



Civil Union

by Gregory A. Johnson

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The lesbian and gay civil rights movement entered a new era on July 1, 2000. On that day Vermont's civil union law took effect, and for the first time ever in the United States same-sex couples became eligible for all the rights, benefits, and responsibilities of marriage.

In 2009, the civil union law was superseded by a law that permitted gay and lesbian couples to marry.

The Law

The civil union law was passed in response to the Vermont Supreme Court's decision in *Baker v. State* (1999). The court in that case found in favor of six same-sex couples suing for the right to marry, but it stopped short of requiring the state to issue them marriage licenses. Instead, the court directed the Vermont Legislature to craft a constitutionally acceptable solution, and allowed it to adopt an "alternative legal status to marriage." That is what the legislature did in creating the parallel system of civil union.

The civil union law directly tracked the marriage law in every respect. The registration process with the town clerk was the same for civil union as it was for marriage.

Under the law, parties to a civil union are responsible for the support of one another "to the same degree and in the same manner as prescribed under law for married persons" (Vt. Stat. Ann. tit. 15, § 1204[c]). A party to a civil union is included in "any definition or use of the terms 'spouse,' 'family,' 'immediate family,' 'dependent,' 'next of kin,' and other terms that denote the spousal relationship, as those terms are used throughout the law" (*Id.* at § 1204[b]).

The same law of "annulment, separation and divorce, child custody and support, and property division and maintenance" applies to marriage and civil union (*Id.* at § 1204[d]). To dissolve a civil union, couples must go to family court, just as with marriage, and are subject to the "same substantive rights and obligations that are involved in the dissolution of marriage" (*Id.* at § 1206).

In addition to granting all the rights and responsibilities of marriage to same-sex couples, the legislature also had uplifting things to say about lesbians and gays in the Legislative Findings to the law. The legislature found, for example, that "[d]espite longstanding social and economic discrimination, many gay and lesbian Vermonters have formed lasting, committed, caring and faithful relationships with persons of their same sex. These couples live together, participate in their communities together, and some raise children and care for family members together, just as do couples who are married under Vermont law."

Governor Howard Dean signed the landmark law one day after the legislature passed it, in a closed-door session from which the media was barred.

Couples Joined in Civil Union

In the first three years the law was in effect, 5,671 same-sex couples joined in civil union. Of these, only 840 were from Vermont, with 4,831 coming from elsewhere. Lesbian and gay couples came to Vermont from 48 other states and from over a dozen other countries for their civil union. The only state not then represented was North Dakota.

After Vermont, the largest number of registrants were from New York, Massachusetts, California, and Florida. Couples also came from other countries such as Canada, England, Venezuela, Mexico, the Philippines, Australia, the Netherlands, Germany, India, and Guatemala.

Recognition of Civil Unions outside Vermont

When lesbian and gay couples from outside of Vermont returned to their home states, the status of their civil union was uncertain. The general rule is a marriage performed in one state will be recognized in other states, absent a "strong public policy" against recognition (Restatement, Second, *Conflict of Laws* § 283 [1971]).

The so-called "Defense of Marriage" Acts, which have been passed in 37 states, may be used by courts as evidence of a strong public policy against recognizing a civil union for marital benefits. These Acts commonly use language akin to the federal Defense of Marriage Act, which prohibits the recognition of same-sex marriage or any "relationship between persons of the same sex that is treated as a marriage under the laws" of any state (28 U.S.C. § 1738C).

As of 2005, two courts have recognized a civil union for marital benefits and two courts have refused to do so. Courts in Georgia and Connecticut have rejected plaintiffs' requests for recognition. The Georgia court, pointing to that state's Defense of Marriage Act, said that "a Georgia trial court is not authorized to consider a foreign 'civil union' as equivalent to marriage" (*Burns v. Burns* [2001]). This holding was affirmed by the Georgia Court of Appeals.

In the Connecticut case, two gay men came to Vermont for a civil union on December 31, 2000, and then sought to dissolve it back in their home state in July, 2001. The court refused to recognize the civil union or to grant the divorce. The court considered marriage and marital benefits a legislative choice, and said, "the Vermont legislature cannot legislate for the people of Connecticut" (*Rosengarten v. Downes* [2002]). Three years later, however, the Connecticut legislature adopted its own civil union.

In March, 2003, a Texas trial court granted a divorce to two gay men who had entered into civil union in Vermont a year earlier (*In the Matter of the Marriage of R.S. and J.A.* [2003]). A furor erupted when the press reported this story. The Texas Attorney General intervened to have the divorce set aside, and the Texas Legislature quickly passed a law declaring that no court could recognize a civil union for any purpose, including divorce. At this point the couple moved to have their divorce proceeding dismissed, and the court granted this request.

In April, 2003, a New York trial court recognized civil union as equivalent to marriage for purposes of New York's Wrongful Death statute. In that case, two gay men obtained a civil union in Vermont and when one died in the hospital the other sued the hospital for medical malpractice.

To be able to bring the suit under the Wrongful Death statute the plaintiff had to qualify as the decedent's surviving spouse. The hospital argued that the plaintiff was not a spouse because the couple was not married. The court held that the men should be considered "spouses" because that is what the civil union law says they are. It concluded, "Under principles of full faith and credit . . . New York will recognize a marriage sanctioned and contracted in a sister state and there appears to be no valid legal basis to distinguish one between a same-sex couple" (*Langan v. St. Vincent's Hospital* [2003]).

Reactions from the Gay and Lesbian Community

While courts wrestle with the meaning and scope of civil union, it is left to the lesbian and gay community to decide on a community response to the new institution. Some have criticized it, calling civil union "separate but unequal," a new Jim Crow. But many lesbian and gay couples decided that, for now at least, civil union is an acceptable alternative to marriage.

Some, in fact, seem to prefer civil union to marriage. As one woman who had been married but now is joined in civil union with her lesbian lover told the *New York Times*, "I see marriage as very patriarchal and very much about property and ownership . . . but I see civil union as a completely level playing field; Theresa and I are equal partners and we are willingly doing this as equals."

As the lesbian and gay community continues to fight for the freedom to marry, the experience in Vermont with civil union stands as an important milestone. As in Vermont itself, civil union may serve as a bridge to marriage in the same way that in Europe it took a decade of experimentation with "registered partnership" before countries such as the Netherlands and Belgium were ready to open marriage to same-sex couples. In this case Vermont has played a crucial role in the long struggle for true equality in marriage.

Civil Unions in Other States

Since Vermont pioneered in introducing the civil union, seven other states have also adopted them: Connecticut, New Jersey, New Hampshire, Illinois, Hawaii, Delaware, and Rhode Island.

New Jersey's civil union was instituted in a manner similar to that in Vermont: the state supreme court found that gay and lesbian couples were treated unequally by not being able to marry but gave the legislature the option of creating civil unions in order to remedy the discrimination.

The legislatures of Connecticut, New Hampshire, Illinois, Hawaii, Delaware, and Rhode Island adopted civil unions without a directive from the courts.

However, the Connecticut Supreme Court later ruled that civil unions were inadequate and ordered that the state permit same-sex couples to marry. The New Hampshire legislature followed the pattern set by Vermont. It later adopted an equal marriage law.

Adoption of Marriage Equality in Vermont

In 2007, the Vermont legislature appointed a panel to inquire whether the civil union law was sufficient in protecting the equal rights of gay and lesbian couples. In the hearings that ensued, many gay and lesbian couples complained that some companies refused to recognize civil unions as equivalent to marriage.

In 2009, the legislature considered a bill to allow same-sex couples to marry. The bill easily passed both houses of the Democratic-controlled legislature but was vetoed by the Republican governor.

In a dramatic showdown, the legislature overrode the governor's veto by a vote of 25-3 in the Senate and by a vote of 100-49 in the House.

Most observers credit the civil unions law for paving the way to full marriage equality in Vermont. In the nine years that the civil union law had been in existence, the sky did not fall. Moreover, in those years Vermonters became familiar with same-sex marriage in two neighboring jurisdictions: Canada and Massachusetts.

The new marriage law became effective on September 1, 2009. After that date, no civil unions will be performed, though those that have been performed will continue to be recognized.

Couples who wish to "upgrade" their civil unions to marriage must obtain marriage licenses and have marriage ceremonies.

The new marriage law also makes explicit that Vermont recognizes same-sex marriages performed in other jurisdictions where they are legal.

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