

MARK LEWIS and DENNIS WINSLOW;  
SAUDRA HEATH and CLARITA  
ALICIA TOBY; CRAIG HUTCHISON  
and CHRIS LODEWYKS; MAUREEN  
KILIAN and CINDY MENEGHIN;  
SARAH and SUYIN LAEL; MARILYN  
MANEELY and DIANE MARINI; and  
KAREN and MARCYE NICHOLSON-  
MCFADDEN,

Plaintiffs-Appellants,

vs.

GWENDOLYN L. HARRIS, in her official  
capacity as Commissioner of the New  
Jersey Department of Human Services;  
CLIFTON R. LACY, in his official  
capacity as Commissioner of the New  
Jersey Department of Health and Senior  
Services, and JOSEPH KOMOSINSKI, in  
his official capacity as the Acting State  
Registrar of Vital Statistics of the New  
Jersey State Department of Health and  
Senior Services,

Defendants-Respondents.

SUPREME COURT OF NEW JERSEY  
DOCKET NO. 58,389

ON APPEAL FROM THE SUPERIOR COURT  
OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-002244-03T5

Sat Below:

Hon. Stephen Skillman  
Hon. Donald G. Collester  
Hon. Anthony J. Parrillo

**BRIEF OF *AMICUS CURIAE* CITY OF ASBURY PARK IN SUPPORT OF  
PLAINTIFFS-APPELLANTS' APPEAL**

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*Amicus* City of Asbury Park (“Asbury Park”) respectfully submits this brief in support of the appeal by Plaintiffs-Appellants from the June 14, 2005 decision of the Appellate Division affirming the trial court’s determination that New Jersey’s exclusion of same-sex couples from the institution of civil marriage does not violate the State Constitution.

### **INTEREST OF AMICUS CURIAE**

Asbury Park is a community of slightly fewer than 20,000 citizens located in Monmouth County, New Jersey. The city has historically been noted for its racial, economic and cultural diversity, and has strongly valued and vigilantly protected the civil rights of all of its residents. On March 8, 2004, in continuation of its tradition of tolerance and inclusion, and to meet what it believed to be its obligation under both the state and federal constitutions, Asbury Park announced that it would commence issuing marriage licenses to same-sex couples.

That same day, Asbury Park became the first municipality in New Jersey to issue a marriage license to a same sex couple, Asbury Park residents Ric Best and Louis Navarette. Deputy Mayor James Bruno officiated at Mr. Best’s and Mr. Navarette’s wedding at Asbury Park’s City Hall. Within hours of these historic developments, Peter C. Harvey, Attorney General of the State of New Jersey, announced that he would pursue legal action to enjoin New Jersey public officials from performing same-sex marriages, and would seek to have any marriage licenses issued to same-sex couples ruled invalid. Attorney General Harvey later informed Asbury Park that city officials would risk criminal prosecution if they were to perform any additional same-sex marriages. In light of this admonition, Asbury Park ceased issuing marriage licenses to same-sex couples.

As a result of these events, Asbury Park and its local government officials have been directly affected by the State's policy with respect to same-sex marriage. Accordingly, Asbury Park's participation as *amicus curiae* will uniquely assist the Court in resolving the issues of great public importance raised by this case.

### **PRELIMINARY STATEMENT**

The issue before this Court – whether same-sex couples are entitled to enjoy the benefits and assume the responsibilities inherent in civil marriage – is not an isolated question that any community in our state can ignore. Same-sex couples are an important presence in New Jersey - the 2000 census reported that at least 16,000 same-sex couples reside in the state, and the actual number may in fact be much greater. Furthermore, many of these couples have assumed the responsibilities of adopting and raising children. In light of these realities, New Jersey's local governments have a significant stake in this debate. Granting same-sex couples the right to marry would further and more formally incorporate them into New Jersey's local communities. And it would also encourage same-sex couples to assume the legal responsibility for caring and providing for each other and their children, and thus greatly reduce the possibility that government must do so. Accordingly, because extending to same-sex couples the freedom to marry would strengthen New Jersey's local communities and thereby improve the lives of all the state's citizens, and because the state's current policy of limiting participation in civil marriage to different-sex couples violates the State Constitution, the decision of the trial Court should be reversed.

### **PROCEDURAL HISTORY AND STATEMENT OF FACTS**

Asbury Park incorporates the Procedural History and Statement of Facts set forth in the Brief of Plaintiffs-Appellants.

## ARGUMENT

### AFFIRMING THE RIGHT OF SAME-SEX COUPLES TO MARRY WOULD BUILD STRONGER COMMUNITIES.

New Jersey's refusal to allow Plaintiffs-Appellants and other same-sex couples to participate in civil marriage violates their fundamental rights, and denies them equal protection and due process under the State Constitution. The strong interest of each of the Plaintiff-Appellants in marrying the person whom he or she loves is self-evident, and far outweighs the state's purported interests in preserving a discriminatory historical understanding of marriage and ensuring "uniformity" between New Jersey's marriage laws and those of other states. However, this Court's affirmation of the right of same-sex couples to marry would not only address these constitutional infirmities, but would also serve a wide range of important community interests.

As an initial matter, extending the imprimatur of marriage to committed same-sex relationships would affirm the dignity of same-sex couples, promote their self-respect, and foster their sense of belonging to their communities. As the Ontario Court of Appeal has observed, it is through the institution of marriage that

society publicly recognizes expressions of love and commitment between individuals, granting them respect and legitimacy as a couple. This public recognition and sanction of marital relationships reflect society's approbation of the personal hopes, desires and aspirations that underlie loving, committed conjugal relationships. This can only enhance an individual's sense of self-worth and dignity.

*Halpern v. Toronto (City)*, 2003 CarswellOnt 2159 at \*12, ¶ 5 (Ont. Ct. App. 2003). See also Joseph Dee, “Domestic Partners Get Hitched to Legal System,” *Trenton Times*, January 13, 2004, at A1 (reporting that legal recognition of same-sex relationships “will provide a boost of self-esteem to young people who feel the sting of homophobia”). This result would improve the quality of life of all citizens by encouraging same-sex couples who might previously have felt marginalized, alienated or less important to more fully participate in, and thus contribute to, their communities.

Granting same-sex couples the right to marry would also help local communities better protect the interests of children, their most vulnerable members. First, encouraging committed same-sex couples to formalize their relationships through marriage would help make those relationships more permanent, and increase the likelihood that the children of same-sex couples will grow up in enduring, stable families. Second, allowing same-sex couples access to marriage would ensure that children of same-sex couples presumptively enjoy permanent legal relationships with both parents. Each parent would then automatically be legally responsible for, and could make decisions and take action on behalf of, all of the couple’s children. And third, recognizing same-sex marriages would promote and support the self-esteem of the children of same-sex couples by affirming that their families, while nontraditional, are legitimate and entitled to public recognition and respect.

Moreover, recognizing the right of same-sex couples to marry would promote the values that New Jersey’s communities strive to achieve and maintain. Marriage (whether between same-sex or different-sex couples) helps build, strengthen and support families. It is through families that communities inculcate and pass down their most important moral and cultural values. It is through



families that all persons, especially children, learn the importance of love, selflessness, respect, honor, and a commitment to a larger end beyond one's self. Expanding the institution of marriage to include same-sex couples would help ensure that the core values that bind New Jersey's communities together are disseminated as widely as possible, and are thus best learned and embraced by future generations.

Finally, recognizing the right of same-sex couples to marry would reduce the number of citizens reliant upon government services, thereby enabling local governments and public officials to perform more efficiently and effectively the vital public services they provide and upon which their communities depend. Participation in civil marriage affords a wide variety of economic protections that greatly reduce the likelihood that married persons will require government assistance to make ends meet. For example, marriage provides an individual access to his or her spouse's health, social security, disability and death benefits, and, where relevant, the right to alimony and child support. In addition, married couples assume responsibility for each other's basic living expenses and liabilities, which the state may then consider in determining their eligibility for government assistance programs.

The 2000 census reported that at least 16,000 same-sex couples reside in the state, and the actual number may in fact be much greater. *See* Ruth Padawer, "Census 2000: Gay Couples, At Long Last, Feel Acknowledged," *The Record (Bergen County, NJ)*, August 15, 2001 at p. 104. The financial impact of granting these couples the right to marry would be significant: one study has concluded that New Jersey's recently-adopted Domestic Partnership Law (the "DPL"), N.J.S.A. 26:8A-1 *et seq.*, which grants same-sex couples many (but not all) of the economic benefits of marriage, is expected to reduce government spending on public

assistance by between \$46 million and \$92 million each year, and to result in an overall net savings to the state of more than \$61 million. See M.V. Lee Badgett, Bradley Sears, Suzanne Goldberg, *Supporting Families, Saving Funds: A Fiscal Analysis of New Jersey's Domestic Partnership Act*, December 2003, available at [http://www.iglss.org/media/files/DPA\\_final.pdf](http://www.iglss.org/media/files/DPA_final.pdf), at pp. 2, 8-10, 23-24. This is not surprising. As the Legislature has expressly acknowledged, the same-sex relationships recognized by the DPL "assist the State by establishing a private support network for the financial, physical and emotional health of their participants." N.J.S.A. 26:8A-1. The DPL, though, does not grant same-sex couples all of the economic rights inherent in civil marriage, such as the right to support or alimony in the event that a partnership is dissolved, or the right to inherit a deceased partner's estate in the absence of a will. See N.J.S.A. 26:8A-1 *et seq.* Therefore, granting same-sex couples the ability to realize the additional economic protections and benefits that only marriage offers is likely to result in even more substantial government savings than those expected under the DPL. It is apparent, then, that inviting committed same-sex couples to assume the mutual responsibilities and obligations of marriage and family would help relieve local governments of many economic and social burdens they might otherwise be required to bear, and would free additional resources that local governments could use to further improve their communities.

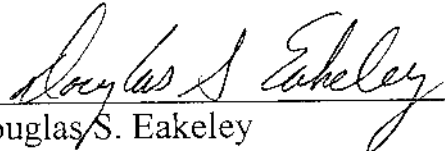
**CONCLUSION**

For the reasons stated above, Asbury Park respectfully submits that recognizing the right of same-sex couples to marry would strengthen the varied communities that make up our state, and improve the lives of all of New Jersey's citizens. Accordingly, Asbury Park urges the Court to reverse the decision of the Appellate Division, and to grant Plaintiffs-Appellants the declaratory and injunctive relief they seek.

Respectfully submitted,

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