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Federal Marriage Amendment Defeated by Congress: What Lies Ahead?

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Grandparents, *continued from page 3*

Lillie Cotton is a grandparent raising eight of her nine grandchildren. Two of her three adult daughters are not mature or financially stable to parent. She says that raising her grandchildren is challenging.

"Because I am not the legal guardian, I can't even do simple things, like enroll the kids in school," Cotton said. "While I could definitely use public services and benefits, I do not want to go the legal route. I do not want the kids to be caught in the system. What if they take them away? I keep hope that one day my daughters will be able to take on the responsibility of parenting alone."

The concern for many like Cotton is the loss of control. For many, the risk of being involved with the state can create uncertainty. Instead, many grandparents make choices that take into account not only the best interests of their grandchildren, but also the dignity and rights of the parent.

More resources for grandparents raising grandchildren are available at:

The Illinois Dept. of Aging Web site:
www.state.il.us/aging/1intergen/grg.htm
 and

FirstGov's Site for Grandparents:
www.firstgov.gov/Topics/Grandparents.shtml

Federal Marriage Amendment Defeated by Congress: What Lies Ahead?

By Jamie Friye

In its 1978 decision in *Zablocki v. Redhail*, the Supreme Court held that a Wisconsin statute limiting the right to marry to those who were not current in their child support obligations violated equal protection and impinged on a fundamental right - the right to marry. The ability for gay and lesbian partners to marry, however, has not yet been deemed worthy of similar constitutional protections.

In July, the Federal Marriage Amendment, which defined marriage as solely between a man and a woman, was defeated by the Senate and it was subsequently defeated in the House of Representatives as well.

"Activist judges and local officials in some parts of the country are not letting up in their efforts to redefine marriage for the rest of America, and neither should defenders of traditional marriage flag in their efforts," President Bush said

in response to Congress's action.

Advocates of the FMA, such as the members

of the Christian Legal Society (CLS), emphasize the need for such an amendment. In *Goodridge v. Dept. of Public Health* (2002), the Supreme Court of Massachusetts struck down existing marriage laws prohibiting same-sex unions. The CLS and other legal analysts believe that the *Goodridge* decision, combined with the fact that many same-sex couples have already traveled to Massachusetts to marry, will embolden the efforts of advocates to effect similar judicial upheaval in the more than 40 states that bar same-sex marriages. Their concern is that out-of-state couples will take advantage of the

Goodridge decision and marry in Massachusetts, then move home and file lawsuits demanding marital rights under the Constitution's full faith and credit clause.

The CLS argues that when it is properly understood, marriage is not an individual right, but an institution that

must be acknowledged by the state. Heterosexual marriage, they say, is the more acceptable means of

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procreation and child-rearing that should be protected. They also contend that the FMA represents the popular conception of marriage shared by Americans of every race, color and creed. And although the proposed amendment has been defeated, its supporters remain optimistic. Samuel B. Casey, executive director and CEO of CLS, predicts that any amendment which has such broad support will need a number of such "test" votes in this and subsequent sessions of Congress until the FMA is enacted.

Proponents of gay marriage, on the other hand, contend that legal justification for banning gay marriage is nonexistent and that only personal prejudice stands in the way of the majority's acceptance and support of the idea. In a recent opinion piece in the *Duluth News-Tribune*, reprinted on the Human Rights Campaign Web site at www.hrc.org, Minnesota state court Judge David Ackerson asked, "What are the legitimate state interests that could possibly justify and compel discrimination against gay people? Is there evidence that allowing gays to marry would endanger or threaten heterosexual marriage? Is there evidence that gay people are somehow anything other than just people who are gay? ... There is none."

Tim Bresnahan of the Human Rights Campaign noted that gay and lesbian couples are in 99 percent of the counties in the United States. "They pay their taxes, they pay into Social Security, yet they are not afforded the same basic protections that heterosexual married couples are given," he said. "Children are not protected, partners are not protected, and fairness is out the window without marriage rights. Writing discrimination into the Constitution is anathema to the pervading tenets of the Bill of Rights."

Civil unions and domestic partner registries do not transfer from state to state, but marriages are recognized across state lines under the Constitution's full faith and credit clause. Several states have already passed anti-gay marriage legislation, so should states be left to decide the question of civil union recognition, they may follow suit and same-sex couples may never reap the benefits of

marriage which are readily available to traditional couples.

Despite the defeat of the FMA in both the Senate and the House, proposed amendments such as this are likely to reappear and the issue of gay

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marriage in general is not likely to go away due to strong advocacy on both sides of the issue. The topic was posed to the vice presidential candidates in the October debate. Vice President Dick Cheney has stated that he does not support President Bush's drive to amend the Constitution to include the FMA, and Democratic candidates John Edwards and John Kerry also opposed it. This was a key issue in many congressional races as well, with positions on both sides of the spectrum. What lies in store remains to be seen.

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