

Untying the Knot

LAMBDA navigates
on the road

History

A look at the court battles from Hawaii to San Francisco

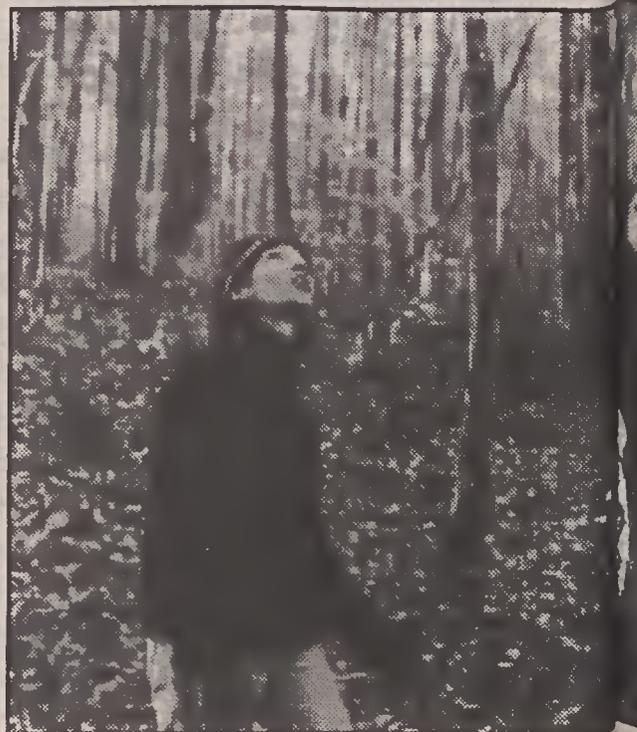
By Trevor Hoppe

When the Massachusetts Supreme Court issued its notorious same-gender marriage ruling this past November, the justices knew that they were in for a maelstrom of criticism. In his State of the Union address in January, President Bush criticized the court for opening the doors to so-called "gay marriage," calling the justices "activist judges" for enforcing their "arbitrary will." Scores of other political and fundamentalist Religious leaders have begun mobilizing their homophobic armies to use same-gender marriage as a divisive issue in the approaching 2004 Presidential election.

The fact that a state court has taken this step comes as no surprise to many LGBTIQ activists. Same-gender couples have been knocking at the doors of justice and demanding marriage equality since the often-cited Hawaii marriage ruling of 1993. In that case, the court ruled that by not allowing same-gender couples to marry, the state had violated the Hawaii constitution's provisions outlawing sex discrimination. Unfortunately, the justices remanded the case back to a lower court, giving lawmakers just enough time to pass a law defining marriage as a union between a man and a woman. The plaintiffs' case was then ruled to be moot.

While same-gender marriage never actually materialized in Hawaii, the case instilled fear into the heart of every card-carrying neoconservative in America. Anti-LGBTIQ forces began a massive "Defense of Marriage" campaign across the nation in hopes of shutting down the "homosexual agenda" in as many legislatures as possible before other state courts had the chance to review similar cases. The well-funded, well-organized extreme right succeeded

Last March, Marcie (left) and Chantelle Fisher-Borne were married in every sense of the word except legally in a commitment ceremony that is pictured on the cover. Both fight alongside the Triangle Freedom to Marry Coalition for same-gender marriage equality.



Cover photo by M...

in pushing through Defense of Marriage Acts in ultimately 38 states, as well as the infamous Federal Defense of Marriage Act of 1996. For the unaware, President Clinton, who is sometimes referred to as the most LGBTIQ-friendly President, signed the bill into law at midnight to avoid press coverage.

The Federal DOMA not only defined marriage as a union between a man and a woman, but also stated that same-gender marriages performed in one state do not have to be recognized by other states. This is blatantly contradictory to the Constitution's "full faith and credit" clause of Article IV, 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." Though the Federal DOMA is in clear violation of this Constitutional provision, a same-gendered couple must be married in one state and be refused recognition of their union in another before the legislation can be challenged in court.

After the Federal legislation was passed, the issue of same-gender marriage cooled off for a few short years. Though a struggle erupted in 1998 in Alaska

in which a lower state court ruled that same-gender couples should be extended the same benefits as heterosexual couples, the case fizzled when voters approved a constitutional Amendment defining marriage as a union between a man and a woman. The next big wave in the struggle for equality appeared across the country in the form of civil unions, predecessors. Vermont's struggle to extend the benefits associated with marriage to same-gender couples the benefits of civil unions in the then-nouveau idea of civil unions at the state level, but do not afford the same numerous Federal benefits that heterosexual marriage. Civil unions are also not recognized so any out of state couple that was married in the Green Mountain state would have their union legally meaningless.

And then Massachusetts had its Supreme Court's 4-3 ruling in the case of *Goodridge v. Department of Public Health* sent the issue to mainstream America. The court's refusal to issue marriage licenses to same-gender couples was unconstitutional, as it set a precedent the Federal Supreme Court would eventually overturn.