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## Same Sex Marriage: Legislating Morality

By Virginia Bola, PsyD

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Biologically, a coupling between male and female (with some very rare exceptions like aphids, mites, and some lizards) is required for procreation, critical for survival of the species. On the other hand, marriage is a human social contract, historically accepted as the optimum means of raising offspring who require years of care before they become independent.

Divine blessing on the union is important to many but marriage in the eyes of religion is totally separate from the civil contract of marriage itself. It is the civil contract which has legal standing for government programs like social security and which can be severed by the courts in divorce proceedings. As a social contract between two individuals, the presumption that one must be male and one must be female is irrelevant.

Marriage is certainly an emotional and legal commitment. Once two individuals make the choice that they will spend the rest of their lives together, society approves the decision, notwithstanding the fact that only half of us will be able to permanently remain in that relationship. It is approved because it is a force for stability and responsibility, both vital if a culture is to thrive.

Most married couples have children; many do not. Child rearing is therefore only one aspect of the state of matrimony, not the sole reason for its existence. So why the outcry against same-sex marriage which brings the same forces of stability and responsibility to society as do heterosexual unions?

I suggest that the widespread movement against gay marriage is not really directed at marital vows at all but is a revolt against homosexuality itself. Rather than supporting gays by letting them receive legal sanction for their relationships, we want to punish them. They have stepped outside the bounds of our experience. They make us feel uncomfortable. We see a young man and a girl kissing on the street and smile. We see two young men kissing and emotionally recoil. Most heterosexuals cannot understand gays and unconsciously think that there is "something wrong" with them. (Until 20 years ago, homosexuality was listed as a mental disorder!) If men are from Mars and women are from Venus, gays are from another galaxy.

## Same Sex Marriage: Legislating Morality

Because of our discomfort or, in many cases, disgust, we try to legislate them out of existence. The courts, and the culture at large, will not allow us to get rid of them. All we have left is an ability to relegate them to a less-than-equal status by denying them an important social right: marriage. That denial, codified in 11 states on election night, 2004, revealed a fearful desire to legislate morality and conduct according to a pre-conceived idea of what is right and wrong for everyone regardless of their religious, moral, humanistic, or sexual preferences.

The morality crusade that was Prohibition was possibly the most destructive social experiment ever attempted. Not only did it fail to stop the use of alcohol, but led to the rise of organized crime which still holds sway some 80 years later. We can successfully legislate against behaviors that hurt society — murder, theft, violence and other dangerous acts — because society benefits when its members are safe and protected.

To suggest that the safety of the world can be threatened by two same-sex individuals reciting vows of commitment before a local official is preposterous. The will to legislate against such an act reflects only our idea to withhold, to punish, to declare before all that it is only our values which matter and that we are right, divinely right.

Virginia Bola is a licensed clinical psychologist with deep interests in Social Psychology and politics. She has performed therapeutic services for more than 20 years and has studied the results of cultural forces and employment on the individual. She is the author of an interactive workbook, *The Wolf at the Door: An Unemployment Survival Manual*, and a monthly ezine, *The worker's Edge*. She can be reached at <http://www.virginiabola.com>

### **Legal Protection for Same-Sex Couples**

**By Johnette Duff**

Has anyone considered a compromise solution to the issue of legalization of same-sex marriages?

As an attorney who has spent years conducting research on the advantages and disadvantages of marriage vs. living together, my viewpoint is a legal one, unobscured by religious or moral questions. Legal recognition of a status for these couples is called for, as is their current need for self-help in making the laws work for them while they are still in flux.

Traditionally and legally, marriage has been defined as a union of a man and woman. Changing that definition is at the heart of the problem. Marriage, throughout history, has had more to do with procreation than romantic love or legal convenience. This legal definition and the issue of procreation have both been used to bolster the denial of the right of same-sex marriage.

What same-sex couples need, and should have, is the ability to form a legal relationship. The semantics used to describe this relationship should not matter as much as the rights and duties arising from it. Denial of these rights is the discrimination same-sex couples decry. We should not forget that only during the last generation was the denial of the right of marriage to members of different races

overturned. The law is meant to serve the needs of the members of society – including same–sex couples.

My compromise solution is a law which allows same–sex couples the right to a legal relationship without the hot–button title of "marriage." With a simple change of terms, these couples could become legal "domestic partners" which confer the same rights and duties of their state's marriage contract. Similar licensing statutes could be enacted, along with the inevitable relationship dissolution laws.

The marriage contract from any state comes with built–in advantages and disadvantages. Married couples are bestowed with automatic inheritance rights. They enjoy the right to sue for loss of consortium if a third party injures their spouse, denying them services and companionship. Because a married couples has rights, they cannot be denied hospital visitation or the right to make medical decisions for each other. Employers often offer medical coverage and benefits to spouses of employees. Why should same–sex couples be denied these benefits?

Couples who live together do have flexibility to create their own rights and duties vis–a–vis each other. A same–sex couple can execute wills, written cohabitation agreements, durable powers of attorney for health care (giving a partner the right to hospital visitation and the right to make medical decisions in the event of an emergency) and, with careful financial awareness, create many of the advantages of marriage.

The question of medical insurance and benefits should be balanced against the "marriage penalty tax," which still exists.

The denial of the choice to same–sex couples, however, is the true discrimination. Same–sex couples should have the option of forming a legal relationship under the law, no matter what title it is given.

Johnette Duff is the author of *The Spousal Equivalent Handbook: a legal and financial guide to living together*, *The Marriage Handbook: a legal and financial guide to your spousal rights*, and *Love After 50: the complete legal and financial guide*. Nationally, she has appeared on *Today*, *Good Morning America*, *CBS This Morning* and in *The Wall Street Journal*, *Self*, *Smart Money*, *New Woman* and *Modern Maturity* promoting information on love and the law. Ms. Duff has recently opened a web site titled, *love and the law*.

Legal Protection for Same–Sex Couples

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