

Forum

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Same-Sex-Unions Bill Helps Stabilize Families

By Fred Silberberg

Recently, the Massachusetts Supreme Court ruled in *Goodridge v. Department of Public Health* that the state did not have the right to deny the protections of marital status to its residents based on sexual orientation. Although the outcry from politicians and pundits trying to "correct" this act by the state Supreme Court has been significant, the court instead should be applauded for changing the law so that it is consistent with what is happening in our society.

A burgeoning class of individuals, including children, need legal protection. If we continue to fail to provide that protection, we harm not only children but also society as a whole. Rather than spending tremendous energy and effort to fight this decision, we should simply live and let live. Attempts to regulate human behavior legislatively are useless.

As a result of the U.S. Supreme Court decision in *Lawrence v. Texas*, which overturned a law prohibiting homosexual sodomy, the legalization of gay marriage in Canada, and now *Goodridge*, the fires of the conservative way of thinking are being stoked. This unfortunately has caused politicians everywhere, including our president, to jump onto the bandwagon in support of the Defense of Marriage Act.

In California, we recognize that this ongoing public spectacle is unnecessary. While the debate raged all across the nation as to whether same-sex couples should be given equal treatment to that received by straight couples, the state Legislature enacted AB205, and, appropriately, no one seems to have batted an eye.

Starting Jan. 1, 2005, same-sex couples who register as domestic partners will be given essentially the same rights as married people. This will extend to registered, same-sex partners the protections formerly provided only to married parties and will give our family courts jurisdiction over an entire class of individuals who heretofore had no such rights.

It may not be called "marriage" in California, but it gives registered, same-sex couples most of the rights of married couples. For example, the new bill mandates that existing state forms which refer to a husband, wife or spouse be revised to refer also to domestic partner.

The bill also gives courts the ability to

award spousal or child support to people who are so registered, allows such people the right to accumulate community property and provides for survivorship rights.

With the exception of the ability to file a joint income-tax return, the bill essentially provides all of the same rights to same-sex individuals as heretofore have existed only for married couples.

The bill sets forth that its intent is to provide equality of rights to all Californi-

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ans in committed relationships and that the state has an interest in fostering the stability of familial relationships, which this legislation is intended to enhance.

Essentially, this legislation merely gives legal recognition to that which is becoming more and more commonplace in our society: same-sex couples. Gay families are no longer an anomaly in our society, and the number of children in such families is growing exponentially.

This bill thankfully recognizes that fact and extends legal protections that are long overdue to those children.

Conservative opponents to this and other similar legislation argue that sanctioning such relationships and the children who follow somehow "dilutes" the value of heterosexual marriage. They argue that the legitimization of such relationships encourages immoral behavior.

The conservative view on this issue misses the point. The simple truth is that, in our open society, people are able to do what they want. That is one of the essential differences between America and the rest of the world.

Because of this freedom, same-sex couples have been forming long-standing unions for years and have formed families through those unions.

Denying such couples the protection of the law would not stop them from pursuing the goals of forming a family. The lack of such protections would and do, however, create unnecessary legal complications that are detrimental to children who have bonded with their parents, regardless of gender.

The case of *Sharon S. v. Superior Court*, 31 Cal.4th 417 (2003), is a prime

example. In *Sharon S.*, the San Diego Department of Social Services had a policy of allowing same-sex couples to adopt, even though such a practice was not specifically authorized by statute. When a particular same-sex partnership dissolved, the biological mother of the children objected to her former partner being able to adopt the children that the partner had helped raise. The appellate court, however, refused to recognize any rights for the nonbiological parent, thereby sanctioning the abrupt termination of the relationship between the nonbiological parent and the children.

Conservatives tell us that the family unit is sacrosanct. Studies buttress this and demonstrate that children indeed fare better when raised within the constructs of a family, particularly if a parent is able to stay home with a child.

Denying same-sex parents the right to accrue property with their working partner and disallowing one parent in a same-sex couple from obtaining support from the working partner after the relationship ends harm the children of that relationship. By denying the children of same-sex unions the ability to receive child support, we directly harm the child.

AB205, therefore, promotes family values. It assures that these nontraditional families will have rights, benefits and legal protections to those that traditional families have had.

That, in turn, provides stability to these families and a means by which their children and the participants can be protected. It also encourages same-sex couples to enter into and stay in committed relationships to obtain those benefits, and it sends a message to them that, by entering into such legally sanctioned relationships, their rights as parents are protected.

If a goal of our society is to foster committed unions, we should encourage stability through such legislation as AB205.

If public policy is to encourage monogamy for as many of our citizens as possible, then we must recognize the need for certain incentives to become monogamous. AB205 thankfully provides those incentives.

Fred Silberberg is a certified family law specialist and a partner at Silberberg & Ross in Brentwood.