Testimony before New Hampshire Study Commission established under S.B. 427
September 19, 2005

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Thank you for having me here this afternoon. I am grateful for the opportunity to address the Study Commission on the important issue of interstate recognition of marriages, civil unions, and domestic partnerships formed by same-sex couples in other states.

A few brief comments about my scholarship which centers on this area. I have written 2 book chapters, over a dozen law review articles, and an unpublished manuscript considering the question of interstate recognition of marriage generally and of same-sex couples' marriages specifically. I recently worked on a draft of an amicus brief to the Supreme Judicial Court of Massachusetts on behalf of numerous Conflict of Law and Family law professors on these same issues. I have also testified before the California legislature twice in its deliberations concerning interstate recognition of marriage and marriage equality for same-sex couples. My curriculum Vitae is attached hereto as Exhibit A.

Simply by looking at my immediate family, the need for interstate recognition of marriage can readily be understood. Both my sisters and my parents live in Kentucky, but none was married there. My older sister married her husband in South Carolina while on vacation with his family. My younger sister was married in Tennessee and returned almost immediately to Kentucky. Finally, my parents were married in Evanston, Illinois; moved immediately to Milwaukee, Wisconsin; and then to Kentucky following my father's job transfer in 1961. It mattered little that they married in my mother's hometown, had their first marital domicile in another state, and moved nine years later to Kentucky. Each of these couples' marital status remained constant throughout these changes in their domiciles.

None of this is remarkable because, interwoven in our societal culture, is an expectation that American citizens can move from state-to-state, and can easily travel through all fifty states, without their marital status changing. Those of you who have the freedom to marry have probably never considered whether your marriage would be permitted in your domicile or whether your marital status would survive a vacation or business trip or a change of domicile.

But now that same-sex couples have won the freedom to marry in Massachusetts and Canada (as well as in Belgium, the Netherlands, and Spain) and have obtained civil union status in Vermont and Connecticut, and domestic partnership status in California, New Jersey, and to a limited extent in Maine, that is the question awaiting us. We will face the same question that interracial couples once faced, both in trying to find a state where they could marry and making decisions about whether they could move or even travel without their marriages being challenged.

Interracial couples knew, however, that if they lived in a state where their marriage was valid and recognized, they could freely move to most other states without fear that their marital status would not travel with them. Only those who were prevented from marrying in their own domicile, married in another state to evade that law, and returned to their original domicile seeking recognition of their marital status encountered difficulties. Even then, many of those marriages were recognized, despite constitutional or statutory provisions declaring the marriage void and even imposing criminal penalties for violating those provisions.[1]

Those who were underage and could not wait to marry until they reached the age of majority in their home state, or who wanted to remarry after divorce sooner than their domicile permitted, or who wanted to marry a first cousin but were prevented from doing so in their home state, or who wanted to move from a state where their common law marriage was permitted to a state where common law marriages could not be created usually found that they could return to their domicile or move to another state without their marriage being declared invalid.[2] The majority of these marriages were recognized, despite statutes prohibiting them in the original domicile state.

They were upheld using the legal doctrines controlling these choice-of-law situations. Courts deciding whether to recognize a marriage entered into out-of-state begin with the general rule preferring validation of marriages, which exists with an "overwhelming tendency" in the United States. Under this validation rule, marriages will be found valid if there they were valid where celebrated. There are such strong policy reasons behind this rule that it has become well entrenched in the substantive law of all the states. "The validation rule confirms the parties' expectations, it provides stability in an area where stability (because of children and property) is very important, and it avoids the potentially hideous problems that would arise if the legality of a marriage varied from state to state." The parties' expectations arise from the fact that the married couple needs to know 'reliably and certainly, and at once, whether they are married or not."[3]

In my over 13 years of researching whether the marriages of same-sex couples will be recognized by the different states, the question asked most often is why choice-of-law theories control this situation, rather than the Full Faith and Credit clause of the U.S. Constitution.[4] This question continues to be asked because everyone understands that a couple's marital status should not vary from state-to-state. Many scholars believe that the Full Faith and Credit clause should be used to resolve these questions; others are less convinced. Some think the Clause

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[1]*See* Andrew Koppelman, *Same-Sex Marriage and Public Policy: The Miscegenation Precedents*, 16 Quinnipiac L. Rev. 105 (1996).

[2]*See* Barbara J. Cox, *Same-Sex Marriage and the Public Policy Exception in Choice of Law: Does it Really Exist?*", 16 Quinnipiac L. Rev. 61 (1996)[hereinafter Cox, *Public Policy Exception*] and cases cited therein.

[3]*See* Barbara J. Cox, *Same-Sex Marriage and Choice of Law: If We Marry in Hawaii, Are We Still Married When We Return Home?*, 1994 Wis. L. Rev. 1033, 1064-1065 [hereinafter Cox, *If We Marry*] (citing William M. Richman, et al., Understanding Conflict of Laws §116 (2d ed. 1993); and Robert A. Leflar et al., American Conflicts Law § 220 (4th ed. 1986)).

[4]U.S. Const. Art. IV §1.

requires every state to recognize marriages validly celebrated in other states; others do not.[5] People remain confused about the Clause's importance because courts addressing interstate recognition of marriage historically have not turned to the Constitution for an answer.

Instead, courts have relied on choice-of-law theories to determine whether a marriage is valid either when the couple returns to their domicile from the state where their marriage was celebrated and seeks recognition of that marriage or moves from the state of domicile and celebration to another state. "The courts are understandably reluctant 'to negate a relationship upon which so many personal and governmental considerations depend.' 'In fact, denying a normal incident of marriage to a validly married couple is a harsh measure that should be avoided unless enjoyment of that incident 'violently offends the moral sense of the community.'"[6]

Each of these choice of law theories, however, does permit a state to refuse to recognize the marriage of its domiciliaries whose marriage would not have been permitted in the state. Using this public policy exception, these choice of law theories, "although clearly tending toward validation as a general rule, ... would defer to the domiciliary state, as the state with the most significant relationship to the couple, to consider whether a given marriage violates its public policy."[7]

The conclusion I reached after completing research in all 50 states is that "courts do not use a public policy exception to refuse to validate an out-of-state marriage even when the domicile has an explicit statutory prohibition against the marriage in question."[8] "Instead, courts repeatedly indicate that they have the discretion to use such a public policy exception but then validate the out-of-state marriage following the general rule in favor of recognition. Although a few states use the exception consistently, virtually all the rest recognize the existence of such an exception but rarely use it."[9]

"In numerous and repeated cases, courts have recognized out-of-state marriages even when the marriage violated the domicile's restrictions on underage marriages, on incestuous marriages (such as first cousin or uncle/niece marriage), on adultery or when divorced persons could remarry, and even on polygamous marriages for some limited purposes."[10] "The vast majority of cases recognize the out-of-state marriages, whether entered into by residents of the domicile who validly married under that state's laws and then moved to another state which

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[5]Some commentators believe the FFC clause should not control this question; others who do are cited in Cox, *If We Marry*, *supra* note 5, at 1041 n.23.

[6]*Id*. at 1085 (citing J. Philip Johnson, Note, *The Validity of a Marriage Under the Conflict of Laws*, 38 N.D. L. Rev. 442, 456 (1962) and Charles W. Taintor, II, *Marriage in the Conflict of Laws*, 9 Vand. L. Rev. 607, 615 (1956)).

[7]*Id*.

[8]Cox, *Public Policy Exception*, *supra* note 2, at 66.

[9]*Id*. at 66-67.

[10]Barbara J. Cox, *But Why Not Marriage: An Essay on Vermont's Civil Unions Law, Same-Sex Marriage, and Separate But (Un)equal*, 25 Vt. L. Rev. 113, 139 (2000)[hereinafter Cox, *But Why Not Marriage*].

prohibited their marriages, or entered into by residents who were prevented by their domicile's law from marrying but who married in another state where their marriage was legal and then sought recognition within their original domicile."[11]

Only in states with anti-miscegenation statutes can one find "consistent and repeated use of public policy exceptions to refuse to recognize otherwise valid out-of-state marriages, and even then only when the couple had not been validly married in its own domicile."[12] But other courts have validated these out-of-state, miscegenous marriages, in cases such as *Pearson v. Pearson*, 51 Cal. 120 (1875) (recognizing interracial marriage validly entered into in Utah despite a California law nullifying them); *Medway v. Needham*, 16 Mass. 157 (1819) (recognizing interracial marriage validly entered into in Rhode Island despite a Massachusetts law prohibiting them); and *Miller v. Lucks*, 36 So. 2nd 140 (Miss. 1948) (recognizing an interracial marriage validly contracted in Illinois for inheritance purposes despite a state Constitutional provision refusing recognition).

In fact, this is the public policy expressed in N.H. RSA 457:3: where it states: "Every marriage legally contracted outside the state of New Hampshire,. . . shall be recognized as valid in this state for all purposes if or once the contracting are or become permanent residents of this state subsequent to such marriage . . . ." An exception is included for marriages prohibited under RSA 457:1 and 2. Until this section was amended in 2004 by SB427, New Hampshire's marriage validation statute (RSA 457:3) followed the general rule of marriage recognition for all classes of marriages: "any marriage legally contracted outside of this state by persons not domiciled in this state and valid in the jurisdiction where contracted shall be recognized as valid in this state for all purposes. . . ."[13]

New Hampshire clearly understands and follows the general validation rule for most marriages, especially those validly contracted outside the state by non-residents. This is what the conflicts of law theories would require, and this is what New Hampshire had previously done until RSA 457:3 was amended in 2004.

Case law from New Hampshire courts also recognizes that the couple's domicile is usually the state that controls the marital status of the couple. As early as 1850, the New Hampshire Supreme Court stated that the doctrine of tying marriage "to the laws of the country where [it was] made is practised in all civilized countries, and is agreeable to the law of nations" and "It is the consent of all nations, . . . that the solemnization of the different nations with

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[11] *Id*. at 139 n.118.

[12] *Id*. at 139.

[13] Both the current version of RSA 457:3 and the prior version of RSA 457:3 seemingly restrict recognition and validity to couples "if or once the contracting parties are or become permanent residents of this state subsequent to such marriage. . . ." It seems that the statute only provides recognition of out-of-state marriages once the parties become permanent residents, but the purpose behind that limitation is unclear. Would New Hampshire really not recognize the marriage of a heterosexual couple, visiting from California, if their marital status became an issue while they were in the state? Would New Hampshire really not permit one spouse to make medical decisions or sue a negligent driver for wrongful death if their spouse was injured or killed while visiting the state? That seems unlikely, and is a good enough reason in itself to revise or amend RSA 457:3.

respect to marriages should be observed, and that contracts of this kind are to be determined by the laws of the country where they are made." *True v. Ranney*, 21 N.H. 52, 55 (1850). Though exceptions have been permitted, they are limited and tend to arise only where the marriage was invalid where celebrated or where the marriage was evasive. *Id*. *See also* Exhibit B (discussing selected New Hampshire marriage recognition cases).

Thus, the prior language of RSA 457:3 and the decisions of the New Hampshire Supreme Court all show proper respect for marriages entered into outside New Hampshire that were valid where contracted or where the married couple was domiciled. That is the consistent, usual marriage validation rule in the United States today.

Unfortunately, the Legislature in May 2004 changed that law in New Hampshire and exempted the marriages of first cousins and same-sex couples from being recognized in this state. The statute continues to recognize and validate every other marriage entered into out-of-state that was valid where contracted, but it exempts the marriages of first cousins and same-sex couples. This is contrary to the principles laid out by the New Hampshire Supreme Court which recognized that the marital status is ordinarily determined by the law of the place where the marriage was contracted, especially when the married couple was domiciled in that state.

It is hard to believe that the public policy of New Hampshire is really to refuse to recognize validly contracted marriages. Let's use the example of Abby and Pat who are validly married in Massachusetts and who have a child, Carol, born during the marriage. Let's assume that Abby is transferred by her job to New Hampshire and the family moves to Concord. Then six months after they arrive in New Hampshire, Pat and Carol are injured in a car accident by a negligent driver. If Pat is a male, then Abby may make medical decisions for Pat and Carol who may have both been badly injured. If Pat is a male and dies from his injuries, then Abby may inherit intestate from him, claim his remains and bury him, access his retirement plan, and sue the person who injured him for wrongful death. But if Pat is a woman, RSA 457:3 could arguable be read say that the marriage between the couple, validly entered into while they were in Massachusetts and were Massachusetts residents, will not be recognized in New Hampshire. Thus, while in New Hampshire, Abby cannot make medical decisions for Pat, cannot claim her remains and bury her spouse, cannot inherit intestate, cannot access her retirement plan, and cannot sue the negligent driver for causing Pat's death.

In this same situation, no one would question that Abby should be able to make medical decisions or seek a second opinion or move Carol from one hospital to another if her medical needs required those decisions to be made. But if Pat is a woman, and is the biological mother of Carol, then RSA 457:3 could arguable be read to say that the parties' marriage will not be recognized, including Abby's rights as a co-parent arising under that marriage. Thus, Abby may not be permitted to make those decisions while Pat is incapacitated and in the hospital.

It makes no sense for New Hampshire to try to erect a fence around the state and essentially tell same-sex couples in legally recognized marriages from Massachusetts or Canada, or legally recognized civil unions from Vermont or Connecticut, or legally recognized domestic partnerships from Maine and New Jersey (as well as California) that to visit, travel through, or move to the state includes the risk of losing their legally coupled status. It seems contrary to the

public policy of New Hampshire to want to do so. Why shouldn't Abby makes these decisions for Pat and Carol if they are unable to do so? Why would New Hampshire want to ignore their coupled status and treat them as single individuals with no legal responsibility for each other? Why should New Hampshire perhaps be responsible to pay for Pat and Carol's injuries because their family status under Abby's insurance is not recognized? How can it possibly help New Hampshire to refuse to recognize this couple and thousands of others like them that may one day visit, travel through, or move to the state.

The usual rule of validation of marriages exists with an "overwhelming tendency" in the United States for exactly these reasons. Courts and legislatures understand that a couple's marital status should not shift as the couple crosses a state border. Especially in New Hampshire where state borders are crossed every day, where same-sex couples have legal status in Vermont, Canada, Massachusetts, and Maine, it seems likely that more problems will be caused than solved by refusing to recognize those couples' marital or registered status whenever they cross the border and enter into New Hampshire.

The original version of RSA 457:3 started with a presumption that marriages legally contracted outside the state would be recognized in the state. It did so because so many problems arise otherwise. It would make more sense for New Hampshire to return to its previous statute and provide recognition in this state to all couples who entered into legally contracted marriages, civil unions, or domestic partnerships.

I'd be happy to answer any questions that any of the Commissioners might have. Thank you again for taking the time to listen to my comments today.

EXHIBIT A

CURRICULUM VITAE

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ACADEMIC EXPERIENCE

Professor of Law, California Western School of Law, San Diego, California, July 1991-present.

My duties include teaching Civil Procedure I and II, Property II, Women and the Law, and Comparative Issues in Family, Gender, and Sexuality. My scholarship focuses on legal rights of same-sex partners, conflicts of law, and interstate recognition of marriage and domestic partnership.

Associate Professor, 1988-1991; Assistant Professor, 1987-1988

Associate Dean for Academic Affairs, California Western School of Law, 225 Cedar Street, San Diego, CA 92101, July 1997-July 1998, January 1999-December 2001.

My duties, in addition to teaching one or two courses per academic year, involve managing the academic programs for the institution, including preparing the schedule; developing and overseeing academic budgets; implementing changes in and developments to academic programs; supervising the staff and offices of Student and Minority Affairs, Registrar, Faculty Support, Internship program, and Law review and journal; handling student complaints, concerns, and Honor Code allegations; and working with faculty on issues of faculty governance and development.

Interim Deputy Director, Association of American Law Schools, 1201 Connecticut Avenue, N.W., Suite 800, Washington, D.C., July 1998-January 1999.

My duties included providing staff support for AALS committees, including Executive Committee, Membership Review, Professional Development, Scholarly Papers Selection, Audit and Finance, and Minority Recruitment and Retention; assisting in all aspects of administration of the national office; representing the AALS at conferences and programs; planning and organizing the Candidates' Workshop at the Annual Faculty Recruitment Conference; and working with member schools on various issues.

Clinical Assistant Professor, Joint Appointment with the University of Wisconsin Law School and the University of Wisconsin Women's Studies Program, July 1986 - June 1987.

This position incorporated the duties of the legal writing supervisor and the women's studies lecturer positions listed below. In addition, I participated in Women's Studies program governance and committee work and supervised students in directed research and independent study.

Legal Writing Supervisor, 1984-1986
Lecturer, University of Wisconsin Women's Studies Program, 1985-1986

SELECTED PUBLICATIONS ON MARRIAGE AND CONFLICTS OF LAW

Books and Book Chapters

Cox, *Interstate Recognition of Same-Sex Couples' Relationships in the United States* in Marriage, Partnership, and Parenting in the 21st Century (Fabrini and Graupner, eds., 2006)(forthcoming Spring 2006).

Cox, Chapter 10 on "*Applying the Usual Marriage-Validation Rule to Marriages of Same-Sex Couples*" in Marriage and Same-Sex Unions: A Debate (Wardle, Strasser, Duncan, and Coolidge, eds, 2003).

Co-editor with Evan Wolfson, Practice Manual on Choice-of-Law and Full Faith and Credit Issues for Attorneys Bringing Same-Sex Marriage Recognition Cases (unpublished manuscript for Lambda Legal Defense Fund, completed July 1998).

Articles

Cox, *California Tracks National Discussion on Interstate Recognition of Same-Sex Couples' Legal Relationships,* California Litigation (forthcoming 2006).

Cox, *Using an 'Incidents of Marriage' Analysis When Considering Interstate Recognition of Same-Sex Couples' Marriages, Civil Unions, and Domestic Partnerships,* 13 WIDENER L.J. 699 (2004).

Cox, *Interstate Validation of Marriages and Civil Unions,* 30 (3) HUM. RTS. Q. 5 (Summer 2003).

Cox, *Adoptions by Lesbian and Gay Parents Must Be Recognized by Sister States Under the Full Faith and Credit Clause Despite Anti-Marriage Statutes that Discriminate Against Same-Sex Couples*, 31 CAP. U.L. REV. 751 (2003).

Cox, *But Why Not Marriage: Some Thoughts on Vermont's Civil Unions Law, Same-Sex Marriage, and Separate But (Un)Equal*, 25 Vermont L. Rev. 113-147 (2000).

Cox, "*The Little Project: From Alternative Families to Domestic Partnerships to Same-Sex Marriage,* 15 Wis. Women's L.J. 77 (2000)(Introducing the republication in 15th Anniversary

Issue of my 1986 article *Alternative Families: Obtaining Traditional Family Benefits Through Litigation, Legislation and Collective Bargaining*, 2 Wis. Women's L.J. 1-51 (1986)).

Cox, *Coalescing Communities, Discourses and Practices: Synergies in the Anti-Subordination Project,* Symposium Issue from the First Annual Lat/Crit Conference, 2 Harv. Lat. L. Rev. 473 (1997).

Cox, *The Lesbian Wife: Same-Sex Marriage as an Expression of Radical and Plural Democracy,* Symposium Issue on "Towards a Radical and Plural Democracy," 33 Cal. W. L. Rev. 155 (1997).

Cox, *Are Same-Sex Marriage Statutes the New Anti-Gay Initiatives?,* Symposium issue on "Reactions to Romer v. Evans, " 2 Nat'l J. Sex. Orien. L. (January 1997)[this is an on-line journal available at http://sunsite.unc.edu/gaylaw].

Cox, *Same-Sex Marriage and the Public Policy Exception in Choice-of-Law: Does It Really Exist?,* Symposium issue on "Federalism Revisited: Extraterritorial Recognition of Same-Sex Marriage," 16 Quinnipiac L. Rev. 61 (1996).

Cox, *A (Personal) Essay on Same-Sex Marriage*, 1 Nat't J. of Sexual Orien. L. (1995)[this is an on-line journal available at http://sunsite.unc.edu/gaylaw] (also published in *Same-Sex Marriage: The Moral and Legal Debate* 27-29 (Robert M. Baird & Stuart E. Rosenblum, eds., 1996).

Cox, *Practical Battles From Being Visible as a Lesbian*, 5 Rev. L. & Women's Stud. 89-104 (1995).

Cox, *Same-Sex Marriage and Choice of Law: If We Marry in Hawaii, Are We Still Married When We Get Home?,* 1994 Wis. L. Rev. 1033-1118.

Cox, *Love Makes a Family--Nothing More, Nothing Less: How the Judicial System Has Refused to Protect Nonlegal Parents in Alternative Families*, VIII Journal of Law and Politics 5-67 (Fall 1991).

Cox, *Choosing One's Family: Can the Legal System Address the Breadth of Women's Choices of Intimate Relationships,* 8 St. Louis U. Pub. L. Rev. 299-337 (1989).

Cox, *Alternative Families: Obtaining Traditional Family Benefits Through Litigation, Legislation and Collective Bargaining*, 2 Wis. Women's L. J. 1-51 (1986)(written and published 1987).

ACADEMIC TRAINING

University of Wisconsin Law School, Madison, Wisconsin, 1979-1982
Degree: J.D. cum laude, May 1982
Cumulative Average: 87.2 or "A" average, ranked about top 10% of the class
Honors: Dean's Award for Academic Achievement

Law Review Associate Editor Service Award
American Jurisprudence Civil Procedure Award
Member of Wisconsin Law Review (selection based on grades)
Dean's List for Academic Excellence 1979-1981

Michigan State University, East Lansing, Michigan, 1974-1978

Major: Justice, Morality and Constitutional Democracy (political philosophy/pre-law)
Degree: B.A. with highest honors, June 1978
Cumulative Average: 3.6 on 4.0 scale
Honors: Honors College, 1975-1978
Dean's List for Academic Excellence 1974-1977

SELECTED PROFESSIONAL AND COMMUNITY ACTIVITY

Wrote *Amicus Curiae* Brief submitted to Massachusetts Supreme Judicial Court in *Cote Whiteacre v. Dep't of Public Health, No. 09436,* submitted March 11, 2005, on behalf of Conflict of Law and Family Law Professors

Member, San Diegans Against Marriage Discrimination, Organizing Committee in San Diego to oppose proposed Constitutional Amendments banning marriage between same-sex couples and eliminating domestic partner rights (on ballot June 2006).

Editorial Board Member, *Same-Sex Partnership Law Report,* appointed March 2005.

Chair, Executive Committee, Freedom to Marry (the national organization focused on obtaining the freedom to marry for same-sex couples), since February, 2003.

Chair, AALS Section on Women in Legal Education, calendar year 2003.

Member, San Diego Steering Committee, No on Knight–Proposition 22 Initiative Campaign, August 1999-March 2000.

Met with Congressman Bob Filner on strategies for opposing the Defense of Marriage Act legislation pending in Congress, July 6, 1996.

Member, Committee on Lesbian, Gay and Bisexual Faculty Concerns, American Association of University Professors, appointed by A.A.U.P. President James Perley, Fall 1994-1999.

Volunteer Attorney, National Center for Lesbian Rights, San Francisco, California, December 1993-1995. I wrote an *amicus curiae* brief to the Wisconsin Supreme Court in the case of *Holtzmann v. Knott* encouraging the court to reverse its earlier decision refusing to recognize lesbian co-parents in visitation cases. The court did reverse its position and became the first Supreme Court to recognize co-parents as having visitation rights.

Member, AALS Working Group on Sexual Orientation Discrimination and Religiously-Affiliated Law Schools, appointed by A.A.L.S. Executive Committee, December 1991-November 1993.

Executive Committee member, AALS Section on Gay and Lesbian Legal Issues, 1992.
Chair of Section, 1991 calendar year.
Chair-elect, 1990 calendar year.
Secretary, 1988 and 1989 calendar years.

Co-chair, Alternative Family Rights Taskforce, August 1983 - September 1985 (this was a taskforce established by the Madison Equal Opportunities Commission to study the feasibility and desirability of passing a city ordinance to extend traditional family benefits to alternative families).

PRESENTATIONS

Panelist, Higgs Fletcher Memorial Lecture at UCSD with S.F. Mayor Gavin Newsom, on marriage equality in CA, April 11, 2005.

Panelist, "The Law of Marriage and Domestic Partnerships in California," California Western School of Law, March 30, 2005.

Presentation, "Same-Sex Marriage and California Domestic Partnerships," Certified Family Law Specialists of San Diego County Bar Association's Winter Seminar, December 11, 2004.

Debate, "Should Marriage be Extended to Lesbian and Gay Couples," University of San Diego Law School, February 2004.

Panelist, "Interstate Recognition of Adoptions by Gay and Lesbian Parents," Theory Meets Practice Symposium, American University Washington College of Law, October 11, 2003.

Panelist, "Adoptions by Lesbian and Gay Parents Must Be Recognized by Sister States Under the Full Faith and Credit Clause Despite Anti-Marriage Statutes that Discriminate Against Same-Sex Couples," Marriage, Adoption, and the Best Interests of the Child Symposium, Capital University Law School, Oct. 31-Nov. 2, 2002.

Plenary Session Panelist, "Pursuing Legal Recognition of Same-Sex Relationships–A Roundtable Discussion," Lavender Law Conference, Philadelphia, Pennsylvania, October 2002.

Panelist, "Interstate Validation of Same-Sex Unions: How are the Courts Addressing Vermont Civil Unions," Lavender Law Conference, Philadelophia, Pennsylvania, October 2002.

Convenor and panelist, "Legally Recognized Forms of Same-Sex Partnership and Conflicts of Law/Private International Law," Conference on "Marriage, Partnerships, and Parenting in the 21st Century," Turin, Italy, June 5-8, 2002.

Panelist, “Lesbian Rights: Legal Issues and Legislative Initiatives,” Western Regional NOW conference, April 27, 2002.

Testified Before California Assembly Judiciary Committee concerning AB 1338 (Civil Unions Bill), Los Angeles, CA, November 5, 2001.

Plenary Session Panelist, “Extraterritorial Recognition of Vermont Civil Unions,” Lavender Law Conference, Washington, DC, October 2000.

Panelist, “Where Do We Go From Here? Same-Sex Marriage and Vermont Civil Unions,” Lavender Law Conference, Washington, DC, October 2000.

Panelist, “Current Developments in Sexual Orientation Law,” State Bar of California Conference, San Diego, CA, September 23, 2000.

Speaker, “Same-Sex Marriage and Interstate Recognition,” Sexual Orientation and the Law Course, Thomas Jefferson School of Law, November 17, 1999.

Panelist, “Marriage: Post-Breakthrough Issues and What We Can Do Now To Protect Our Future Victory,” Lavender Law Conference, Seattle, Washington, October 1999.

Speaker, “Challenges to Same-Sex Marriage Initiatives Using the Guaranty Clause of State Constitutions,” Freedom to Marry Symposium, Harvard University Law School, February 1999.

Panelist, “Pros and Cons on Whether to Permit Same-Sex Marriage,” University of New Mexico Law School, March 1998.

Commentator, “Race, Ethnicity and Sexual Orientation,” Association of American Law Schools National Conference, January 1998.

Speaker, “Same-Sex Marriage and Political Action,” Unitarian Universalist National Conference, San Diego, California, March 1997.

Speaker, "Same-Gender Marriage on the Horizon," sponsored by the San Diego County Bar Association, San Diego, California, October 1996.

Panelist, "Same-Gender Marriage on the Horizon," sponsored by the Human Rights Committee and the Committee on Sexual Orientation Discrimination, California State Bar Annual Meeting, Long Beach, California, October 1996.

Panelist, "Family Law and Sexual Minorities," sponsored by the Family Law Section, California State Bar Annual Meeting, Long Beach, California, October 1996.

Panelist, "Extraterritorial Recognition of Marriages by Same-Sex Couples: A View from the Trenches," at Symposium on the Right to Same-Sex Marriage, Quinnipiac College School of Law, September 1996.

Testified Before California Senate Committee on the Judiciary on A.B. 1982, Which Would Have Amended State Marriage Validation Statute to Prevent Recognition of Same-Sex Marriages, July 9, 1996.

Panelist, "Legislative Attempts to Prevent Same-Sex Marriage," at Gay and Lesbian Alliance Against Defamation Program, San Diego, California, March, 1996.

Panelist, "The Future of Same-Sex Marriage Since Baehr v. Lewin," at American Association of Law Schools National Conference, January 1996.

Panelist, "Choice-of-Law Issues in Marriage Cases involving Same-sex couples" at the 1994 Lavender Law Conference, Portland, Oregon, October 1994 (two panel presentations).

EXHIBIT B
Testimony of Professor Barbara Cox
Conflicts of Laws

Supplemental New Hampshire Case Law Citations

In *Sirois v. Sirois*, 94 N.H. 215, 50 A.2d 88 (1946), the Court stated that "the marriage status ... is of great importance not only to the individual, but also to the state where he makes his home." The court also said that the "authority of a state to decide what marriages it will recognize is beyond question. . . ." *Id*. at 216, 50 A.2d at 88-89. Although holding that an underage marriage which violated both the laws of the state of celebration (MA) and the state of the couple's domicile (NH) could be annulled, the court recognized the importance of the law of the state where the couple was domiciled in determine the marriage's validity.

In *Shippee v. Shippee*, 95 N.H. 450, 66 A.2d 77 (1949), the Court cited the First Restatement of Conflicts of Laws, sec. 121, for the proposition that the "validity of the marriage ceremony performed in New York. . . depends on the law of that state." *Id*. at 451, 66 A.2d at 78. It held that the judgment entered by the state of California was "conclusive upon all other courts." *Id*.

In *Fowler v. Fowler*, 96 N.H. 494, 79 A.2d 24 (1951), the Supreme Court of New Hampshire stated that "[t]he effect of the removal of the impediment to the marriage must be determined according to the law of this jurisdiction, where the parties have had their domicile. . . ." *Id*. at 496-97, 79 A.2d at 27.

In *Smith v. Smith*, 99 N.H. 362, 111 A.2d 531 (1955), the Court held that the parties' New Hampshire marriage was valid despite the fact the couple knew that they could not be married in Massachusetts because the wife's divorce was not yet absolute, but believed in good faith and on the advice of their lawyer that they could marry in New Hampshire. The court stated that the marital status of an individual "is fixed by the law of the domicil[e]; and that status is to upheld in every other state, so far as. . . not inconsistent with its own laws and policy." *Id*. at 364-5, 111 A.2d at 533. Using the example of a common law marriage, the court recognized that such a marriage validly contracted in one state would remain valid when the parties changed their domicile, "even though such a marriage may not legally be contracted in the latter state." *Id*. at 365, 111 A.2d at 533. It held the same rule controlled this case; if the marriage became valid in Massachusetts while the parties were domiciled there, then it was properly recognized as valid in New Hampshire. *Id*. *See also*, *Laplant v. Laplant*, 99 N.H. 357, 111 A.2d 325 (1955)(holding that marriage that was void in OK when entered, but became valid under MA law while the parties were living in MA, should be recognized in NH where the parties later became domiciled.)