard, the state is forced to prove it has a “compelling state interest” in denying marriage licenses to same-gender couples. Hawaii attempts to show that the desirability for children to be raised by their biological parents is such a compelling interest. During the expert witness trial, even the state’s own witnesses are forced to admit that gay couples can and often do make very good parents. On December 3rd, Judge Kevin Chan rules, that the state has not met its burden, and marriage licenses must be issued to same-sex couples on the same basis as to heterosexual couples. The state immediately appeals, and also requests a stay on the effect of the ruling pending the final result of the appeal to the Hawaii Supreme Court. The stay is granted.

1997

On July 22nd a complaint is filed in Chittenden County Superior Court on behalf of three couples seeking the right to marry in Vermont (Baker v. State).

In September, Hawaii legislature adopts “domestic partnership” legislation that guarantees limited rights to registered domestic partners (including same gender partners). However the rights guaranteed fall far short of the number of rights automatically given to legally married other-gender couples.

The Hawaii legislature votes to place a referendum on the state ballot in November 1998 asking the citizens of Hawaii if they wish to amend the Hawaii State Constitution to limit legal marital rights to couples consisting of one man and one woman.

On December 19th, the Superior Court in Vermont dismisses Baker v. State.

The following states adopt anti-marriage legislation: Florida, Indiana, Maine, Mississippi, Missouri, Montana, North Dakota and Virginia.

1998

On February 27th, echoing the Hawaii case (Baehr v. Miike), the Superior Court for the State of Alaska orders that the State must show a compelling state interest in its denial of a legal marriage license to Jay Brause and Gene Dugan. The case (Brause v. Alaska) is appealed to the State Supreme Court.

In March, the three couples appeal Baker v. State to Vermont Supreme Court; oral arguments scheduled for November 1998.

Anti-marriage legislation passed by the state legislature is invalidated on procedural grounds by the State Supreme Court of Missouri.

The following states adopt anti-marriage legislation: Alabama, Iowa, Kentucky and Washington.

The following states have anti-marriage legislation pending: Alaska, Hawaii, New Jersey and Ohio.

On November 3rd, voters in Hawaii vote 69% to 28% to amend the state’s constitution to empower the legislature to reserve marriage to opposite sex couples. This vote nullifies any positive ruling by the Hawaii Supreme court, effectively allowing the state legislature to ban same-gender marriage.

Voters in Alaska vote 68% to 32% to amend the state's constitution to limit the definition of marriage as only between one man and one woman.

Oral argument in the Vermont Supreme Court in Baker (see above) are scheduled for November 18, 1998.

Notes

- {1} “Dispositive” is a legal term meaning that the question at issue is thereby completely resolved; i.e., “disposed of.”
- {2} *Christianity, Social Tolerance, and Homosexuality*, by John Boswell, University of Chicago, 1980, pgs. 10, 25, 180.

Endnotes

-
- ¹. *Long Road to Freedom*, edited by Mark Thompson, St. Martin’s, 1994, pg. 36.
- ². 291 Minnesota 191 N.W.2d 185 (1971)
- ³. Court of Appeals Kentucky 501 S.W.2d 588 (1973)
- ⁴. 11 Washington App. 247, 522 P.2d 1187 (1974)
- ⁵. Thompson, op. cit., pg. 101.
- ⁶. Ibid., pg. 115.
- ⁷. Ibid., pg. 115.
- ⁸. “Official Rules on Wedding of 2 Women,” by B.D. Colen, in *The Washington Post*, July 10, 1975, pgs. C1, C11.
- ⁹. “Divorce Bill Chance ‘Excellent’,” by Patricia Camp, in *The Washington Post*, July 9, 1975, pg. C2.
- ¹⁰. “Lesbians Protest at Marriage Office,” by Jeff Lyon, in *The Chicago Tribune*, October 21, 1975.
- ¹¹. “Gay Couple Can’t Wed,” by Myrna Oliver, in *The Los Angeles Times*, March 16, 1977, pg. 6.
- ¹². “Senate Approves Measure Banning Gay Marriages,” (UPI), in *The Los Angeles Times*, August 12, 1997, and “On a 66-2 Vote,” (newsnote), in *The Los Angeles Times*, August 14, 1977.
- ¹³. “ACLU Seeks to Lift Gay Marriage Bans,” (AP), in *The Chicago Tribune*, October 29, 1986.
- ¹⁴. “A Nontraditional Way to Say ‘I Do,’ by Clarence Page, in *The Chicago Tribune*, October 8, 1989.
- ¹⁵. “Should Gays Have Marriage Rights?,” by Walter Isaacson, in *Time*, November 20, 1989, pp. 101-102.
- ¹⁶. “Coalition Readies Bill to Recognize Same-Sex Marriage,” by Kay Longcope, in *The Boston Globe*, June 12, 1991.
- ¹⁷. District of Columbia Superior Court, No 90-13892 (1991)
- ¹⁸. “Gay Couple Sues D.C. Over Marriage License,” by Richard Keil, in *The Boston Globe*, November 27,

1990.

¹⁹. “Citing the Bible, Federal Judge O.K.’s Ban on Marriage,” by Chris Bull, in *The Advocate*, February 11, 1992, pg. 20.

²⁰. “Gays Under Fire,” author unknown, in *Newsweek*, September 14, 1992.

²¹. “Gay Couple Challenge State Laws on Marriage,” by Kathleen Kelleher, in *The Los Angeles Times*, April 21, 1993.

²². Hawaii Supreme Court, No. 15689 (1993)

²³. “Ruling by Hawaii’s Supreme Court Opens the Way to Gay Marriages” by Joan Biskupic, in *The Washington Post*, May 7, 1993, pg. A10.

²⁴. “Hawaii Court Revives Suit on Gay Marriages,” by Bettina Boxall, in *The Los Angeles Times*, May 7, 1993, pgs. A3, A27.

²⁵. “Gay Marriage Ruling,” by John Wilke and Arthur Hayes, in *The Wall Street Journal*, May 7, 1993.

²⁶. “For Better or For Worse” by Eloise Salholz, Lucille Beachy, Dogan Hannah, Vicki Quade & Melinda Liu, in *Newsweek*, May 24, 1993, pg. 69.

²⁷. “A Conflict of Laws and Morals: The Choice of Law Implications of Hawaii’s Recognition of Same-Sex Marriages,” by Joseph Hovermill, in *Maryland Law Review*, Vol. 53:452 (1994).

²⁸. “Gay Marriages Opposed in Poll,” (Reuters), in *The Boston Globe*, February 7, 1994.

²⁹. “Why Discrimination Against Lesbians and Gay Men Is Sex Discrimination,” by Andrew Koppelman, in *New York University Law Review*, May, 1994, pg. 231.

³⁰. No. 296666 (Az. Super. Ct., Apr. 13, 1994).

³¹. *Lesbian/Gay Law Notes*, September, 1994, pg. 102.

Redacted, updated, and reprinted from Same Sex Marriage Rights: A Primer written by Jeffrey Nickel, edited by Kimberly A. Shaw. (Forum on the Right to Marriage, Boston, 1997)