# Written Statement
# of
# Monte Neil Stewart
# to the
# Commission on Family Recognition and Protection

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**Vermont Law School**

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# Executive Summary

1. Marriage is a vital social institution and, like each important social institution, is made up of a unique web of widely shared public meanings.
2. These "institutionalized" meanings teach, form, and transform individuals, providing them with identities, purposes, projects, and ways of behaving and relating to others. In this way, these meanings provide valuable social goods.
3. Across time and cultures, *the union of a man and a woman* has virtually always been a core meaning constitutive of the nearly universal marriage institution.
4. The man/woman meaning continues as a widely shared ("institutionalized") meaning at the core of the contemporary Vermont and American marriage institution.
5. The man/woman meaning is essential to the production of a number of the valuable social goods that the marriage institution provides our society. Those social goods include effective protection of the child's bonding right, that is, the right of every child to know and be brought up by his or her biological parents, with exceptions only in the best interests of the child, not those of any adult; optimal provision of private welfare to children conceived by passionate man/woman sex; an effective way over the male-female divide; the source of the identity and status of *husband* and *wife*; and others.
6. If *the union of a man and a woman* ceases to be a core constitutive meaning of marriage, that institution, probably sooner rather than later, will cease to provide those particular social goods.
7. The law does not have the power to usher same-sex couples into the man/woman marriage institution, but the law certainly has the power to suppress the man/woman meaning, thereby "de-institutionalize" man/woman marriage, and fabricate in its place a genderless marriage regime built around the law-mandated meaning of "the union of any two persons."
8. A genderless marriage regime is radically different from the man/woman marriage institution, as evidenced by the large divergence in the nature of their respective social goods. It could not be otherwise because genderless marriage is radically different in what it aims for and in what it teaches.

**9.** At any one time, Vermont can have one, but only one, of three alternatives: the man/woman marriage institution, a genderless marriage regime, or no normative marriage institution at all. Vermont must choose which one; two of these alternatives at the same time amounts to an impossibility. Vermont has always chosen man/woman marriage and done so legislatively as recently as 2000.

10. Because of the social institutional realities just summarized, the serious intellectual debate about man/woman marriage versus genderless marriage has been over for some time, with man/woman marriage the clear victor.

11. Moreover, those social institutional realities are, in large measure, the reason 20 out of 21 American appellate court decisions have upheld the constitutionality of man/woman marriage and refused to mandate genderless marriage – including the nine most recent such decisions.

12. The social institutional realities just summarized are also the basis for Vermont's choice of the man/woman marriage institution (and the unavoidable rejection of the other two alternatives) and for Vermont's implementation of civil unions to meet the perceived needs of same-sex couples.

13. Under the present state of the law in Vermont and across the Nation, for Vermont to switch to a genderless marriage regime will provide virtually ***no*** new tangible, meaningful legal benefits to same-sex, civil union couples who enter that regime.

## Written Statement of Monte Neil Stewart

My thanks to the Commission for the invitation to participate with distinguished and able colleagues in today's session.

I am aware that controversial questions concerning pre-judgment, partiality, and bias have swirled around the Commission since the announcement of its constituent members. I am not here to address those questions. In that vein, it would be wrong for anyone to view my presence and participation here today as some kind of position statement relative to that controversy. The sole purpose for my presence and participation is to share information and understanding germane to this great public issue: Should Vermont law sustain the man/woman meaning at the core of this State's vital social institution of marriage, or, rather, should Vermont law suppress that institutionalized meaning and replace it with the "any two persons" meaning? Or, in short, should Vermont continue with the man/woman marriage institution or instead move to a genderless marriage regime?

In a moment, I will give answers to the questions that the Commission previously posed to today's participants. First, however, both to identify common ground and to sharpen key concepts, I will provide foundational information.[1]

Regarding common ground, there is indisputably this: Marriage is a vital social institution. Indeed, those six words begin Massachusetts's *Goodridge* decision. Thus, marriage, like all social institutions, is constituted by a web of shared public meanings. It is these institutionalized meanings that teach, form, and transform individuals, providing identities, purposes, and projects and guiding behavior. In this way, these institutionalized meanings provide valuable social goods. Indeed, it is exactly because social institutions – examples being private property, money, marriage, elections – provide valuable social goods that society and its laws sustain them.

Across time and cultures, a core meaning constitutive of the marriage institution has virtually always been the union of a man and a woman. This core man/woman meaning is powerful and even indispensable for the marriage institution's production of at least six of its valuable social goods. The man/woman marriage institution is:

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[1] This foundational information is set forth in detail and is rather fully elaborated in a series of my articles and in the authorities cited and reviewed in those articles. Citations to those articles may be found in footnotes 3 and 5 of Monte Neil Stewart, *Marriage Facts*, 31 HARV. J.L. & PUB. POL'Y xx (2007), a copy of which I previously provided Commission members and today's participants.

1. Society's best and probably only effective means to make real the right of a child to know and be brought up by his or her biological parents (with exceptions justified only in the best interests of the child, not those of any adult) – what I call "the child's bonding right."
2. The most effective means humankind has developed to maximize the private welfare provided to children conceived by passionate, heterosexual coupling (with "private welfare" meaning not just the basic requirements like food and shelter but also education, play, work, discipline, love, and respect).
3. The indispensable foundation for that child-rearing mode—that is, married mother/father child-rearing—that correlates (in ways not subject to reasonable dispute) with the optimal outcomes deemed crucial for a child's—and therefore society's—well being.
4. Society's primary and most effective means of bridging the male-female divide.
5. Society's only means of conferring the identity of, and transforming, a male into husband/father and a female into wife/mother statuses and identities particularly beneficial to society.
6. Social and official endorsement of that form of adult intimacy—married heterosexual intercourse—that society may rationally value above all other such forms. That rationality has been demonstrated in the scholarly literature and remains, to date, unrefuted.

With its power to suppress social meanings, the law can radically change and even deinstitutionalize man/woman marriage, with concomitant loss of the institution's social goods. Further, genderless marriage is a radically different institution than man/woman marriage, as evidenced by the large divergence in the nature of their respective social goods (in the case of genderless marriage, only promised, not yet delivered). Indeed, observers of marriage who are both rigorous and well-informed regarding the realities of social institutions uniformly acknowledge the magnitude of the differences between the two possible institutions of marriage, and this is so regardless of the observer's own sexual, political, or theoretical orientation or preference.

Another social institutional reality is that a society can have, at any one time, only one social institution denominated *marriage*. That is because a society, as a simple matter of reality, cannot, at one and the same time, have as shared, core, constitutive meanings of the marriage institution "the union of a man and a woman" *and* "the union of any two persons." A society, as a simple matter of reality, cannot, at one and the same time, tell people, and especially children, that *marriage* means "the union of a man and a woman" *and* "the union of any two persons." The one meaning necessarily displaces the other. Hence, every society

must choose either to retain the old man/woman marriage institution or, by force of law, to suppress it and put in its place the radically different genderless marriage institution. But to suppress, by force of law, the shared public meanings constituting the old institution is to lose the valuable social goods flowing from those institutionalized meanings. Thus, social institutional realities refute the "no-downside" argument advanced by genderless marriage proponents and seen in the famous tactic of asking: "How will letting Jim and John marry hurt Monte's and Anne's marriage?"

These social institutional realities further reveal phrases like *gay marriage* or *same-sex marriage* to be misleading, in two related ways. First, nowhere in the world is marriage defined legally, socially, or otherwise as the union of two persons of the same sex. It is defined either as the union of any two persons, as in Massachusetts (at least legally), or as the union of a man and a woman, as in the other 49 states (both legally and socially). Second, when people confront the marriage issue, the *same-sex marriage* term and the others like it get those people thinking of a new, different, and separate marriage arrangement or institution that will co-exist with the old man/woman marriage institution. But once the legislature adopts "the union of any two persons" as the legal definition of civil marriage, that becomes the *sole* definitional basis for the *only* law-sanctioned marriage any couple can enter, whether same-sex or man/woman. Thus, as will become even more clear later on, legally sanctioned genderless marriage (the not-misleading term for what is being proposed), rather than peacefully co-existing with the old man/woman marriage institution, actually displaces and replaces it.

Further, after legislative adoption of genderless marriage, Vermont will certainly *not* be the happy home of many different marriage norm communities, each doing its own marriage thing, each equally valid before the law, and each equally secure in its own space. Rather, Vermont will have one marriage norm community (genderless marriage) officially sanctioned and officially protected; all other marriage norm communities will be officially constrained, officially disdained, and sharply curtailed. Moreover, there are profound problems with the notion that supporters of the old marriage institution can, if they want, just huddle together in some linguistic, social, or religious enclave to preserve the old institution and its meanings. Social institutional studies teach that the dominant society and its language and meanings will, like an ocean and its waves, inevitably wear down and cause to disappear any island enclave of an opposing norm. To the degree that members of the enclave were to adopt the speech of the dominant society, they would lose the power to name, and in large part the power to discern, what once mattered to their forbears. To that degree, their forbears' ways would seem implausible to them, and probably even unintelligible.

What I have just summarized rather severely is known in the literature as the social institutional argument for man/woman marriage. Despite ample opportunity to do so, genderless marriage proponents have never honestly engaged and effectively countered that argument. Rather, they have tried to ignore it or otherwise evade it, such as by misstating component parts. Both the strength of that argument and the virtual absence of any genuine counter to it are why, in large measure, 20 of the 21 American appellate court decisions resolving constitutional claims to judicially mandated genderless marriage have rejected those claims and held man/woman marriage to be constitutional, including all nine American appellate court decisions decided since the *Goodridge* decision came down in November 2003. Moreover, those are the reasons it is fair and accurate to say that the serious intellectual debate over man/woman marriage versus same-sex marriage was over some time ago, with man/woman marriage the clear victor.

I now turn to the questions posed to us by the Commission.

*1A. What are the legal consequences as between marriage and civil union in Vermont?*

At the state level, there is no difference in legal consequences. That is because of the clear language of the Civil Union Act.

At the federal level, a Vermont marriage is now recognized as a "marriage" for all federal purposes and a Vermont civil union is not recognized as a "marriage" for any federal purpose. (The federal Defense of Marriage Act dictates this result.) Because of the nature of our federal system and because of the federal constitution's supremacy clause, Vermont has no power to change federal treatment of civil unions. Moreover, if Vermont were to redefine marriage here to the union of any two persons, same-sex couples marrying thereafter would still not be married for federal purposes.

*1B. In terms of legal benefits, protections, rights and obligations, what does a marriage license deliver you that a civil union license doesn't?*

If the adjective "legal" modifies (as seems to be the clear intent) "benefits, protections, rights and obligations," the answer at the state level is again "no differences," for the reasons just given. Also for the reasons just given, Vermont has no power to alter a same-sex couple's "benefits, protections, rights and obligations" governed by federal law.

If the adjective "legal" is cast aside and replaced by "social," then we get to the real reason for the marriage battle in Vermont. Genderless marriage proponents assert that allowing same-sex couples into marriage will enhance (in ways said to be beneficial to society generally) their social status and hence well-being. But this assertion collides with a number of social institutional realities. The first is that Vermont law has no power to usher same-sex couples into the venerable man/woman marriage institution; all Vermont law can do is suppress the man/woman marriage institution, fabricate in its place the radically different genderless marriage regime, and then assure that the marriage of no couple in this State (whether man/woman or same-sex) is legitimate unless sanctioned by that regime. But to take that radical approach is to assure, probably sooner rather than later, the loss of the valuable social goods now produced uniquely by the institutionalized man/woman meaning. That is a very high cost indeed, and that is the second social institutional reality.

Regarding that high cost, take as just one example the destruction in this State of the child's bonding right:

> [S]ame-sex marriage would require us in both law and culture to deny the double origin of the child. I can hardly imagine a more serious violation. It would require us to change or ignore our basic human rights documents, which announce clearly, and for vitally important reasons, that every child has a birthright to her own two natural parents. It would require us, legally and formally, to withdraw marriage's greatest promise to the child – the promise that, insofar as society can make it possible, I will be loved and raised by the mother and the father who made me. When I say, "Every child deserves a mother and a father," I am saying something that almost everyone in the world has always assumed to be true, and that many people today, I think most people, still believe to be true. But a society that embraces same-sex marriage can no longer collectively embrace this norm and must take specific steps to retract it. One can

believe in same-sex marriage. On can believe that every child deserves a mother and a father. One cannot believe both.[2]

*1C. Do these differences raise any statutory, common law or constitutional law issues?*

There are certainly no substantial constitutional issues in the perpetuation of the man/woman marriage institution. That is because society (and hence government) has compelling interests in perpetuating the valuable social goods produced in large measure and even uniquely by the now-institutionalized man/woman meaning. The reality of those compelling interests means that, under even the strictest standard of constitutional review, the laws sustaining the man/woman marriage institution fully withstand any and all constitutional challenges leveled at them. Moreover, those laws withstand any and all challenges premised on notions of "over-inclusive" and "under-inclusive." That is because society, if it is to have a normative marriage institution, has *only* two choices: either it will choose genderless marriage or it will choose man/woman marriage. To choose genderless marriage is to cause the loss of the man/woman meaning and therefore the loss of its valuable social goods. Man/woman marriage is neither over-inclusive nor under-inclusive because, to sustain society's compelling interests in the perpetuation of the man/woman meaning's social goods, it *must be only what it is* — the source of institutional power to that meaning.

The judiciary relative to common law issues and the legislature relative to statutory issues can address any actual difficulty arising from Vermont's still relatively new civil-union regime – and do so in an orderly manner based on a solid factual record. Certainly neither the judiciary nor the legislature would be justified in de-institutionalizing man/woman marriage in this State and replacing it with a genderless marriage regime. What is set forth earlier makes that clear.

*2. Which states, if any, officially recognize a Vermont civil union? Is the recognition statutory or judicial? Is the recognition full or partial, or circumstance-driven? Same questions about the federal government. Are there any differences compared to recognition of a same-sex marriage from Massachusetts or Canada?*

As noted above, there is no federal recognition of Vermont civil unions, nor will there be any federal recognition of a Vermont "marriage" by a same-sex couple, nor does Vermont have any power to alter that important federal policy.

[2] DAVID BLANKENHORN, THE FUTURE OF MARRIAGE 201 (2007).

The chart attached as Appendix 1 answers for each of the fifty states this cluster of questions. Suffice it to say here that no State statutorily authorizes recognition of an out-of-state, same-sex-couple marriage, whether solemnized in Massachusetts or outside the United States, and no state appellate court has yet granted such recognition either. (This is true even in Massachusetts!)

*3. In terms of tangible legal consequences, including recognition by other states or the federal government, what identifiable advantages or disadvantages would a lesbian couple with a Vermont marriage license have that they do not have with a Vermont civil union license?*

To be sensible, the answer must be put in two parts, in-state and out-of-state legal consequences. In-state, there will be no differences in tangible legal consequences.

Out-of-state, as the law across the Nation now stands, there will be no meaningful differences. All promises (except one) of new legal advantages to Vermont same-sex couples resulting from a genderless marriage regime here are premised entirely on speculation as to what the federal government and the other 49 states may or may not do at some time in the future. The only non-speculative "advantage" would be provision of "standing" to a same-sex couple married in Vermont to demand in a court outside this State recognition of the "marriage" by that foreign jurisdiction. But as seen in the answer to the very next question, those courts are under no federal obligation to recognize such a Vermont "marriage." If they do so, it is as an act of that foreign jurisdiction's own law and public policy.

*4. What decided cases and/or pending litigation (including challenges to state or federal Defense of Marriage Act laws) are there which bear on these questions? What do the reported DOMA cases tend to say?*

Whole forests have been cut down to make the paper to print the law journal articles arguing the constitutionality of federal and state DOMAs and the applicability of the federal constitution's full faith and credit clause to a same-sex couple's foreign "marriage." And all for nought. As has been clear to careful scholars since the beginning, and as the recently completed briefing in Rhode Island's *Chambers v. Ormiston* case confirmed, the full faith and credit clause does not require any state to recognize a same-sex couple's "marriage" entered into in another state. If a state elects to recognize for its own purposes such a marriage, it does so as an exercise of its own sovereignty and the operation of its own law.

As to the constitutionality of the federal DOMA, all the cases addressing the issue have held it to be constitutional.[3] Further, the key gay/lesbian rights organizations have assiduously sought to avoid litigation of that issue precisely because of their (correct) assessment that the courts, all the way to the United States Supreme Court, will rule against them.[4] As to the constitutionality of state DOMAs, 20 of the 21 American appellate courts to address the issue have held man/woman marriage to be constitutional, including all nine decided since the *Goodridge* decision was handed down in November 2003. And to the extent that state DOMAs prohibit recognition of a foreign marriage by a same-sex couple, settled full-faith-and-credit jurisprudence clearly allows for such.

*5. Why did the Massachusetts court reach a different conclusion than the Vermont court? Were there any significances of these reasons for the Vermont civil union law?*

As shown in the 2004 article *Judicial Redefinition of Marriage*, both the Vermont Supreme Court in *Baker* and the Massachusetts Supreme Judicial Court in *Goodridge* used a common pattern of argument to reach the desired results.[5] Also as shown in that and a number of subsequent articles,[6] and as recognized since 2003 by a number of American appellate courts, the judicial performances reflected in those two cases' majority opinions are profoundly flawed. "[T]he majority opinions in the [*Baker* and *Goodridge*] cases do not amount to an adequate judicial treatment of a few material, foreground issues. The courts did an unacceptable job with their performance of the very tasks that lie at the heart of judicial responsibility in virtually every case."[7] In bears noting that the literature remains devoid of any counter to that harsh assessment of those judicial performances.

As to why the Vermont Supreme Court allowed civil unions while the Massachusetts Supreme Judicial Court insisted on a genderless marriage regime, the answer cannot really be found in the "no-separate-but-equal" argument of the latter court in *Opinions of the Justices to the Senate*, the decision announcing the insistence on genderless marriage. That argument is quite patently a willful

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[3] Wilson v. Ake, 354 F. Supp. 2d 1298, 1309 (M.D. Fla. 2005); Smelt v. Orange County, 374 F. Supp. 2d 861, 880 (C. D. Cal. 2005), *dismissed on other grounds*, 447 F.3d 673 (9th Cir. 2006) ; *In re* Kandu, 315 B.R. 123, 137–38 (Bankr. W.D. Wash. 2004).

[4] *See* Monte Neil Stewart, *Eliding in Washington and California*, 42 GONZ. L. REV. 501, 514 n.67 (2007), *available at* http://manwomanmarriage.org/jrm/pdf/Eliding_in_WA_and_CA.pdf.

[5] Monte Neil Stewart, *Judicial Redefinition of Marriage*, 21 CAN. J. FAM. L. 11 (2004), *available at* http://manwomanmarriage.org/jrm/pdf/jrm.pdf [hereinafter Stewart, *Redefinition*].

[6] *E.g.*, Monte Neil Stewart, *Genderless Marriage, Institutional Realities, and Judicial Elision*, 1 DUKE J. CONST. L. & PUB. POL'Y 1 (2006), *available at* http://www.manwomanmarriage.org/jrm/pdf/Duke_Journal_Article.pdf.

[7] Stewart, *Redefinition*, *supra* note 5, at 132.

refusal to acknowledge the social institutional argument for man/woman marriage. The enabling power, in these kinds of cases, of willful blindness has been well demonstrated. As to the judges who have gone that route, their very act of ignoring or otherwise evading the social institutional argument for man/woman marriage enabled their opinions to rather freely conclude that society has no rational basis for perpetuating the man/woman meaning in marriage; that there is no harm, no "downside," in replacing that meaning by force of law with *the union of any two persons*; that child welfare is only promoted by such a radical redefinition of marriage; that nothing but religious doctrine sustains the man/woman "limitation"; and that the struggle for genderless marriage is truly equivalent to the struggle culminating in *Perez* and *Loving*. The willful blindness toward the social institutional argument for man/woman marriage also enabled those opinions to rather freely commit an act of profound injustice—to label more or less explicitly, and certainly falsely, a number of people as hateful, mean-spirited, prejudiced, bigoted, invidiously discriminatory, and filled with animus towards gay men, lesbians, and even the children being raised by same-sex couples. The people so labelled include the citizens and the legislators who voted for the impugned man/woman marriage laws and the judges in these and other cases who upheld such laws against constitutional challenge. That injustice certainly merits the harsh but just charge against such opinions of wilful blindness—and all that charge entails with respect to performance of the judicial role.

In the end, this simple answer is the most valid answer to the question of why the Vermont court allowed civil unions while the Massachusetts court insisted on a genderless marriage regime: four of the seven justices on the latter court were simply more wilful than their colleagues in imposing their personal views of the "good society."

*6. As posed by the charge to the Commission, what is "the basis for Vermont's separate legal structures for recognizing and protecting same-sex couples versus heterosexual couples?"*

The basis for Vermont's simultaneous perpetuation of the man/woman marriage institution and provision of civil unions – what in the California litigation is called the "parallel institutions approach" – is found in the social institutional realities already summarized. Thus, Vermont can have the man/woman marriage institution or it can have a genderless marriage regime or it can have no normative marriage institution at all. Those are the only three choices, and this State can choose only one because two-at-a-time or three-at-a-time are impossibilities. Vermont has always chosen the man/woman marriage institution and legislatively reaffirmed that choice as recently as 2000. For this State to choose a genderless marriage regime is to de-institutionalize the man/woman meaning at the core of the present vital marriage institution; the law is without question sufficiently powerful to accomplish that result. But to de-institutionalize the man/woman

meaning is to lose, sooner rather than later, the valuable social goods produced by that widely shared public meaning. Those valuable social goods include effective protection of the right of a child to know and be brought up by his or her biological parents (with exceptions justified only in the best interests of the child, not those of any adult); optimal provision of private welfare to children conceived by passionate man/woman sex; an effective way over the male-female divide; and the source of the identity and status of *husband* and *wife*. If *the union of a man and a woman* ceases to be a core constitutive meaning of marriage, that institution will cease to provide these particular social goods (and others not listed here but described earlier). And if that meaning is replaced by *the union of any two persons*, a number of those social goods, regardless of their source, will become, quite simply, contrary to official public policy. One is the child's bonding right. Another is the status of *husband* and *wife*.

These social institutional realities lead a number of different modes of critical morality to the same conclusion: critical morality undergirds and sustains both the decision to perpetuate the man/woman marriage institution and the unavoidably concomitant refusal to implement a genderless marriage regime.[8]

This last point leads to these important observations about the basis for Vermont's simultaneous perpetuation of man/woman marriage and provision of civil unions, with that basis being, of course, the social institutional argument for man/woman marriage:

1. Each building block in the argument is uncontroversial. Virtually all serious students of social institutions accept the validity of the understandings comprising it.
2. To date, the argument remains unrefuted. The appellate courts that have mandated genderless marriage (in Massachusetts and Canada), in order to reach that result, ignored or otherwise evaded the argument, and these courts' elision of the argument is now well demonstrated in the scholarly literature. In contrast, the courts that have engaged the argument have rejected genderless marriage. Likewise, none of the serious legal scholars supporting genderless marriage have genuinely engaged and countered the argument.
3. The argument fully qualifies as Rawlsian "public reason" and satisfies even this high standard: "The requirements of public reason would . . . require the delineation of precisely how same-sex marriages threaten the institution of marriage in terms of public reasons and political values implicit in our

[8] Monte Neil Stewart, *Marriage Facts and Critical Morality* 98-112, *available at* http://marriagelawfoundation.org/mlf/publications/Facts.pdf.

public culture."[9] This achievement of the social institutional argument merits emphasis exactly because of what Margaret Somerville has accurately observed:

> One strategy used by same-sex marriage advocates is to label all people who oppose same-sex marriage as doing so for religious or moral reasons in order to dismiss them and their arguments as irrelevant to public policy. [Further,] good secular reasons to oppose same-sex marriage are re-characterized as religious or as based on personal morality and, therefore, as not applicable at a societal level.[10]

4. Because the argument demonstrates that adoption of genderless marriage will necessarily de-institutionalize man/woman marriage, and thereby cause the loss of its unique social goods, the argument effectively refutes the notion that the proponents of man/woman marriage have only one "real" motive: animus towards gay men and lesbians.
5. Because the argument demonstrates society's (and hence the government's) compelling interests in preserving the vital social institution of man/woman marriage, the argument is a sufficient response to all constitutional and public-policy challenges leveled at the laws sustaining that institution.

Respectfully submitted,

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[9] Linda C. McClain, *Deliberative Democracy, Overlapping Consensus, and Same-Sex Marriage*, 66 FORDHAM L. REV. 1241, 1251 (1998).

[10] Margaret Somerville, *What About the Children?*, *in* DIVORCING MARRIAGE: UNVEILING THE DANGERS IN CANADA'S NEW SOCIAL EXPERIMENT 70-71 (Daniel Cere & Douglas Farrow eds. 2005). She goes on to note that these tactics "do not serve the best interests of either individuals or society in this debate." *Id*. at 71.