



# News

FOR RELEASE:

May 14, 1996

## House of Representatives

Public Information Department  
Commonwealth  
of Pennsylvania

Rep. C. Allan Egolf  
(717) 582-8119  
(717) 783-1593

**PLEASE NOTE: CORRECTIONS TO RELEASE DATED 5/13 -- SEE PAGE 2**

### EGOLF BILL PROHIBITS SAME-SEX MARRIAGES

HARRISBURG -- In a move to keep court decisions in other states from affecting Commonwealth residents, Rep. Allan Egolf (R-Perry) and Rep. Stephen Maitland (R-Adams) have introduced legislation to only recognize marriages between men and women in Pennsylvania.

"This is an issue of states' rights," Egolf said, citing a case being considered by the Supreme Court of Hawaii. If the court rules to recognize marriages between two people of the same sex, the other 49 states would have to recognize them as well, under the "full faith and credit" clause of the U.S. Constitution.

"Basically, if you're married in Hawaii, you're married everywhere else," Egolf said. "I absolutely do not want the courts of other states telling Pennsylvanians what to do.

"Our state government needs to heed the wishes of our residents, not those of a state 10,000 miles away."

In addition to not recognizing same-sex marriages which take place in other states or countries, House Bill 2604 would prohibit couples of the same sex from marrying in Pennsylvania.

Egolf called attention to a March CNN/USA Today/Gallup Poll in which 68 percent of respondents oppose recognizing same-sex marriages, while just 27 percent support it.

"If there is an issue Pennsylvanians want to see addressed, they can use the legislative procedure to do it," Egolf said. "But given the recent poll, a majority of people, including Pennsylvanians, oppose same-sex marriages and therefore don't want to see a Hawaii decision affect them.

"The shape of our society should come from our people, not from a court."

In addition, Maitland pointed out that research across the country reflects that children fare better when they are raised by a mother and father.

"Our children -- our future business, government, community leaders who someday will be parents themselves -- should remain our prime focus of thought."

He likened a couple in a same-sex marriage raising children to a laboratory experiment and referred to research showing that kids reared in traditional two-parent households get better grades and commit fewer crimes.

"We know for certain our children do best when they have a mother and father," he said. "With that in mind, why not demand the best for them. Same-sex marriages are not the best we can offer our children. As a society, as a government we can do better."

Egolf also compared the allowance of same-sex marriages to the California no-fault divorce ruling nearly 30 years ago, which made the divorce process easier.

"When that happened, we saw the divorce trend spread across the country and ever since our families have deteriorated, victimizing the innocent children," Egolf said. "I don't think there is a Republican or a Democrat who would disagree with us when we say that considering what is in the best interest of our children should be our highest priority."

Finally, Egolf added that by recognizing same-sex marriages the government essentially would be placing more **unfunded** mandates on businesses as well as increasing the burden on taxpayers.

"Businesses would be required to extend the same insurance and pension benefits to same-sex couples even if they were opposed to those relationships," he said. "And citizens should not be forced to subsidize tax breaks for these marriages."

The **representatives** stressed that this bill does not represent a change in Pennsylvania law. Rather, Egolf said it reemphasizes the policy the state has held all along.

"We are simply reinforcing what our courts have said time and time again," Egolf said.

Egolf and Maitland expect the House Judiciary Committee to examine the bill, which has the support of the Pennsylvania Family Institute.

# # #



**GAY AND LESBIAN  
LAWYERS OF PHILADELPHIA**

Box 58279, Philadelphia, PA 19102, (215) 627-9090

April 27, 1996

PENNSYLVANIA House of Representatives  
Judiciary Committee  
House Box 202020  
Harrisburg, PA 17120-2020

Hon. Thomas P. Gannon  
Hon. J. Scott Chadwick  
Hon. Lita Indzel Cohen  
Hon. Jerry Birmelin  
Hon. Daniel F. Clark  
Hon. Brett Feese  
Hon. Timothy F. Hennessey  
Hon. Albert Masland  
Hon. Ron Raymond  
Hon. Jere W. Schuler  
Hon. Stephen R. Maitland  
Hon. Dennis M. O'Brien  
Hon. Robert D. Reber, Jr.  
Hon. Chris R. Wogan  
Hon. Thomas R. Caltagirone  
Hon. Lisa M. Boscola  
Hon. Andrew J. Carn  
Hon. Frank Dermody  
Hon. Mike Horsey  
Hon. Kathy M. Manderino  
Hon. Peter J. Daley, II  
Hon. Gregory C. Fajt  
Hon. Harold James  
Hon. David J. Mayernik

Dear Judiciary Committee Member:

By unanimous resolution of the Board of Directors of GALLOP, the Gay And Lesbian Lawyers Of Philadelphia, we have been directed to express on behalf of our entire membership, including more than two hundred active members of the Pennsylvania Supreme Court Bar, our grave concerns with the bills that have recently been proposed by Representatives Egalf and Maitland and their effects on the people of Pennsylvania.

The fundamental premises which have been purported by the anti-marriage bill's sponsors and advocates are misleading, misplaced, ill-conceived, and without merit. The bills are a thinly disguised attempt to promote a homophobic agenda, which is detrimental to gays and lesbians in

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Pennsylvania. The bills, if enacted, will further alienate and stigmatize the gay and lesbian citizens of Pennsylvania and adversely affect the self-esteem of hundreds of Pennsylvania's gay and lesbian youth, a class which is already identified by the highest suicide rate of any group in the Commonwealth.

This bill does far more damage to the legal structure of marriage laws in Pennsylvania than the misleading suggestion that it "merely preserves the status quo." If enacted, the bill will affirmatively assault the rights conferred by another state. It constitutes the first effort to nullify another state's marriage law since the discriminatory law against interracial marriage was found to be unconstitutional by the U.S. Supreme Court in Loving v. Virginia (1967).

As its sponsors must concede, this bill addresses the state-recognized civil status of marriage. It is improper for legislators to impose their individual moral or religious beliefs on the electorate as a whole, particularly where the fundamental right to marry is involved.

The apparent intent behind the bill, i.e. the "affirmation" of the family unit, is simply not accomplished by the singling out of a class of individuals who have not even been afforded the right to a legally recognized union. Indeed, the very real problems associated with the increasing rate of divorce and the effect of single-parent households on children remain as troubling and real, regardless of whether this bill is enacted into law. Indeed, this bill is affirmatively destructive to those families that already exist in Pennsylvania, because of the detrimental consequences to children and extended family members of gays and lesbians.

The myriad litigation issues for individual citizens will overburden the court system in Pennsylvania. Actions in Commonwealth Court, as well as Family Court, would increase staggeringly because of Representatives Egalf's and Maitland's proposed bills. At a time when reduced federal funding of programs protecting families and nurturing children may result in new financial burdens being imposed on the states, it is futile and ill-conceived to implement ineffective legislation that will take hundreds of thousands of dollars to litigate. Our sister state of Maryland recognized this and less than three weeks ago, an identical legislative proposal there, Maryland House Bill 1268, was defeated in the Judiciary Committee.

It is important to understand that the State of Hawaii is not imposing its will on the Commonwealth of Pennsylvania. Hawaii's Supreme Court is simply reviewing a Hawaii case. Whatever the result of that decision, it cannot and will not affect Pennsylvania's marriage laws. The only method by which Pennsylvania's laws could be affected would be if the U.S. Supreme Court rendered a decision upholding the constitutionality of the Hawaii statute under the U.S. Constitution. As evidenced by the Supreme Court's ruling in Loving v. Virginia (1967), should it choose to examine this issue, the state would not be protected from constitutional scrutiny. It should not be forgotten that the arguments used against same-sex marriage were not long ago used against those who wished to marry a person of a different race. The freedom to marry, to right to a civil marriage license from the state, and the choice of whom to marry belong to each couple, and cannot be made by the government.

If one of these proposed bills are passed, it will merely yield to the prejudices of those who hate or are fearful of gay and lesbian families,

and let loose the floodgates of litigation, to the ultimate detriment of every taxpayer in the Commonwealth.

Because both Representative Egalf's bill and Representative Maitland's bill are such extraordinary pieces of hate legislation, the Board of GALLOP is requesting that your committee inform us in a timely fashion of any public hearings regarding its passage. Numerous GALLOP members from Pennsylvania, and several non-lawyer citizens, have contacted us to indicate their concern, sorrow, and anger that such hateful legislation has been introduced. Several gay and lesbian parents and several mental health care professionals wish to speak out concerning the impact of this law on the self-esteem of gay and lesbian youth who suffer the highest suicide rate of any class of individuals in Pennsylvania. We appeal to you to follow the spiritual countenance of Justice Hugo Black: "to stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement."

On behalf of gay and lesbian families, youth, and the good name of the citizens of Pennsylvania, we urge the Judiciary Committee to follow the example of Maryland's legislature, and lay this bill to rest.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Andrew S. Park".

Andrew S. Park, Esq.  
Secretary, GALLOP



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April 26, 1996

Pennsylvania House of Representatives  
Judiciary Committee  
House Box 202020  
Harrisburg, PA 17120-2020

Hon. Thomas P. Gannon  
Hon. J. Scott Chadwick  
Hon. Lita Indzel Cohen  
Hon. Jerry Birmelin  
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Hon. Mike Horsey  
Hon. Kathy M. Maderino  
Hon. Peter J. Daley, II  
Hon. Gregory C. Fajt  
Hon. Harold James  
Hon. David J. Mayernik

Dear Judiciary Committee Member:

On behalf of the National Lesbian and Gay Law Association-Region 2, which includes Pennsylvania, Delaware, New Jersey, and New York, I am writing to express our concern, sorrow, and anger over the proposed introduction of the two House Bills proposed by Representatives Egalft and Maitland before your legislature.

Pennsylvania now is one of thirty-two states before whom such hateful legislation premised on the miscegenation laws has been introduced. The miscegenation laws, which forbade intermarriage between "colored persons" and whites, were found to be unconstitutional in the landmark U.S. Supreme Court case of Loving v. Virginia (1967). It should not be forgotten that the arguments used to support the separation of the races included disturbingly similar references to those used against gay and lesbian couples today.

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These bills are destructive of already existing families in Pennsylvania and has numerous harmful consequences for the children and extended members of gay and lesbian families. Three harmful consequences to children and to extended family members are worthy of consideration.

1. If a gay parent brings children into a relationship, his partner cannot be legally responsible for the welfare of their children if his partner dies. Furthermore, even if he has acted as a de facto step-parent, or as a legal step parent under another state's law, throughout the entirety of the children's life, he would come to Pennsylvania's courts as a stranger in any effort to retain custody or guardianship. His rights would likely fail even against the rights of unknown distant kin who have never expressed interest in or concern for those children.
2. If the parents of a lesbian mother, who have acted as grandparents for those children, seek visitation or custody in Pennsylvania courts, they would have as much standing as a stranger or a baby sitter. This would be the case regardless of whether or not the grandparent was part of those children's lives from birth.
3. When a gay person enters a hospital, the important decisions regarding treatment and care that are afforded to his spouse under another state's law would be forfeited in Pennsylvania. The sick partner's estranged relatives would have the right to cut off the legal spouse from all contact with the partner whose life was shared.

As is apparent from the various ways that the denial of marriage benefits can arise, there will undoubtedly be an onslaught of litigation regarding this proposed bill. Under the Pennsylvania legal system, since the Family Court would not have jurisdiction over these issues, the Commonwealth Court will be called upon to adjudicate the minutiae of family law problems for families, whose existence this law denies.

Rejecting these bills is entirely consist with family values. It recognizes relationships that already exist both within the state of Pennsylvania, and throughout the country. While similar bills have been introduced by right minded individuals who insist that the family must be limited to the "Ozzie and Harriet" model of the 1950s, most state legislatures have refused to accept this myopic, ill-conceived,

hateful and disturbingly intolerant view of the American family. Indeed, the legislatures of the following states have refused to endorse this narrow definition of family: Colorado, Iowa, Maine, Missouri, New Mexico, Rhode Island, Virginia, Washington, West Virginia, Wyoming, and, most recently, Maryland.

It is common knowledge that Pennsylvania is home to many of our nation's premiere companies. Few, if any, of these companies are limited in their geographic reach to the Keystone State. Many of those corporations doing business in Pennsylvania have non-discrimination policies which include sexual orientation. Some of these companies include DuPont, Merck, AT&T, Chase Manhattan, Citicorp, Core States, First Chicago, Gannett, General Electric, General Motors, H&R Block, Hewlett Packard, IBM, J.P. Morgan & Co., Mellon, MidAtlantic, Prudential, Viacom, Paramount, and Xerox.

These laws, if enacted, would have an adverse effect on the decisions of these and other companies, regarding the hiring, transferring, and promoting of gay and lesbian employees. Pennsylvania's proposed law would require those employees to forfeit the existing marital protections and benefits that were legally afforded to them by other states. This will necessarily complicate business decisions. Not only are Representative Egalf's and Maitland's bills anti-family, they are also anti-business.

For all these reasons, we urge you to defeat these bills while they are still in the Judiciary Committee.

Most sincerely,

A handwritten signature in black ink, reading "David M. Rosenblum". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping tail.

David M. Rosenblum, Esq.  
Regional Representative  
NLGLA



JUL 9 1996

file  
R.S.M.

League of Gay and Lesbian Voters • 5819-B Forward Ave. • Pittsburgh, Pa 15217  
(412) 421-4470

Honorable Allan Egolf  
PO Box 202020  
Pennsylvania House of Representatives  
Harrisburg, Pa 17120

7 July 1996

Dear Senator Egolf,

I appreciated you spending the time to discuss with me you legislation prohibiting the recognition of same-sex marriages. I think it is the beginning of at least understanding between our two sides of the fence. Despite the passage of the amendment, I still feel there is much to gain though discussion of this and related issues, where we may each gain some understanding of the other's positions, and perhaps even work out reasonable compromises. It is important that we understand differing view points, regardless of whether we reach agreement. At the least, perhaps we can make politics were a little better. Your openness to this idea is very much appreciated.

I will be away in Ireland until 19 July, but I will be free after that. If you are still willing to look into this issue further, I'd like to meet with you either in Harrisburg or, if that is not convenient, at your district office. I will call you when I get back to try to schedule an appointment.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Chris Young', written in black ink.

Chris Young  
Chair, LGLV

PS: I am sorry if this letter is very terse and perhaps not too eloquent. I've been up all night trying to get ready to leave. The plane leaves in just a few hours.

**Also:** PO Box 8083; Erie, Pa 16505 • PO Box 1205; Johnstown, Pa 15907 • PO Box 10986; State College, Pa 16805 • PO Box 20781; Lehigh Valley, Pa 18002 • PO Box 17275; Philadelphia, Pa 19105 • PO Box 1313; Harrisburg, Pa 17105 • PO Box 565; Clearfield, Pa 16830 • PO Box 1064; Washington, Pa 15301 • PO Box 2823; Wilkes-Barre, Pa 18703



July 1, 1996

Dear Hon. C. Allan Eloff,  
District 86  
787-0860

Pennsylvania Family Institute is offering you an opportunity to make your positions known to voters in Pennsylvania. Our office is producing a non-partisan Voter's Guide for congressional races, state row offices, and the Pennsylvania General Assembly.

This year, Pennsylvania Family Institute plans to distribute one million copies of the guide throughout the state in newspapers, libraries, schools, bookstores, churches and businesses. For the General Election in 1994, Pennsylvania Family Institute distributed more than one million copies of the voter's guide to a broad cross-section of citizens. Our Pennsylvania Voter's Guide has become a respected and anticipated resource for many Pennsylvania voters.

The Pennsylvania Family Institute is a nonprofit, nonpartisan, research and education organization, which analyzes public policies and cultural trends and their impact on children and families throughout our Commonwealth. As part of our effort to encourage responsible citizenship, we produce voter's guides for each major election. We do not endorse candidates or parties. Our goal is to inform the electorate of the candidates' positions on issues which are important to voters in Pennsylvania.

**Our guide is strictly a reporting service; we do not "rate" or "score" candidates in any way.** Even if you are unopposed, we encourage your cooperation. This is an opportunity to educate Pennsylvania's voters. The Voter's Guide will list your responses to our questions, as well as a brief biography (experience, education) and a campaign telephone number.

To obtain the information for the guide, **we would appreciate your completing the enclosed questionnaire, and returning it to us by fax (717) 545-8107, or by using the enclosed return envelope. We would appreciate your prompt consideration; our deadline is July 24th. With your completed questionnaire, please also include a brief biography (by FAX).**

Thank you for your cooperation. If you have any questions, please call our office. We would appreciate your response as soon as possible - **by July 24, 1996** at the latest - to meet our production schedule.

Very truly yours,

Michael Geer  
President



Hon. C. Allan Egolf  
 State Representative, District 86



**1996 General Voters' Guide**

Questionnaire for State Candidates

Please FAX your responses to 717.545.8107 or mail by July 24, 1996 to:  
 Pennsylvania Family Institute, 3544 N. Progress Ave., Harrisburg PA 17110

Questions	(Please check the appropriate column)	Support	Oppose
1. Do you support or oppose further restrictions on a woman's access to abortion?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Do you support or oppose further regulations on religious day-care institutions?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Would you support or oppose legislation that would require offenders to pay individual restitution to victims instead of going to prison?	<i>(not enough info.)</i>	<input type="checkbox"/>	<input type="checkbox"/>
4. Do you support legislation to limit the number of appeals for criminals sentenced to death?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Do you support or oppose changing Pennsylvania's unilateral no-fault divorce law to require mutual consent of both parties, or, if only one party wants a divorce, require proof of fault?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Do you support or oppose the Pennsylvania state mandated outcomes-based education program?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Do you support or oppose providing vouchers or grants for parents to send their child to the school of their choice (public, private or religious)?	<i>Support: if we could guarantee no new regulations on pvt. schools, otherwise oppose</i>	<input type="checkbox"/>	<input type="checkbox"/>
8. Do you support or oppose legislation to compensate property owners whose property values are decreased due to environmental regulations?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Do you support or oppose a provision in the state's budget to fund contraceptive services using state tax dollars?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Do you support or oppose legalized riverboat casino gambling in Pennsylvania?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Do you support or oppose providing special legal protections based on sexual orientation?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Do you support or oppose right to work legislation which prohibits compulsory union membership?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. Would you support or oppose legislation to change the definition of "contemporary community standard" in obscenity cases from a statewide to a local standard?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
14. Do you support or oppose shifting the basis for local taxes from property to income, as long as it is revenue-neutral (it raises the same amount of government revenue)?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
15. Do you support or oppose abolishing state inheritance taxes?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Do you support or oppose legislation that includes a family cap, capping additional payments to mothers who have additional children while on welfare?		<input checked="" type="checkbox"/>	<input type="checkbox"/>

Candidate's Signature *allan Egolf* Date 7/2/96

Mr. Speaker:

According to Article Four, Section One of the U.S. Constitution, "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State." This means that, generally, if a marriage is valid where it is performed, it is valid everywhere.

However, there are exceptions to the Full Faith and Credit Clause. The U.S. Supreme Court has stated that every state is entitled to enforce its own statutes in its own courts, and not every statute from another state will override a conflicting statute in Pennsylvania.

In the case of marriage, the exception allows states not to recognize marriages if they are "repugnant to the public policy" of the home state.

Since no state has ever recognized same-sex marriages before, the question has never come before the courts. If and when this question comes to Pennsylvania courts, we want to remove any potential confusion. This amendment introduced by Rep. Maitland and myself specifically states what our policy is and always has been--that these so-called "marriages" are contrary to our public policy, and will not be recognized in Pennsylvania.

This amendment does not take anything away from anyone that they now have. It is simply an expression of Pennsylvania's traditional policy of moral opposition to same-sex marriages [as described by *DeSanto v. Barnsley*, 476 A.2d 952 (Pa.Super. 1984)] and support of the traditional family unit. In addition this amendment serves many other practical purposes for the Commonwealth of today and the future.

For example, legalizing same-sex marriages would place another unfunded mandate on our business community.

Any existing pension or insurance program providing benefits to a "spouse" would have to include an entirely new supply of so-called "spouses". The providers of these benefits would have to assume a liability they never conceived when the promise was made. To avoid these new liabilities, providers would have to cancel and rewrite the agreements. Future agreements might even delete the coverage of "spouse" and family that Pennsylvania workers have come to depend on.

The burden on the public sector could be great as well. In recognizing same-sex marriages, courts would also have to hear all same-sex divorce suits. This will only compound the backlog of cases in our judicial system. Social Security, tax, and other benefits presently conferred on spouses would have to be expanded to include married partners of the same sex. The financial costs imposed on society by the forced recognition of same-sex marriage cannot even be calculated at this time.

Ours is a democratic form of government. Do you want a group of judges in Hawaii determining Pennsylvania's laws and policies? If the people of Pennsylvania want us to change our marriage laws, we have the legislative process to do that. However, I do not believe they want to do that at this time. A CNN/USA Today poll taken in March of this year indicated that nearly 70% (68% to be exact) of Americans are opposed to same-sex marriages.

As our U.S. Supreme Court said in 1885, and Justice Scalia recently reiterated in his dissent to Romer v. Evans:

"Certainly no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth, fit to take rank as one of the coordinate States of the Union, than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guarantee of that reverent morality which is the source of all beneficent progress in social and political improvement."

I urge you to vote yes on this Amendment.

DRAFT OF FLOOR INTRODUCTION TO SAME SEX MARRIAGE LEGISLATION

3 → This ~~Bill~~ Amendment is ~~not~~ <sup>simply</sup> just an expression of Pennsylvania's traditional policy of moral opposition to same sex marriages [as described by DeSanto v. Barnsley, 476 A.2d 952 (Pa.Super. 1984)] and support of the traditional family unit, but serves many other practical purposes for the Commonwealth of today and the future.

4 → For example, legalizing s.s.m.'s would place another unfunded mandate on our business community.  
5 Any existing pension or insurance program providing benefits to a "spouse" would have to include an entirely new supply of "spouses". The providers of these benefits would have to assume a liability they never conceived when the promise was made. To avoid these new liabilities, providers would have to cancel and rewrite the agreements. Future agreements might even delete the coverage of "spouse" and family that Pennsylvania workers have come to depend on.

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I urge you to vote yes on this Bill/Amendment.

SB 1374

MR. SPEAKER, THIS AMENDMENT IS FULLY COMPATIBLE WITH THE FULL FAITH AND CREDIT AND THE DUE PROCESS OF THE UNITED STATES CONSTITUTION. ANY QUESTION ABOUT THOSE ISSUES WAS LAID TO REST BY THE UNITED STATES SUPREME COURT IN ITS 1981 DECISION IN ALLSTATE INSURANCE COMPANY V. HAGUE.

A READING OF THE FACTUAL SITUATION AND THE COURT'S RATIONALE MAKE IT CLEAR THAT THIS AMENDMENT, IF ANYTHING, STANDS ON EVEN FIRMER CONSTITUTIONAL GROUND THAN THE MINNESOTA LAW WHICH WAS AFFIRMED BY THE HIGH COURT IN THE HAGUE CASE.

A READING OF THE COURT'S PLURALITY OPINION IN HAGUE CLEARLY SUPPORTS THE CONSTITUTIONALITY OF THIS AMENDMENT. THE SUPREME COURT SAID, IN RELEVANT PART, AND I QUOTE:

**RESPONDENT'S LATE HUSBAND, RALPH HAGUE, DIED OF INJURIES SUFFERED WHEN A MOTORCYCLE ON WHICH HE WAS A PASSENGER WAS STRUCK FROM BEHIND BY AN AUTOMOBILE. THE ACCIDENT OCCURRED IN PIERCE COUNTY, WIS. [WISCONSIN], WHICH IS IMMEDIATELY ACROSS THE MINNESOTA BORDER FROM RED WING, MINN. [MINNESOTA] THE OPERATORS OF BOTH VEHICLES WERE WISCONSIN RESIDENTS, AS WAS THE DECEDENT WHO, AT THE TIME OF THE ACCIDENT, RESIDED WITH RESPONDENT IN HAGER CITY, WIS [WISCONSIN].**

....

**NEITHER THE OPERATOR OF THE MOTORCYCLE NOR THE OPERATOR OF THE AUTOMOBILE CARRIED VALID INSURANCE. HOWEVER, THE DECEDENT HELD A POLICY ISSUED BY PETITIONER ALLSTATE INSURANCE COMPANY COVERING THREE AUTOMOBILES . . . . THE UNINSURED MOTORIST COVERAGE WAS LIMITED TO \$15,000 FOR EACH AUTOMOBILE.**

**AFTER THE ACCIDENT, BUT PRIOR TO THE INITIATION OF THIS LAWSUIT, RESPONDENT MOVED TO RED WING. SUBSEQUENTLY, SHE MARRIED A MINNESOTA RESIDENT AND ESTABLISHED RESIDENCE WITH HER NEW HUSBAND IN SAVAGE, MINN. [MINNESOTA]. . . . SHE BROUGHT THIS ACTION IN MINNESOTA DISTRICT COURT SEEKING A DECLARATION UNDER MINNESOTA LAW THAT THE \$15,000 UNINSURED MOTORIST COVERAGE ON EACH OF HER LATE HUSBAND'S THREE AUTOMOBILES COULD BE "STACKED" TO PROVIDE TOTAL COVERAGE OF \$45,000. PETITIONER DEFENDED ON THE GROUND THAT WHETHER THE THREE UNINSURED MOTORIST COVERAGES COULD BE STACKED SHOULD BE DETERMINED BY WISCONSIN LAW, SINCE THE INSURANCE POLICY WAS DELIVERED IN WISCONSIN, THE ACCIDENT OCCURRED IN WISCONSIN, AND ALL PERSONS INVOLVED WERE WISCONSIN RESIDENTS AT THE TIME OF THE ACCIDENT.**

**. . . . INTERPRETING WISCONSIN LAW TO DISALLOW STACKING, THE COURT CONCLUDED THAT MINNESOTA'S CHOICE-OF-LAW RULES REQUIRED THE APPLICATION OF MINNESOTA LAW PERMITTING STACKING. THE COURT REFUSED TO APPLY WISCONSIN LAW AS "INIMICAL TO THE PUBLIC POLICY OF MINNESOTA" AND GRANTED SUMMARY JUDGMENT FOR RESPONDENT.**

**. . .**

**IT IS NOT FOR THIS COURT TO SAY WHETHER THE CHOICE-OF-LAW ANALYSIS SUGGESTED BY PROFESSOR LEFLAR IS TO BE PREFERRED OR WHETHER WE WOULD MAKE THE SAME CHOICE-OF-LAW DECISION IF SITTING AS THE MINNESOTA SUPREME COURT. OUR SOLE FUNCTION IS TO DETERMINE WHETHER THE MINNESOTA SUPREME COURT'S CHOICE OF ITS OWN SUBSTANTIVE LAW IN THIS CASE EXCEEDED FEDERAL CONSTITUTIONAL LIMITATIONS.**

**. . .**

**IN DECIDING CONSTITUTIONAL CHOICE-OF-LAW QUESTIONS, WHETHER UNDER THE DUE PROCESS CLAUSE OR THE FULL FAITH AND CREDIT CLAUSE, THIS COURT HAS TRADITIONALLY EXAMINED THE CONTACTS OF THE STATE, WHOSE LAW WAS APPLIED, WITH THE PARTIES AND WITH THE OCCURRENCE OR TRANSACTION GIVING RISE TO THE LITIGATION. IN ORDER TO ENSURE THAT THE CHOICE OF LAW IS NEITHER ARBITRARY NOR**

**FUNDAMENTALLY UNFAIR, . . . , THE COURT HAS INVALIDATED THE CHOICE LAW OF A STATE WHICH HAS HAD NO SIGNIFICANT CONTACT OR SIGNIFICANT AGGREGATION OF CONTACTS, CREATING STATE INTERESTS, WITH THE PARTIES AND THE OCCURRENCE OR TRANSACTION.**

**TWO INSTRUCTIVE EXAMPLES OF SUCH INVALIDATION ARE HOME INSURANCE COMPANY V. DICK . . . AND JOHN HANCOCK MUTUAL LIFE INSURANCE CO. V. YATES . . . IN BOTH CASES, THE SELECTION OF FORUM LAW RESTED EXCLUSIVELY ON THE PRESENCE OF ONE NONSIGNIFICANT FORUM CONTACT.**

. . .

***DICK* AND *YATES* STAND FOR THE PROPOSITION THAT IF A STATE HAS ONLY AN INSIGNIFICANT CONTACT WITH THE PARTIES AND THE OCCURRENCE OR TRANSACTION, APPLICATION OF ITS LAW IS UNCONSTITUTIONAL. . . .**

. . .

**THE LESSON . . . IS THAT FOR A STATE'S SUBSTANTIVE LAW TO BE SELECTED IN A CONSTITUTIONALLY PERMISSIBLE MANNER, THAT STATE MUST HAVE A SIGNIFICANT CONTACT OR SIGNIFICANT AGGREGATION OF CONTACTS, CREATING STATE INTERESTS, SUCH THAT CHOICE OF ITS LAW IS NEITHER ARBITRARY NOR FUNDAMENTALLY UNFAIR. APPLICATION OF THIS PRINCIPLE TO THE FACTS OF THIS CASE PERSUADES US THAT THE MINNESOTA SUPREME COURT'S CHOICE OF ITS OWN LAW DID NOT OFFEND THE FEDERAL CONSTITUTION.**

**MINNESOTA HAS THREE CONTACTS WITH THE PARTIES AND THE OCCURRENCE GIVING RISE TO THE LITIGATION. IN THE AGGREGATE, THESE CONTACTS PERMIT SELECTION BY THE MINNESOTA SUPREME COURT OF MINNESOTA LAW ALLOWING THE STACKING OF MR. HAGUE'S UNINSURED MOTORIST COVERAGES.**

**FIRST, AND FOR OUR PURPOSES A VERY IMPORTANT CONTACT, MR. HAGUE WAS A MEMBER OF MINNESOTA'S WORKFORCE, HAVING BEEN EMPLOYED BY A RED WING, MINN., ENTERPRISE FOR THE 15 YEARS PRECEDING HIS DEATH. WHILE EMPLOYMENT STATUS MAY IMPLICATE A STATE INTEREST LESS SUBSTANTIAL THAN DOES RESIDENT STATUS, THAT INTEREST IS NEVERTHELESS IMPORTANT.**

...

**SECOND, ALLSTATE WAS AT TIMES PRESENT AND DOING BUSINESS IN MINNESOTA.**

...

**THIRD, RESPONDENT BECAME A MINNESOTA RESIDENT PRIOR TO INSTITUTION OF THIS LITIGATION.**

...

**IN SUM, MINNESOTA HAD A SIGNIFICANT AGGREGATION OF CONTACT WITH THE PARTIES AND THE OCCURRENCE, CREATING STATE INTERESTS, SUCH THAT APPLICATION OF ITS LAW WAS NEITHER ARBITRARY NOR FUNDAMENTALLY UNFAIR. ACCORDINGLY, THE CHOICE OF MINNESOTA LAW BY THE MINNESOTA SUPREME COURT DID NOT VIOLATE THE DUE PROCESS CLAUSE OR THE FULL FAITH AND CREDIT CLAUSE.**

...

THOSE QUOTATIONS ARE TAKEN FROM THE SUPREME COURT'S PLURALITY OPINION IN THE HAGUE CASE. JUSTICE STEVEN'S CONCURRING AND PIVOTAL OPINION FURTHER REINFORCES THE CONSTITUTIONALITY OF THIS AMENDMENT. IN HIS CONCURRING OPINION, JUSTICE STEVENS SAID, AND I QUOTE:

...

**THE FULL FAITH AND CREDIT CLAUSE IMPLEMENTS THIS DESIGN BY DIRECTING THAT A STATE, WHEN ACTING AS THE FORUM OF LITIGATION HAVING MULTISTATE ASPECTS OR IMPLICATIONS, RESPECT THE LEGITIMATE INTERESTS OF OTHER STATES AND AVOID INFRINGEMENT UPON THEIR SOVEREIGNTY. THE CLAUSE DOES NOT, HOWEVER, RIGIDLY REQUIRE THE FORUM STATE TO APPLY FOREIGN LAW WHENEVER ANOTHER STATE HAS A VALID INTEREST IN THE LITIGATION. . . . ON THE CONTRARY, IN VIEW OF THE FACT THAT THE FORUM STATE IS ALSO A SOVEREIGN IN ITS OWN RIGHT, IN APPROPRIATE CASES IT MAY ATTACH**



**PARAMOUNT IMPORTANCE TO ITS OWN LEGITIMATE INTERESTS. ACCORDINGLY, THE FACT THAT A CHOICE-OF-LAW DECISION MAY BE UNSOUND AS A MATTER OF CONFLICTS LAW DOES NOT NECESSARILY IMPLICATE THE FEDERAL CONCERNS EMBODIED IN THE FULL FAITH AND CREDIT CLAUSE. RATHER, IN MY OPINION, THE CLAUSE SHOULD NOT INVALIDATE A STATE COURT'S CHOICE OF FORUM LAW UNLESS THAT CHOICE THREATENS THE FEDERAL INTEREST IN NATIONAL UNITY BY UNJUSTIFIABLY INFRINGING UPON THE LEGITIMATE INTERESTS OF ANOTHER STATE.**

**IN THIS CASE, I THINK THE MINNESOTA COURTS' DECISION TO APPLY MINNESOTA LAW WAS PLAINLY UNSOUND AS A MATTER OF NORMAL CONFLICTS LAW. BOTH THE EXECUTION OF THE INSURANCE CONTRACT AND THE ACCIDENT GIVING RISE TO THE LITIGATION TOOK PLACE IN WISCONSIN. MOREOVER, WHEN BOTH OF THOSE EVENTS OCCURRED, THE PLAINTIFF, THE DECEDENT, AND THE OPERATORS OF BOTH VEHICLES WERE ALL RESIDENTS OF WISCONSIN. NEVERTHELESS, I DO NOT BELIEVE THAT ANY THREAT TO NATIONAL UNITY OR WISCONSIN'S SOVEREIGNTY ENSUES FROM ALLOWING THE SUBSTANTIVE QUESTION PRESENTED BY THIS CASE TO BE DETERMINED BY THE LAW OF ANOTHER STATE.**

...

**PETITIONER HAS FAILED TO ESTABLISH THAT MINNESOTA'S REFUSAL TO APPLY WISCONSIN LAW POSES ANY DIRECT OR INDIRECT THREAT TO WISCONSIN'S SOVEREIGNTY. IN THE ABSENCE OF ANY SUCH THREAT, I FIND IT UNNECESSARY TO EVALUATE THE FORUM STATE'S INTEREST IN THE LITIGATION IN ORDER TO REACH THE CONCLUSION THAT THE FULL FAITH AND CREDIT CLAUSE DOES NOT REQUIRE THE MINNESOTA COURTS TO APPLY WISCONSIN LAW TO THE QUESTION OF CONTRACT INTERPRETATION PRESENTED IN THIS CASE.**

**IT MAY BE ASSUMED THAT A CHOICE-OF-LAW DECISION WOULD VIOLATE THE DUE PROCESS CLAUSE IF IT WERE TOTALLY ARBITRARY OR IF IT WERE FUNDAMENTALLY UNFAIR TO EITHER LITIGANT. . . .**

...

**THE FORUM STATE'S INTEREST IN THE EFFICIENT OPERATION OF ITS JUDICIAL SYSTEM IS CLEARLY NOT SUFFICIENT, HOWEVER,**

**TO JUSTIFY THE APPLICATION OF A RULE OF LAW THAT IS  
FUNDAMENTALLY UNFAIR TO ONE OF THE LITIGANTS. . . .  
CONCERN ABOUT THE FAIRNESS OF THE FORUM'S CHOICE OF ITS  
OWN RULE MIGHT ARISE IF THAT RULE FAVORED RESIDENTS  
OVER NONRESIDENTS, IF IT REPRESENTED A DRAMATIC  
DEPARTURE FROM THE RULE THAT OBTAINS IN MOST AMERICAN  
JURISDICTIONS, OR IF THE RULE ITSELF WAS UNFAIR ON ITS  
FACE OR AS APPLIED.**

**THE APPLICATION OF AN OTHERWISE ACCEPTABLE RULE OF  
LAW MAY RESULT IN UNFAIRNESS TO THE LITIGANTS IF, IN  
ENGAGING IN THE ACTIVITY WHICH IS THE SUBJECT OF THE  
LITIGATION, THEY COULD NOT REASONABLY HAVE  
ANTICIPATED THAT THEIR ACTIONS WOULD LATER BE JUDGED  
BY THIS RULE OF LAW. A CHOICE-OF-LAW DECISION THAT  
FRUSTRATES THE JUSTIFIABLE EXPECTATIONS OF THE PARTIES  
CAN BE FUNDAMENTALLY UNFAIR. THIS DESIRE TO PREVENT  
UNFAIR SURPRISE TO A LITIGANT HAS BEEN THE CENTRAL  
CONCERN IN THIS COURT'S REVIEW OF CHOICE-OF-LAW  
DECISIONS UNDER THE DUE PROCESS CLAUSE.**

**. . .**

**ALTHOUGH I REGARD THE MINNESOTA COURTS' DECISION TO  
APPLY FORUM LAW AS UNSOUND AS A MATTER OF CONFLICTS  
LAW, AND THERE IS LITTLE IN THIS RECORD OTHER THAN THE  
PRESUMPTION IN FAVOR OF THE FORUM'S OWN LAW TO  
SUPPORT THAT DECISION, I CONCUR IN THE PLURALITY'S  
JUDGMENT. IT IS NOT THIS COURT'S FUNCTION TO ESTABLISH  
AND IMPOSE UPON STATE COURTS A FEDERAL CHOICE-OF-LAW  
RULE, NOT IS IT OUR FUNCTION TO ENSURE THAT STATE COURTS  
CORRECTLY APPLY WHATEVER CHOICE-OF-LAW RULES THEY  
HAVE THEMSELVES ADOPTED. OUT AUTHORITY MAY BE  
EXERCISED IN THE CHOICE-OF-LAW AREA ONLY TO PREVENT A  
VIOLATION OF THE FULL FAITH AND CREDIT OR THE DUE  
PROCESS CLAUSE.**

JUSTICE STEVENS' FOOTNOTE COMMENT IS PARTICULARLY RELEVANT TO  
OUR DELIBERATION TODAY, AND I QUOTE:

**"FOR EXAMPLE, IT IS WELL ESTABLISHED THAT THE FULL  
FAITH AND CREDIT CLAUSE DOES NOT REQUIRE A STATE TO  
APPLY ANOTHER STATE'S RULE IN VIOLATION OF ITS OWN  
LEGITIMATE PUBLIC POLICY."**

SO SPOKE JUSTICE STEVENS.

I THINK IT IS CLEAR BEYOND ANY SHADOW OF A DOUBT THAT PENNSYLVANIA HAS A FAR GREATER INTEREST IN HOW TO TREAT THE MARITAL STATUS OF A COUPLE WHO MIGRATE FROM ANOTHER STATE THAN MINNESOTA HAD IN WISCONSIN'S STACKING LAW.

THE INSTITUTION OF MARRIAGE FORMS THE BEDROCK OF THE FAMILY AND SOCIETY. THE HEALTHY FUNCTIONING OF THE FAMILY UNIT IS CRUCIAL TO THE RAISING OF CHILDREN AND TO THE STABILITY OF SOCIETY. IN ORDER TO FURTHER THIS COMPELLING GOVERNMENT INTEREST, THE STATE HAS THE POWER AND THE DUTY TO FULLY REGULATE THE INSTITUTION OF MARRIAGE WITHIN ITS BORDERS. PENNSYLVANIA HAS FAR GREATER CONTACT WITH COUPLES WHO CHOOSE TO MOVE HERE AND LIVE UNDER OUR MARRIAGE LAW THAN DOES THE STATE WHERE THE COUPLE WAS MARRIED AND HAS SINCE LEFT.

PENNSYLVANIA'S CONTACT WITH SUCH COUPLES IS FAR GREATER AND MUCH MORE SIGNIFICANT THAN MINNESOTA'S INTEREST IN WISCONSIN'S INSURANCE STACKING LAW WHICH INVOLVED A WISCONSIN ACCIDENT; A WISCONSIN VICTIM; WISCONSIN DRIVERS AND AN INSURANCE POLICY CONTRACTED IN WISCONSIN. WHILE MINNESOTA HAD NO PARTICULAR INTEREST IN WHAT HAPPENED IN THE WISCONSIN ACCIDENT, PENNSYLVANIA HAS A COMPELLING INTEREST IN WHAT HAPPENS IN IF A COUPLE SEEKS TO

HAVE OUR STATE RECOGNIZE A MARRIAGE WHICH IS IN SHARP CONFLICT WITH  
OUR FUNDAMENTAL PUBLIC POLICY

FOR THIS REASON, I AM CONFIDENT THAT THIS AMENDMENT WILL  
WITHSTAND ANY CONSTITUTIONAL ATTACK BASED UPON DUE PROCESS OR  
FULL FAITH AND CREDIT.

I URGE THE MEMBERS TO SUPPORT THE CONSTITUTIONALITY OF THIS  
AMENDMENT.

THANK YOU, MR. SPEAKER.

**THIS AMENDMENT PROTECTS PENNSYLVANIA AGAINST A FUTURE COURT DECISION DICTATING THAT WE MUST RECOGNIZE SAME-SEX MARRIAGES WHICH ARE VALIDLY PERFORMED IN HAWAII OR ELSEWHERE.**

**THE NEED FOR THIS LEGISLATION HAS BEEN CREATED BY A RECENT DEVELOPMENT IN HAWAII WHERE A STATE COURT HAS INDICATED THAT IT MAY EXTEND THAT STATE'S MARRIAGE LAW TO INCLUDE SAME-SEX COUPLES--UNLESS HAWAII CAN ESTABLISH A COMPELLING REASON AGAINST SUCH AN EXTENSION. FROM THE TONE AND REASONING OF THE HAWAII COURT'S OPINION, IT SEEMS UNLIKELY IT WILL ACCEPT THE STATE'S JUSTIFICATION FOR LIMITING MARRIAGE TO PERSONS OF THE OPPOSITE SEX.**

**THE QUESTION THEN ARISES AS TO WHAT HAPPENS IF THE HAWAII SUPREME COURT FOLLOWS THROUGH ON THE IMPLICATIONS OF ITS INITIAL DECISION AND CREATES A RIGHT TO TRANSACT A SAME-SEX MARRIAGE IN THAT STATE.**

**AT THAT POINT, THERE IS EVERY REASON TO BELIEVE THAT HAWAII WILL BECOME THE SAME MAGNET FOR SAME-SEX COUPLES THROUGHOUT THE COUNTRY THAT RENO, NEVADA ONCE WAS FOR INDIVIDUALS SEEKING EASY DIVORCE. IT IS EASY TO ENVISION THE PROSPECT OF THOUSANDS—EVEN TENS OF THOUSANDS—OF SAME-SEX COUPLES MOVING TO HAWAII, ESTABLISHING A RESIDENCE, AND THEN RETURNING TO THEIR STATE OF ORIGIN IN ORDER TO REESTABLISH DOMICILE AS VALIDLY MARRIED PARTNERS. HAVING BEEN VALIDLY MARRIED UNDER THE LAWS OF HAWAII, SAME-SEX COUPLES THAT RETURN TO PENNSYLVANIA WILL THEN DEMAND THAT THEIR SAME-SEX MARITAL STATUS BE RECOGNIZED IN THE COMMONWEALTH AND THAT THEY BE ACCORDED THE SAME PRIVILEGES AND BENEFITS OF MARRIAGE THAT ARE GRANTED TO HUSBANDS AND WIVES.**

**IF SAME-SEX COUPLES DEMAND THAT THEY BE ACCORDED THE STATUS OF MARRIAGE PARTNERS BASED ON THEIR HAWAIIAN LICENSES, A QUESTION ARISES AS TO WHETHER OR**

**NOT OUR COURTS WILL RECOGNIZE THOSE MARRIAGES ON THE GROUNDS THAT THEY WERE VALIDLY PERFORMED IN ANOTHER STATE AND ARE THEREBY ENTITLED TO FULL FAITH AND CREDIT OR TO COMITY UNDER CONFLICT OF LAWS ANALYSIS.**

**IF PENNSYLVANIA DOES NOT TAKE STEPS TO REVISE ITS MARRIAGE LAW TO ADDRESS COMMONWEALTH POLICY ON SAME-SEX MARRIAGES, THERE IS NO WAY TO MAKE A CONFIDENT PREDICTION ON HOW OUR STATE SUPREME COURT WILL DECIDE THIS ISSUE. UNFORTUNATELY, CURRENT LAW GIVES OUR JUDICIARY LITTLE IN THE WAY OF TANGIBLE GUIDANCE FOR RESOLVING THIS QUESTION.**

**FOR THIS REASON, THERE IS A SUBSTANTIAL RISK THAT THE COURT MIGHT ACCORD RECOGNITION TO HAWAIIAN-STYLE SAME-SEX MARRIAGES UNLESS WE HERE IN THE GENERAL ASSEMBLY FILL THIS LEGAL VACUUM WITH A CLEAR DIRECTIVE THAT SAME-SEX MARRIAGES VIOLATE THE FUNDAMENTAL PUBLIC POLICY OF OUR STATE.**

**IF WE TURN OUR HEADS AND IGNORE THIS ISSUE, WE WILL HAVE PLACED OUR DEEPLY CHERISHED CONCEPT OF MARRIAGE AS A UNION BETWEEN A MAN AND A WOMAN AT RISK THROUGH OUR OWN WILLFUL NEGLECT.**

**THIS AMENDMENT WILL PROTECT PENNSYLVANIA'S HISTORICAL POLICY OF TRADITIONAL MARRIAGE IN TWO WAYS.**

**FIRST, IT WILL STRENGTHEN OUR LEGAL POSITION AGAINST A FEDERAL CONSTITUTIONAL ATTACK ON DUE PROCESS AND FULL FAITH AND CREDIT GROUNDS. ALTHOUGH I BELIEVE OUR TRADITIONAL MARRIAGE POLICY WOULD PROBABLY SURVIVE A FULL FAITH AND CREDIT OR DUE PROCESS CHALLENGE WITHOUT THIS AMENDMENT, THE AMENDMENT WILL BOLSTER THE COMMONWEALTH'S LEGAL POSITION BY MAKING IT CLEAR THAT SAME-SEX MARRIAGES VIOLATE OUR FUNDAMENTAL PUBLIC POLICY. THIS IS BECAUSE THE PRESERVATION OF A STATE'S IMPORTANT PUBLIC POLICIES HAS**

**GENERALLY BEEN FOUND TO JUSTIFY A REFUSAL TO APPLY THE LAW OF A SISTER STATE.**

**SECOND, IT WILL ELIMINATE THE MORE SERIOUS LEGAL THREAT THAT OUR COURTS WILL EMPLOY A CONFLICTS OF LAW ANALYSIS TO RECOGNIZE SAME-SEX MARRIAGES VALIDLY PERFORMED IN ANOTHER STATE.**

**A LITTLE BACKGROUND ON THE FULL FAITH AND CREDIT AND DUE PROCESS ISSUES MAY BE HELPFUL SINCE THEY RAISE FEDERAL CONSTITUTIONAL QUESTIONS. IN LIGHT OF A 1981 U.S. SUPREME COURT DECISION IN ALLSTATE INSURANCE COMPANY V. HAGUE, I DO NOT BELIEVE THAT PENNSYLVANIA WILL BE FORCED TO RECOGNIZE SAME-SEX MARRIAGES ON THE FEDERAL CONSTITUTIONAL GROUNDS OF DUE PROCESS OR FULL FAITH AND CREDIT. HOWEVER, THIS AMENDMENT FURTHER DIMINISHES THE RISK OF A SUCCESSFUL FULL FAITH AND CREDIT OR DUE PROCESS CHALLENGE SINCE IT WILL CLEARLY ESTABLISH THAT SAME-SEX MARRIAGES UNDERMINE A FUNDAMENTAL PUBLIC POLICY OF THE COMMONWEALTH IN THE HIGHLY SENSITIVE AREA OF MARRIAGE AND FAMILY THAT HAS BEEN A TRADITIONAL SUBJECT OF STATE REGULATION.**

**IN HAGUE, THE U.S. SUPREME COURT UPHELD THE APPLICATION OF MINNESOTA'S INSURANCE STACKING LAW UNDER CIRCUMSTANCES WHERE THE WIDOW OF AN ACCIDENT VICTIM MOVED INTO MINNESOTA FROM WISCONSIN AFTER THE ACCIDENT AND THEN FILED A LAWSUIT SEEKING A DECISION UNDER MINNESOTA LAW--DESPITE THE FACT THAT THE PLAINTIFF AND HER HUSBAND LIVED IN WISCONSIN AT THE TIME OF THE ACCIDENT, DESPITE THE FACT THAT THE RELEVANT INSURANCE POLICY WAS EXECUTED IN WISCONSIN, AND DESPITE THE FACT THAT THE VICTIM AND ALL DRIVERS IN THE ACCIDENT WERE WISCONSIN RESIDENTS AT THE TIME OF THE ACCIDENT. IF THAT CASE PASSED CONSTITUTIONAL MUSTER UNDER FULL FAITH AND CREDIT AND DUE PROCESS, SURELY PENNSYLVANIA CAN APPLY ITS MARRIAGE LAW TO SAME-SEX COUPLES MARRIED**

legit purpose:

# -TRADITIONAL MORALS

IN HAWAII IF THEY CHOOSE TO LEAVE THE ALOHA STATE IN ORDER TO LIVE IN THE COMMONWEALTH.

TRADITIONAL MARRIAGE

BY ESTABLISHING A CLEAR-CUT PUBLIC POLICY BASIS FOR REJECTING HAWAII'S LAW, THIS AMENDMENT WILL INCREASE THE PROTECTION FOR PENNSYLVANIA'S MARITAL POLICY AGAINST A CONSTITUTIONAL ASSAULT WHICH IS BASED UPON FULL FAITH AND CREDIT OR DUE PROCESS

ECONOMIC ISSUES

A SECOND, AND EVEN MORE COMPELLING, REASON FOR THIS AMENDMENT LIES IN THE MURKY SWAMP OF CONFLICT OF LAWS JURISPRUDENCE.

AS A MATTER OF COMITY IN OUR FEDERAL SYSTEM, STATE COURTS WILL FREQUENTLY HONOR THE LAWS AND POLICIES OF OTHER STATES EVEN WHERE THEY ARE INCONSISTENT WITH THE POLICIES OF THE HOME STATE. UNDER CONFLICT OF LAWS ANALYSIS, STATES WILL RECOGNIZE THE MARRIAGES, DIVORCES AND OTHER SOCIAL AND LEGAL RELATIONSHIPS ESTABLISHED IN OTHER STATES AS A MATTER OF COMITY EVEN WHEN THE STATE IS NOT REQUIRED TO DO SO.

THIS RAISES THE QUESTION AS TO WHETHER OR NOT OUR HIGH COURT WOULD RECOGNIZE HAWAIIAN-STYLE SAME-SEX MARRIAGES AS A MATTER OF COMITY UNDER CONFLICT OF LAWS ANALYSIS. FRANKLY, IT IS NOT CLEAR AT ALL WHAT OUR HIGH COURT WILL DECIDE, GIVEN THE CURRENT MURKY STATE OF PENNSYLVANIA LAW.

FIRST, I BELIEVE OUR COURTS WOULD PROBABLY FIND THAT PENNSYLVANIA LAW PROHIBITS PENNSYLVANIA COUPLES FROM CONTRACTING A SAME-SEX MARRIAGE WITHIN THE COMMONWEALTH. IN DESANTO VERSUS BARNSLEY, OUR SUPERIOR COURT RULED THAT SAME-SEX COUPLES CANNOT CONTRACT A COMMON LAW MARRIAGE WITHIN THE COMMONWEALTH. HOWEVER, IT MUST BE CAUTIONED THAT OUR MARRIAGE LAW MADE SPECIFIC REFERENCE TO MALE AND FEMALE MARRIAGE LICENSE APPLICANTS AT THE TIME OF THE



**DESANTO RULING IN 1984. SINCE THAT TIME, WE HAVE AMENDED OUR MARRIAGE LAW TO MAKE IT GENDER NEUTRAL. ALTHOUGH I BELIEVE THIS CHANGE WAS MERELY STYLISTIC AND EDITORIAL, IT REMAINS TO BE SEEN HOW OUR APPELLATE COURTS WILL INTERPRET THIS REVISION.**

**EVEN IF OUR COURTS WERE TO FIND THAT THIS REVISION DID NOT ALTER THE SUBSTANCE OF OUR LAW AS FAR AS MARRIAGES CONTRACTED WITHIN PENNSYLVANIA ARE CONCERNED, THIS CHANGE COULD WEAKEN PENNSYLVANIA'S DEFENSE AGAINST THE RECOGNITION OF SAME-SEX MARRIAGES THAT ARE VALIDLY PERFORMED IN ANOTHER STATE.**

**THIS LEADS TO AN ANALYSIS OF HOW OUR COURTS MIGHT APPLY OUR CONFLICT OF LAWS JURISPRUDENCE IN THE EVENT THAT SAME-SEX COUPLES FROM HAWAII MOVE TO PENNSYLVANIA AND SEEK RECOGNITION OF THEIR HAWAIIAN MARRIAGES. A PROBABLE SCENARIO INVOLVES THE LIKELIHOOD OF PENNSYLVANIA COUPLES ESTABLISHING RESIDENCE IN HAWAII, GETTING MARRIED AND RETURNING TO THE COMMONWEALTH WITH A DEMAND THAT THEIR SAME-SEX MARRIAGE BE GIVEN THE SAME LEGAL RECOGNITION AS A MARRIAGE BETWEEN A MAN AND A WOMAN.**

**FIRST, THE COURTS WILL GENERALLY APPLY THE LAW OF THE STATE WHERE A MARRIAGE IS PERFORMED UNLESS IT FINDS THAT THE MARRIAGE IN QUESTION FALLS WITHIN AN EXCEPTION TO THIS GENERAL RULE. RIGHT OFF THE BAT, THE COMMONWEALTH STARTS OUT IN A WEAKENED LEGAL POSITION BECAUSE IT MUST ESTABLISH THAT SAME-SEX MARRIAGES SHOULD BE TREATED AS AN EXCEPTION TO THE GENERAL RULE FOR RECOGNITION OF MARRIAGES IN OTHER STATES.**

**SECOND, STATES WILL RECOGNIZE SOME TYPES OF MARRIAGES THAT WERE VALIDLY PERFORMED IN OTHER STATES EVEN IF THOSE MARRIAGES COULD NOT HAVE BEEN LAWFULLY CONTRACTED IN THE STATE. FOR INSTANCE, STATES WITHOUT COMMON LAW MARRIAGE OFTEN RECOGNIZE THE**

**VALIDITY OF COMMON LAW MARRIAGES THAT WERE VALIDLY PERFORMED IN OTHER STATES.**

**OTHER EXAMPLES INVOLVE COUPLES WHO WERE VALIDLY MARRIED IN ANOTHER STATE AT A YOUNGER AGE OR WITHIN A CLOSER DEGREE OF BLOOD RELATIONSHIP, SHORT OF INCEST, THAN IS PERMITTED IN THE HOME STATE.**

**AS FAR AS PENNSYLVANIA IS CONCERNED, I WILL QUOTE FROM A DECISION OF OUR SUPERIOR COURT IN SCHOFIELD VERSUS SCHOFIELD. THE SCHOFIELD COURT RECOGNIZED A MARRIAGE BETWEEN FIRST COUSINS WHICH WAS VALIDLY PERFORMED IN DELAWARE DESPITE THE FACT THAT SUCH MARRIAGES WERE PROHIBITED IN PENNSYLVANIA. THE SCHOFIELD COURT DECLARED:**

**THE PARTIES TO THIS PROCEEDING IN DIVORCE ARE “OF KIN OF THE DEGREE OF FIRST COUSINS;” BOTH ARE NATIVES OF PENNSYLVANIA AND WERE DOMICILED IN THIS STATE ON APRIL 15, 1906, WHEN, EACH KNOWING THAT BECAUSE OF THEIR RELATIONSHIP THEY COULD NOT LAWFULLY BE JOINED IN MARRIAGE IN THIS STATE, THEY WENT TO WILMINGTON IN THE STATE OF DELAWARE AND WERE THERE MARRIED. THEY RETURNED TO THE STATE OF PENNSYLVANIA SHORTLY AFTER THE MARRIAGE CEREMONY AND HERE LIVED AS MAN AND WIFE, TWO CHILDREN, NOW LIVING, HAVING BEEN THE FRUIT OF THE MARRIAGE. THE LIBELANT LEFT THE HOUSE OF RESPONDENT ON DECEMBER 7, 1908, AND HAS SINCE THAT TIME BEEN LIVING AT THE HOUSE OF HER FATHER. SHE FILED THIS LIBEL IN THE COURT BELOW ON DECEMBER 29, 1909, ALLEGING THAT THE PARTIES WERE OF “KIN OF THE DEGREE OF FIRST COUSINS,” THAT THE MARRIAGE WAS NULL AND VOID AND IN VIOLATION OF THE ACT OF JUNE 24, 1901, P.L. 597, AND THAT “NOT BEING DESIROUS OF CONTINUING A RELATIONSHIP WHICH THE LAW FORBIDS AS BEING**

**INCESTUOUS," SHE PRAYED THAT A DECREE BE MADE DIVORCING HER FROM THE BONDS OF MATRIMONY BETWEEN HER AND THE SAID RESPONDENT. . . .**

**THE ONLY QUESTION IN THIS CASE IS WHETHER THE MARRIAGE, WHICH WAS LAWFUL IN THE STATE OF DELAWARE IN WHICH IT WAS CELEBRATED, IS RENDERED VOID, FOR THE REASON THAT THE PARTIES, BEING DOMICILED IN PENNSYLVANIA, AND KNOWING THAT THE STATUTE OF THIS STATE PROHIBITED THEIR BEING JOINED IN MARRIAGE, THEY LEFT THIS STATE FOR THE PURPOSE OF BEING MARRIED IN THE STATE OF DELAWARE, THE LAW OF WHICH PERMITTED SUCH MARRIAGE, AND SHORTLY AFTER THE CEREMONY RETURNED TO THEIR PENNSYLVANIA DOMICILE AND THERE CONTINUED TO RESIDE. . . .**

**\* \* \***

**. . . THIS STATUTE, BY ITS TERMS, PROHIBITED THE MAKING OF MARRIAGE CONTRACTS, THE MARRIAGE CEREMONY, BETWEEN FIRST COUSINS IN PENNSYLVANIA, AFTER JANUARY 1, 1902, AND, BY ITS SECOND SECTION DECLARES MARRIAGES "CONTRACTED" IN VIOLATION OF ITS PROVISIONS VOID. BUT IT DOES NOT RENDER THE EXISTENCE OF THE MARRIAGE RELATION, THE STATUS OF MARRIAGE, BETWEEN FIRST COUSINS GENERALLY UNLAWFUL, IF THE RELATION HAS ITS ORIGIN IN A CONTRACT LAWFUL WHEN AND WHERE IT WAS MADE. IT BEING ESTABLISHED THAT THIS MARRIAGE WAS LAWFUL IN DELAWARE, WE FIND NOTHING IN THE STATUTE WHICH WOULD WARRANT US IN HOLDING IT TO BE INVALID IN PENNSYLVANIA.**

**HOWEVER, STATES WILL NOT RECOGNIZE OTHER TYPES OF MARRIAGES THAT MAY HAVE BEEN VALIDLY PERFORMED IN OTHER STATES IF THEY ARE DEEMED TO EITHER VIOLATE THE**

**POSITIVE LAW OR FUNDAMENTAL PUBLIC POLICY OF THE HOME STATE. EXAMPLES OF MARRIAGES WHICH HAVE FAILED TO RECEIVE RECOGNITION IN MANY STATES ON THOSE GROUNDS INCLUDE THOSE INVOLVING BIGAMY, INCEST, AND EXTREMELY UNDERAGED PARTIES.**

**IT MUST BE CAUTIONED THAT THE LAW CAN VARY FROM STATE TO STATE ON WHETHER OR NOT A GIVEN TYPE OF MARRIAGE VIOLATES ITS PUBLIC POLICY.**

**AGAIN, IT MUST BE EMPHASIZED THAT IT IS NOT ENOUGH FOR A MARRIAGE TO BE SIMPLY ONE THAT CANNOT BE LAWFULLY CONTRACTED IN THE HOME STATE. IT MUST ALSO BE SHOWN THAT THE MARRIAGE IS FUNDAMENTALLY REPUGNANT TO THAT STATE'S PUBLIC POLICY OR THAT RECOGNITION OF SUCH A MARRIAGE IS PROSCRIBED BY THAT STATE'S POSITIVE LAW.**

**WHEN WE LOOK AT THE CONCEPT OF A HAWAIIAN-STYLE SAME-SEX MARRIAGE WITH THIS BACKGROUND IN MIND, WE HAVE A VERY UNCERTAIN AND MURKY PICTURE FOR THE COURT TO ADDRESS.**

**IN THIS REGARD, PENNSYLVANIA DOES NOT SPECIFICALLY PROHIBIT THE COMMONWEALTH FROM RECOGNIZING SAME-SEX MARRIAGES WHICH ARE VALIDLY PERFORMED IN OTHER STATES.**

**MOREOVER, PENNSYLVANIA DOES NOT EVEN SPECIFICALLY PROHIBIT SAME-SEX MARRIAGES BY WAY OF AN EXPRESS STATUTORY DIRECTIVE FROM THE GENERAL ASSEMBLY, WHICH CONSTITUTES THE POLICYMAKER FOR THE COMMONWEALTH.**

**THEREFORE, IT WOULD BE DIFFICULT FOR THE STATE TO DEFEND AGAINST A RECOGNITION OF A SAME-SEX MARRIAGE ON THE GROUNDS THAT SUCH RECOGNITION IS SPECIFICALLY PROSCRIBED BY OUR POSITIVE LAW. THIS AMENDMENT FILLS THAT VACUUM BY EXPRESSLY PROHIBITING THE RECOGNITION**

**OF SUCH MARRIAGES WHEN PERFORMED IN OTHER STATES AS A MATTER OF SPECIFIC STATUTORY DIRECTIVE.**

**IN ADDITION, IT IS NOT CLEAR WHETHER OUR COURTS WILL FIND THAT SAME-SEX MARRIAGES VALIDLY PERFORMED IN OTHER STATES ARE FUNDAMENTALLY VIOLATIVE OF PENNSYLVANIA'S STRONGLY HELD PUBLIC POLICY.**

**FIRST, OUR MARRIAGE LAW NOT ONLY FAILS TO SPECIFICALLY PROHIBIT SAME-SEX MARRIAGES, BUT WE EVEN AMENDED OUR MARRIAGE LAW IN 1990 TO MAKE IT GENDER NEUTRAL.**

**SECOND, OUR SUPREME COURT HAS ALREADY INVALIDATED PENNSYLVANIA'S LAW AGAINST SODOMY WHICH HAD DECRIMINALIZED THE TYPE OF SEXUAL ACTIVITY WHICH FORMS THE BASIS FOR A SAME-SEX MARRIAGE. IF SUCH SEXUAL CONDUCT IS PERMISSIBLE AS A MATTER OF STATE LAW, THIS SERVES TO WEAKEN THE ARGUMENT THAT THE MARRIAGE ITSELF IS FUNDAMENTALLY VIOLATIVE OF PENNSYLVANIA PUBLIC POLICY.**

**ON THE OTHER HAND, PENNSYLVANIA DOES NOT PROHIBIT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND IT IS SUSPECTED THAT POLLING DATA WOULD SHOW THAT MOST PENNSYLVANIANS ARE OPPOSED TO THE CONCEPT OF SAME-SEX MARRIAGES.**

**HOW OUR COURTS WILL SORT OUT THESE AND OTHER CONFLICTING POLICIES IN ATTEMPTING TO DETERMINE WHETHER SAME-SEX MARRIAGES VIOLATE OUR FUNDAMENTAL PUBLIC POLICY IS ANYBODY'S GUESS UNLESS WE PASS THIS AMENDMENT AND GIVE THE COURTS A CLEAR STATUTORY DIRECTION AS TO PENNSYLVANIA'S PUBLIC POLICY AS FAR AS SAME-SEX MARRIAGES ARE CONCERNED.**

**FOR THESE REASONS, MR. SPEAKER, I URGE THE HOUSE TO ADOPT THIS AMENDMENT.**