

# FORUM

LOS ANGELES DAILY JOURNAL • FRIDAY, AUGUST 3, 2007 • PAGE 6

## Family Ties

By Fred Silberberg

The gay marriage debate continues to rage in many parts of the country. In Massachusetts, the only state in the nation that actually allows marriage between people of the same sex, an effort to overturn the law in the state legislature was recently defeated. Conservatives have vowed to revisit their attempt to overturn the law, this time by attacking the politicians who voted to keep gay marriage legal.

In an effort to address the concerns of both those who advocate for gay marriage and those who oppose it, several states have recently enacted same-sex civil unions or domestic partnerships similar to those that exist in California. In these situations, same-sex partners obtain some of the benefits that married couples have, such as the ability to be health insurance dependents, to inherit property from the other party, and, in the case of California, to acquire community property. But these domestic partnerships are still not marriages in the conventional sense.

Because the federal government will not recognize domestic partnerships, benefits such as favorable tax rates and the right to social security derivative benefits are not available to people who register as domestic partners. No matter how much politicians may claim to be aiding the gay minority, these partnerships have neither the status, nor the full benefits, of legal marriage.

The main source of opposition to

allowing gay marriage comes from the religious right. On the federal level, they are bolstered by the Bush administration's alignment with their cause. The arguments that they usually advance to oppose gay marriage include the nebulous concepts that gay marriage diminishes the value of marriage or weakens the family. Yet, when all is said and done, one has to question exactly how

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a marriage between two consenting adults of the same sex has any effect at all on the millions of marriages that exist between members of the opposite sex.

Consider this hypothetical. In a recently completed suburban development, there are 30 single-family homes. Twenty-seven of the homes are occupied by families having a mother and a father. Three of them are occupied by families where the parents are of the same sex. The fact that those three households have same-sex parents has no effect on the other 27

households. It is absurd to believe that because three of the households are occupied by same-sex couples, it will in any way impact the lives or the relationships of the other 27 couples. Yet, this is the argument that is most often advocated to withhold the ability to marry from people who are gay.

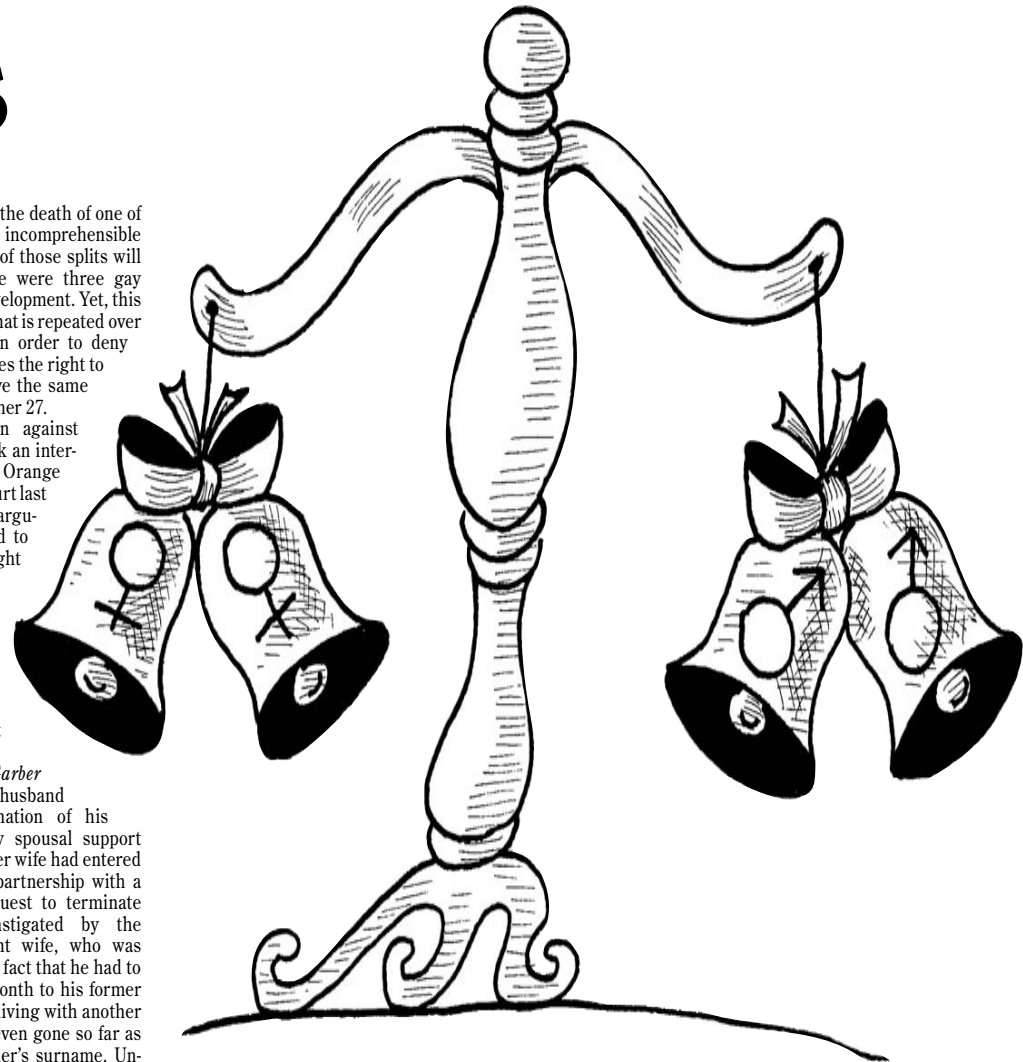
Carry the hypothetical a step further. If statistics hold true in this development, a significant percentage of the 27 couples will have split up within five years. In 10 or more years, half of them will no longer be together. They will have split up for a myriad of reasons, including incompatibility, financial stress, infidelity, the death or serious illness

of a child or even the death of one of the partners. It is incomprehensible that a single one of those splits will be because there were three gay couples in the development. Yet, this is the argument that is repeated over and over again in order to deny those three couples the right to marry and to have the same benefits as the other 27.

The prohibition against gay marriage took an interesting twist in an Orange County family court last week. The very argument that is used to deny gays the right to marry, has, for probably the first time, actually had an effect on heterosexual marriage, and a negative one at that.

In the case of *Garber v. Kirkwood*, a husband sought a termination of his obligation to pay spousal support because his former wife had entered into a domestic partnership with a woman. The request to terminate support was instigated by the husband's present wife, who was unhappy with the fact that he had to pay \$1,500 per month to his former spouse, who was living with another woman and had even gone so far as to take her partner's surname. Under the California Family Code, the remarriage of the supported spouse terminates jurisdiction over spousal support by operation of law.

In this case, the husband argued that his former wife's participation in a registered domestic partnership was the same as her being married and, as such, he should not have been obligated to continue to pay her spousal support. The trial court, while allowing further briefing, denied the husband's request on



the basis that his former wife was not remarried, only registered as a domestic partner. Although she was living in a relationship similar to a marriage, she could not be married under California law and therefore the automatic termination over spousal support did not apply.

In reality, the wife's relationship with her female lover is akin to a marriage. They live together as a couple. The share the same

surname. They are registered as domestic partners, which is the highest status that they can achieve in California, because our state, supported by our governor, continues to refuse to allow gay marriage.

Clearly something is wrong with this picture. The "moral majority" refuses to allow this woman and her partner to get married because it might "lessen the value of marriage." The fact is that it has done

exactly the opposite. It has impacted the husband's marriage to his new wife. And perhaps that is a good thing, because this is the first time that we can actually see how forbidding gay marriage lessens the value of its heterosexual equivalent.

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