

## Two Men and a Baby

### Gay Marriage Would Protect The Children Of Committed Same-Sex Pairs

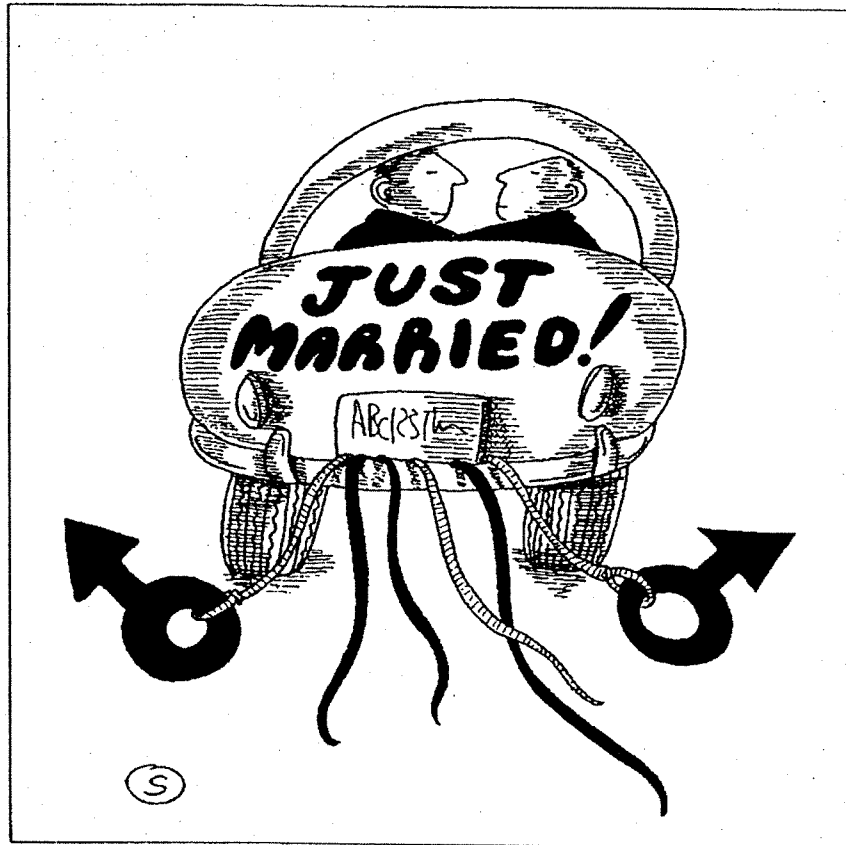
By Fred Silberberg

The debate over Proposition 22 is now in full swing. It seems to be in the media daily. In fact, it appears that the subject of homosexual marriage is today's news all over our nation. The debate over legalization is in full swing from Virginia to Hawaii, as well as in California. However, there is one part of the debate we never hear about. That part concerns children. As a family law attorney, I think it is time that we looked at the issue differently. For if we examine the issue of gay marriage through the eyes of a child, we might come to a different conclusion than that favored by right-wingers.

To be sure, conservatives around the nation will tell us that one of the reasons for prohibiting same-sex marriage is to protect children. Don't we need to ensure that children are not placed in a deviant household? We don't want to let children think that such behavior is acceptable. If it is children that we are trying to protect, then we need to look at the issue from their point of view.

The cause of homosexuality and whether it is deviant or acceptable conduct are not the issues we should be focusing on. What is relevant is the fact that a noticeable percentage of the population is gay and that part of that population chooses to live monogamously, as do many of us. Of those people, many also make the choice to raise children. Some of them do it by adoption, and others by arranging for a surrogate mother or insemination. In either event, the result is the same. Children are either born to, or reared by, gay couples. That is a fact of life. It is a fact brought upon the children of these relationships, who have no say in the matter.

There is one significant difference, though. If the parents of these children cannot legally marry, that creates a significant problem for the children. The children are "illegitimate" and the parents have no rights regarding custody. If the parents have no such rights, then the children are not protected.



Let's take the hypothetical example — which isn't always hypothetical — of Anne and Eve, a lesbian couple who have two children that they have raised from birth. The children, Sara and Ben, were conceived by artificial insemination. Sara is the biological child of Anne and an anonymous sperm donor. Ben is the biological child of Eve and a male friend who willingly donated his semen so that she could become pregnant. Sara is 6 years old and Ben is 5. Both children are very attached to Anne and Eve, who have raised them since birth.

Anne and Eve split up. Each takes their respective child with them to a new home. Anne wants to share custody with Eve, who refuses. Every night at bedtime, each child asks his or her mother where his or her sibling is. Every night at bedtime, each child asks his or her mother where the other woman is. Every night at bedtime, each child cries himself or herself to sleep. To the children,

the situation is an inexplicable loss.

Anne goes to court to try to obtain custodial rights. There's only one problem — Anne and Eve were never legally married, although they wanted to be. The family law court has no jurisdiction to make any provisions. In the end, who suffers? The children. Fast-forward the tape a bit. Ben's biological father has never had a relationship with the child. Unbeknownst to anyone, he has a drug problem. Upon learning that Anne and Eve have separated, he decides he wants rights to Ben. The child was conceived by artificial insemination, but it was not done by a licensed physician. Ben's father obtains legal rights to the child, while Anne cannot. Is this result what we want for Ben? Is this result in Ben's "best interests"?

If we are truly concerned about the best interests of children, then why wouldn't we offer the children, the innocent victims, the protection that allowing their parents to marry would provide? We used to look down upon adults who had chil-

dren out of wedlock and we referred to their children as "illegitimate" and "bastards." It appears that as a society, we are finally enlightened enough to understand that there are no illegitimate children — although there may be irresponsible parents. Shouldn't we treat children of gay relationships the same way? Aren't those children as legitimate as you or I? This, above all other reasons, should justify the legalization of gay marriage.

It's a new millennium, and homosexuality is out of the closet. More people live openly gay lives now than ever before, and they are accepted in many parts of the country — excluding Montana — as productive members of society. As part of that trend, children are being raised in gay households. Isn't it time we protected those children? Gay marriage should be legalized for their sakes alone.

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