

Politics & People / By Albert R. Hunt

## Gay Marriage Constitutional Amendment: A Loser

**B**arney Frank, only hours after George Bush has endorsed a constitutional amendment outlawing gay marriages, is upbeat: "This makes the issue easier to differentiate."

The Massachusetts Democrat is one of the three openly gay members of the House; the other two are Tammy Baldwin, a Wisconsin Democrat, and Jim Kolbe, an Arizona Republican. Gay marriage, with the president's embrace of a constitutional change, is emerging as a hot-button issue in this year's campaign. An hour-long conversation with Rep. Frank, as astute politically as he is liberal, is instructive.

The opponents start off with an advantage, he acknowledges, but time is not on their side, especially for a constitutional amendment. The president may have galvanized some social conservatives, he adds, but he also made it much easier for Democrats, including John Kerry, to stake out a middle ground acceptable even to the liberal interest groups. He offers a critical caveat: Demonstrations like the mass gay and lesbian marriages in San Francisco will cause a political backlash.

In years past, Rep. Frank observes, opponents would have simply said, "These (gay) people are bad. But that's now considered an act of prejudice, so they have to show what we do has a negative effect on other people." That happens, he ventures, when average citizens—who never think about this issue "hear" respectable people—the archbishop, the president saying, "This is going to affect you and your family."

But the more the issue is discussed and the more there are actual experiences the more it's clear that's a canard. Rep.

Frank cites Vermont, where a controversial civil-unions measure was signed into law by Gov. Howard Dean four years ago: "Civil unions were a ferocious issue in Vermont," Rep. Frank recalls; Republicans took over the legislature in the next election. "But today it's a non-issue. In Vermont, civil unions are boring to all people who aren't in them . . . and probably are to some people who are in them too."

Gay marriages don't threaten others or destabilize the institution of marriage. (Chicago mayor Richard Daley, no left-winger, recently dismissed the notion that gay unions are any insidious threat: "Marriage has been undermined by divorce.") Voters, who have no objection in principle but worry about destabilizing social effects, will ultimately see this reality.

It's Barney Frank's home state of Massachusetts that ignited the latest flurry, when the state's Supreme Judicial Court said the state had to permit gay marriages. There's expected to be a referendum in a few years, and the gay and lesbian community has been adhering to this lawful process.

**T**hat's in strong contrast, Rep. Frank notes, to San Francisco, where they "are ignoring the law" and "trivializing marriage." Few have more credibility to criticize the San Francisco actions than Barney Frank; the city's mayor, Gavin Newsom, earlier consulted with the Massachusetts lawmaker but then ignored and misrepresented his counsel.

The San Francisco circus was illegal and also has been denounced by Republican Gov. Arnold Schwarzenegger, a staunch opponent of President Bush's call for a constitutional amendment ban-

ning gay marriages. It's a hoax on those participating. "People all over the country went to San Francisco and got married," Mr. Frank notes. "They have no chance of being held valid."

The mass marriages play into the hands of the constitutional amendment forces, he says. "First, it's annoying people; unlike Massachusetts where people are obeying the law." And it creates the impression that it forces other states to accept gay marriages conducted in San Francisco or elsewhere. Yet, notes Rep.



Barney Frank

Frank, a senior Democrat on the House Judiciary Committee, many legal experts, such as Yale law professor Lea Brilmayer, argue just the opposite.

His criticism has provided political cover for other liberals, although he insists, "I'm not doing this to help John Kerry. I'm doing it to help same-sex marriage. It directly conflicts with what we're arriving at in Massachusetts."

But he believes putting the constitutional amendment front and center redounds to the benefit of the Democratic presidential nominee. "It gives John Kerry a way to differentiate himself from George Bush without endorsing same-sex marriage."

Ordinarily the style of liberal interest groups—including gays and lesbians—would be to demand total fealty from politicians. But the resentment of the

president on this score, Rep. Frank believes, already has engendered more accommodation. Now Sen. Kerry's "support for civil unions" will be "sufficient to generate widespread support" in the gay community.

**W**hat the constitutional amendment would do, of course, is prohibit states from deciding the gay issue on their own. That, he says, is making a number of Republicans squirm. House Judiciary Committee Chair Jim Sensenbrenner, among others, has expressed little interest in the issue.

"Privately, a number of my Republican colleagues say they don't want this issue to come up," notes Rep. Frank. In the House, the amendment has 116 co-sponsors today, or only 40% of the two-thirds required to approve a constitutional change. "Eight years ago, when the issue was the Defense of Marriage Act—which prohibits forcing any state to recognize gay marriages performed in another state—"there were almost twice as many co-sponsors at this juncture."

The whole issue of sex and the law is thorny. Seventy-eight years ago, when the late segregationist Strom Thurmond fathered Essie Mae Washington-Williams with his African-American housekeeper, "he could have sex, but he couldn't have married her legally," notes Rep. Frank. That's where the gay marriage bashers would lead us. Barney Frank is convinced that this will be transparent to most Americans.

Meanwhile, he's figuring out whether to hang a picture of himself and his partner at a high-powered Washington event. The other couple in the picture is George and Laura Bush.