



**TO: Senate Judiciary Committee Members**  
**FROM: Allen Gilbert, executive director, ACLU of Vermont**  
**DATE: March 16, 2009**  
**RE: S. 115 -- Same-sex marriage**

In a 1926 case where he defended black Detroit residents who had tried to move into a white neighborhood, Clarence Darrow said, “I believe the life of a Negro has been a life full of tragedy, of injustice, of oppression. The law has made him equal, but man has not . . . . I know there is a long road ahead of him before he can take the place which I believe he should take.”

Darrow was speaking to the enormity of the task before black Americans -- of not simply being told they had been given equality, but of actually having equality.

This is the kernel of every civil rights struggle. It is the kernel of the question before you regarding marriage rights.

Our civil unions law of 2000 was a transition on the road to full equality for people of the same sex who wish to marry. It was a solution invited by the *Baker* decision, but it was nonetheless recognized as an imperfect solution.

The law said civil unions are equal to marriage. But built into the law was the acceptance that a gay couple’s marriage was not the same as a heterosexual couple’s marriage. It was “separate but equal.” If it were truly equal, it would be called the same thing -- marriage. But it wasn’t. Committed relationships for same-sex couples were deemed “civil unions.”

This was the same sort of solution black Americans had to live under in this country for a century while they fought for equality -- even though they supposedly had equality.

We agree as a society to live under the same set of laws, and we have a right to ask for the same set of benefits as others enjoy. This is core to our values as Vermonters and as Americans. Liberty, as we hope it exists, is diminished when we deviate from the equal protection of everyone’s rights.

The challenge before this committee is how best to ensure that the rights that same-sex couples should have are provided to them.

I have little doubt that if Vermont were an independent nation and we could decide this issue as a sovereign people, we would grant gay couples equal marriage rights with all deliberate speed.

Our hesitation to do this is, I think, is based on a fear, as a member of a union of states, of being out-of-step with the rest of the nation. We are particularly worried about how federal law may continue to discriminate against those we want to help to gain rights equal to the rights long held by the majority.

The ACLU believes that we should not let this hesitation stand in the way of doing the right thing. The government of the state of Vermont should end the discrimination that currently exists against gay couples wishing to marry.

American abolitionist Theodore Parker said during the long struggle to free black Americans from slavery, "The moral arc of the universe is long, but it bends towards justice."

It is rare that we as individuals are given the opportunity to bend that arc. Such an opportunity is before you now. Please seize it and do the right thing. Grant marriage equality for same-sex couples.

I would be happy to come before the committee and answer members' questions.