

1. Congressman Barney Frank (D-MA) explains “why now” on same sex-marriage initiatives.

2. Congressman Barney Frank (D-MA) offers a critique of those who argue that civil unions are just as good as marriage.

1. Barney Frank: Gay marriage is simply next in line in the nation’s history of extending civil rights to all.

PLI: Why do you think that the issue of same-sex marriage has exploded at this particular time in our history? Do you perceive that most gay couples want "marriage," as opposed to simply the ability to have a ceremony (be it in a Church or City Hall), after which all the rights and obligations of marriage are bestowed upon them?

BARNEY FRANK: You have to go back to the first real movement for equality in America. Let’s go back to the Constitution, which set forth some very wonderful principles but promptly excluded most Americans from them. I mean, if you were a – in some places, if you were a rich white Protestant man, you had the full set of rights. Most white men had most of the rights... So there’ve been a series of movements. Obviously, the movement to give blacks rights began in the 19th century, although it’s very badly stymied, the movement to give rights to women begins in the 19th century. We get into the 20th century and first women get their rights, and then blacks do — later — and then comes World War II, which is very important because in World War II America got to see what prejudice and hatred can do when it really gets carried to a terrible extreme. And I believe the whole notion of discriminating against people took a hit from World War II, fortunately.

So after World War II these various movements against discrimination heat up in America, and they were essentially based on sex and on race, but some other things came into. And gay and lesbian people essentially said, by the ’60s, well, what about us? I mean, America was just driven with these debates about women’s rights and the rights of racial minorities, and what happened was, in 1969 it kind of bubbled over into the gay community and so [in] the beginning of the ’70s, gay people join into that and you go at your rights one at a time, you fight some of the most egregious forms of discrimination and this is sort of the next one that you come to, which is the right to marry.

Not all gay couples want to get married or even legally bound together. It turns out that one of the major differences in our society with regard to marriage, as people suspected, is not between gay and straight people but between men and women because now that same-sex couples can get married in Massachusetts, a disproportionate number of them are between women... So a lot of people don't want to get married. Whereas I argued for the legal recognition of same-sex marriages, I had to reassure both some gay men and some right-wingers that it would be entirely optional.

But then, as to those people who do want some legal recognition, yeah, overwhelmingly people want equality. They want the same rights and recognitions as other people – it's partly legal, it's partly emotional. It's interesting because four years ago when Vermont did civil unions, it was very controversial. Gay and lesbian people and our supporters were overwhelmingly in favor of it, the antis were overwhelmingly against it. It's interesting now that civil unions have become the fallback position for some of those who are against [same-sex marriage] and some gay and lesbian people are skewering them. I think both are overdone. I obviously think the opposition is overdone. In states where it's not possible to get full marriage, I think civil unions, if they have full legal rights, are a step forward, and you don't, I think, reject steps forward. I think the fact that Vermont had civil unions is helpful to us as we defend same-sex marriage in Massachusetts. We can point out the absence of any negative consequences because I can tell you that while people on the opposition side are now saying civil unions [are] one thing, marriage is another, if you go back to the debates in Vermont they were not making that distinction. Every negative prediction people are making about [same-sex] marriage they made about civil unions. But as to gay and lesbian people, yes, the overwhelming preference is for the same thing that everybody else has.

2. Barney Frank: Civil union is not marriage.

PLI: Why is the word "marriage" so important? Wouldn't it be the same things if a legislature were to grant all the rights inherent in a marriage to same sex couples as it does to heterosexual couples, but chose to call it nothing, as opposed to marriage vs. "civil union?" Finally, do you think the Massachusetts experience makes gay marriage nationwide inevitable, and what are the chances that a Federal Marriage Amendment will obviate the entire movement?

BARNEY FRANK: [F]rom a legal standpoint, it doesn't work to call it anything other than marriage for this reason – there are a number of benefits and obligations that are imposed by the federal government – more benefits at the federal level, more obligations at the state level – and they only are available to people who are married. So that if you are civilly united as in Vermont you have no claim on the federal benefits. Now, it is true that under current law, based on the part of what was called the Defense of Marriage Act...you don't have the federal benefits either. The federal government wrote it, over my objection, in 1996 to say that the federal government

would confer no benefits, recognize no obligations in a same-sex marriage. But I think that one might be vulnerable to legal challenge. So that what you could see is Massachusetts couple bringing an equal protection suit there saying, “Wait a minute – we’re married and other people in Massachusetts are married. Our state says our marriage is the equivalent of theirs but the federal government gives certain rights and obligations to this one group and not to us.” Now that wouldn’t be available to a civil union, that would only be available to marriage.

[Another] point I would make is this: people say well, what difference does it make to call it marriage? Well, it must make some difference to somebody or else why not do it? People say, “Well, what’s the matter with you? Why don’t you agree not to call it marriage? It’s no big deal.” Well, if it’s no big deal, why not call it marriage? I mean, there is obviously a certain symbolism there, there’s a certain sense of whether it’s an equal thing or not, but even before you reach that you do have this legal situation.

The [proponents of a federal constitutional amendment] have found that people aren’t all that excited about it. There’s one thing that would give it legs – if the federal courts were to start ruling that because same-sex marriages have been recognized in Massachusetts, those marriages must be given full faith and credit and fully recognized by every other state, that would cause a backlash. I don’t believe the federal courts are going to say that.

States have always been allowed to make their own public policy judgments about marriage and have generally been allowed to refuse to recognize those that didn’t comply with their own public policy, except in the case of racial discrimination. So therefore, I don’t think you’re going to see any significant chance of a constitutional amendment, unless the Supreme Court said, okay, if Massachusetts does, everybody does. Because their argument against a constitutional amendment is, in part, “What’s the matter with you? This is Massachusetts? What do you care? What business is it of yours?” If the federal courts were to say under full faith and credit everybody has to do it, that would give legs to a constitutional amendment. But I don’t think the federal courts are going to do that.

[As for the inevitability of gay marriage,] nothing is inevitable in politics. [The Massachusetts experience] makes it likelier that there will be other states that will do it. I also don’t think you’re going to see it nationwide for some time. There are parts of this country that will be very resistant. Even after the Supreme Court ended segregation legally, it took decades in some of these hard-line southern states for it to become real, into the ’70s. But I think it will make it likelier that other states will do it.

There are two groups of people, I think, who are opposed to same-sex marriage. A small group of people just don’t like gay and lesbian people. They don’t like us and if they don’t like us one at a time, they really hate the notion of two of us together. It’s just prejudice. A larger group of people are not prejudiced against gay and lesbian people, but most people don’t live other people’s lives, they live their own lives, they

don't understand the pain, the sense of loss that gay and lesbian people feel about being told that our love is not worthy of any legal recognition. And they hear respected people – the President of the United States, clergy, academics, governors – say oh, this will have a terrible effect, if you allow this it will be very destabilizing. Now, they don't have any basis for judging that one way or the other but they figure, "Well, why take the risk? I don't dislike those people. Maybe we'll give them some benefits. Why take this risk?"

In advance, it's hard to overcome that. But now that we have had same-sex marriage for six weeks in Massachusetts and civil unions for four years in Vermont, it is easier for us to argue what I believe to be obviously the case that those fears are just wrong, that recognizing same-sex marriage will have no negative, destabilizing or corrosive effect on regular marriage, and as we can prove that – in other words, as we are debating the reality rather than these fears – we make gains.

Barney Frank interview conducted by Brian Scott Mednick on June 28, 2004.

