

A man in a dark suit, white shirt, and patterned tie, wearing glasses, is speaking and gesturing with his right hand. In the background, a young girl with brown hair is looking down. The background is a brick wall.

Before 2000 “civil unions” did not exist. Vermont legislators created this legal category as a political compromise to do one thing: reserve the privileged status of marriage for heterosexuals while creating a separate status for same-sex couples. Six years later, in Lambda Legal’s New Jersey marriage equality case, the state’s highest court issued an historic unanimous ruling that it is unconstitutional to deny same-sex couples access to the same rights and obligations of marriage that different-sex couples may enjoy. The court directed the New Jersey Legislature to fix this inequality with, at the very least, civil unions. Unfortunately, as in Vermont, legislators chose the very least.

MARRIAGE

BY NO OTHER NAME

BY DAVID BUCKEL, MARRIAGE PROJECT DIRECTOR

More protections for our families are always better than fewer, and Lambda Legal will work hard to continue our successes in furthering those protections, as we did in New Jersey with our court case. New Jersey joins California, Connecticut and Vermont in extending many of the benefits and obligations of marriage to same-sex couples through civil unions or their equivalent (California uses the name of domestic partnership). These states lead the handful of other states and the more than 200 municipalities that recognize same-sex relationships through domestic partnerships with varying levels of protections. Meanwhile in Massachusetts, because of our sister organization GLAD's groundbreaking victory in 2003, same-sex couples can marry outright. Despite these advances, protections for same-sex couples still fall short of the constitutional promise of equality.

When the government decides what choices an individual can make, it sets an example for employers, businesses, police, emergency room workers, neighbors and others — and Lambda Legal has the testimony and phone calls to our Help Desks to prove it. Take just one example: Two lesbians have a civil union protected by law. One with kidney failure is hospitalized and unconscious, and the other cannot get hospital staff to respect their relationship. The staff even take the patient's commitment ring off her finger for safekeeping and refuse to give the ring to the partner with the matching ring. Instead, they ask her partner to identify the patient's blood relatives. Lambda Legal located the hospital's attorney and got him to make the calls necessary to ensure respect for the couple's relationship — but only after an emotional nightmare.

The government also used to decide what choices people — especially lesbian and gay people — could make about certain forms of sexual intimacy. Lambda Legal had a decades-long strategy to overturn these laws, until our landmark case *Lawrence v. Texas* in 2003 won the right for us to make that choice for ourselves in any state in the nation. Our opponents in that case argued that the laws forbidding certain forms of sex were



Lewis v. Harris plaintiffs celebrate and review the New Jersey Supreme Court's decision.

NEW JERSEY CIVIL UNION WATCH

Find out about Lambda Legal's "Civil Union Watch," an advocacy and monitoring program seeking to ensure that same-sex couples in New Jersey are treated fairly under the new law.

AS PART OF THE "CIVIL UNION WATCH" YOU CAN:

- Visit our website at www.lambdalegal.org and download Lambda Legal's FAQ about New Jersey's new civil union law and what same-sex couples need to know.
- Report any instances of discrimination against same-sex couples who have entered into a civil union. Contact Lambda Legal's Help Desk at 212-809-8585, toll-free at 866-542-8336 or legalhelpdesk@lambdalegal.org.

LAMBDA LEGAL WILL:

- Advocate for the proper interpretation and application of the new law.
- Hold community meetings and distribute materials to New Jersey residents.
- Bring appropriate legal action when couples' civil unions are not respected.

rarely enforced and thus were harmless. But we made sure it was understood that whenever government treats a minority differently, especially by writing a separate status for a group of people into law, the result can — wrongly — validate different treatment by others.

The United States Supreme Court agreed, explaining that the state laws criminalizing forms of adult consensual

sexual intimacy were "an invitation to subject homosexual persons to discrimination both in the public and the private spheres." This is why losing the choice to marry matters even for those who would never marry: the law's mark of supposed inferiority is on the entire community. As the Supreme Court of Massachusetts explained in rejecting a civil union bill as unconstitutional, for the government to use the label "civil union"



The Long Road to Justice in Lambda Legal's Marriage Case *Lewis v. Harris*

- **JANUARY 2001** • Lambda Legal begins building the foundation for a marriage equality lawsuit in New Jersey.
- **JUNE 2002** • Lambda Legal files a lawsuit in New Jersey on behalf of seven same-sex couples demanding their constitutional right to marry.
- **NOVEMBER 2003** • The trial court finds in favor of the state, denying same-sex couples the right to marry.
- **DECEMBER 2003** • Lambda Legal files an appeal to the New Jersey Appellate Division, followed by Massachusetts becoming the first state in the nation to issue marriage licenses to same-sex couples.
- **JUNE 2005** • The New Jersey Court of Appeals rules 2-1 against marriage equality for same-sex couples, clearing the way for the case to move to the State Supreme Court for a final ruling.
- **NOVEMBER 2005** • Lambda Legal files an opening brief at the New Jersey Supreme Court, supported by an array of friend-of-the-court briefs from clergy, national associations of psychologists and social workers, professors, government officials, the state bar association, national civil rights groups and many others.
- **OCTOBER 2006** • The New Jersey Supreme Court rules that same-sex couples must be provided the full and equal rights and benefits of marriage. The court gives the legislature 180 days to remedy the inequality.
- **DECEMBER 2006** • The New Jersey legislature hastily passes a civil union bill. Lambda Legal remains committed to achieving full equality for same-sex couples in New Jersey and across the country.

is a considered choice of language that assigns us a second-class status. Akin to our work challenging the military's "Don't Ask, Don't Tell" policy, the goal is not to get everyone married any more than it is to get everyone in the military. It is instead to win the right to make the same choices others can make freely and without government interference, such as whether to join the military or whether to get married.

For people who *would* choose to marry, anything other than marriage *has to be explained*. Only the word *married* conveys the universally understood meaning applicable to many of our families — a meaning unmatched by any other word. By imposing civil unions and barring marriage, even if the two statuses offer the same benefits and obligations on paper except for the powerful "M" word, the government is forcing same-sex couples to explain the difference in their daily lives. They lose the respect and dignity they believe their commitment deserves. The Chief Justice of the New Jersey Supreme Court understood this. In her opinion in Lambda Legal's marriage equality case, she quoted from our plaintiffs' testimony about how important it is for our words to match our lives, how without the word *marriage* other people "have to wonder what kind of relationship it is or how to refer to it or how much to respect it."

Does this mean Lambda Legal opposes civil unions in all instances? No. Whatever the calculus that defines the best strategy for an individual state, our role is not only to help get to success — big or little, now or later — but also

to ensure that everyone knows it isn't over until same-sex couples can choose freely from the same range of options as different-sex couples. Maybe some won't choose marriage; but it should be their choice rather than the government's.

Following Lambda Legal's victory in New Jersey, the high courts of California and Connecticut are now considering whether civil unions or their equivalent can fulfill the guarantee of equality when plaintiffs want marriage. New Jersey's experiment with civil unions will only further press the issue of what the promise of equality really means. The bottom line for Lambda Legal is that assigning the separate status of civil unions sends a message of inferiority to everyone else, which invites more discrimination against *all* gay people regardless of whether they would ever choose to marry, and robs those who would marry of the dignity and respect they deserve.



TOP: *Lewis v. Harris* plaintiff couples and families BOTTOM: David Buckel explains the Court's decision at a press conference with Senior Counsel Susan Sommer.