

Gay groups say domestic partnerships must be preserved

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By Zak Szymanski

Like most members of Boston's LGBT community, Erika McLaughlin supports gay marriage and celebrated it as a victory for civil rights when her state of Massachusetts made same-sex marriage legal in 2004.

But in the two years since that historic moment, she said, her status as a legal domestic partner to her girlfriend is becoming increasingly challenged during her day-to-day activities.

"Yes, my employer is keeping [domestic partner benefits]. But on a de facto level, we're having fewer and fewer rights now that marriage has been legal for two years," McLaughlin told the *Bay Area Reporter*

"Hospitals are asking, 'Yes, but are you legally married?' for next-of-kin stuff, when before they just went with it because, 'She's there in the place with you, and you both say so,' and they don't want to discriminate. Before marriage, most landlords weren't going to question who that girl living there was; now, it's getting increasingly common to hear, 'Okay, but are you legally married?' in [legal tenancy] situations."

The gay marriage movement has made a strong case for recognizing that love makes a family, with gains and successes realized in the form of civil unions, marriage-like benefits for domestic partnerships, and a wider recognition that all families deserve protections.

Yet the recent news that Massachusetts-based gay employees of the *Boston Globe* were told to marry their partners or lose their domestic partnership benefits has raised questions about gaining gay marriage seemingly at the expense of other forms of family recognition.

Unlike most companies nationwide, the *Globe* (a division of the New York Times Company) had limited its domestic partnership benefits to legal spouses and same-sex couples, who until recently could not marry in Massachusetts.

While McLaughlin said losing domestic partnership benefits at the *Globe* seemed fair since gays have been fighting for equal, not special rights, many family advocates say that losing domestic partnership because of marriage flies in the face of the reason the DP system was created in the first place – to recognize all kinds of family situations outside of marriage. And while it's understandable that someone who came of age more recently may equate domestic partnership rights with marriage or feel guilty for having so-called special rights through domestic partnership, Nancy Polikoff, a litigator for many gay and lesbian family cases and a law professor at American University in Washington, D.C., said DP systems were set up to recognize people who already have responsibilities and obligations for each other but have been denied the benefits "that would otherwise flow to people who are providing care for one another."

"Marriage is what gets special rights now," said Polikoff, "and that's the problem."

The *Globe* decision highlights the need for the community to step up the fight for domestic partnership recognition of all kinds of arrangements, said some LGBT family advocates.

And the everyday situations described by McLaughlin may also demonstrate the need for more citizens to be educated about their local domestic partnership ordinances; enacted in 1993, Boston's city registry, for example, actually does extend some basic rights to unrelated economically interdependent adults of all genders, regardless of their ability to marry. Thus, registered gay couples enduring extra scrutiny now that gay marriage has passed are actually experiencing

discrimination.

Many national LGBT groups, despite their large investment in securing gay marriage, agree that there is a problem with a society that values marriage over all other family forms. And in light of the *Globe* decision, organizations across the country this week said that the movement does have a responsibility to fight for the preservation of domestic partner systems.

"We're deeply disappointed by the *Globe's* decision, and we do not feel that benefits should flow only from marriage, because a married couple does not reflect the reality of the American family, gay or straight," Matt Foreman, executive director of the National Gay and Lesbian Task Force, told the *B.A.R.* "Our mission is to see that all families are protected and have access to healthcare regardless of their marital status."

More than 5 million Americans live in unmarried households, mostly in opposite-sex partnerships, the *Globe* itself reported in August 2004.

"We have always believed families are configured in many ways and that marriage is not the answer for all families," agreed Michelle Granda, an attorney with the Boston-based Gay and Lesbian Legal Advocates, the group that is widely credited with winning same-sex marriage in Massachusetts. Gaining same-sex marriage, said Granda, "doesn't mean people who configure their families in different ways shouldn't have equal compensation for equal work."

But the same groups also emphasized that the *Globe* decision seemed to be an isolated incident and not yet cause for panic.

"I don't think this is the wave of the future, and so far it has not become a challenge that we all need to respond to," said Foreman. "It's just emerging, but our movement will respond as it always does when crises arrive."

Other advocates said immediate action was indeed necessary to preserve domestic partnerships nationwide, and some added that the increased energy and attention to marriage in the LGBT community was making it harder to fight for other forms of family recognition.

"A movement that argues for marriage only and sees everything else as second-class will end up causing a loss of domestic partnership and the possibility of alternatives," said historian Lisa Duggan, professor and director of American studies at New York University.

"Making the fact that you are in a sexual or romantic relationship be the dividing line between what's respected as family under the law and what isn't, to me, is a mistake," said Polikoff. "But it's easy to see how we got here, given the growth of the right-wing pro-marriage movement that penalizes other forms of relationships. Single women raising children alone, for instance, are really vilified, and I think that does make it harder for the LGBT community to take positions that are grounded in the idea that all family forms are equal. It becomes easier to argue that gay couples should be able to get married, too, and it's just a different ideology."

There are numerous reasons why LGBT people in relationships may need domestic partnership benefits after same-sex marriage becomes legal. Some binational couples may expose themselves to immigration difficulties if they got married, said Granda, while some members of the military may find themselves outed and discharged.

Others say they wouldn't want to marry even if they could. Robert Corey and Tom McLeod are gay seniors and friends who vowed long ago to care for each other in their small Southern city and who use Corey's inclusive domestic partnership benefits to supply healthcare to their household. Kim Roche, a bisexual woman who is domestically partnered to a man in Austin, Texas, said her decision not to get married is an act of political solidarity with other queers.

But LGBT marriage advocates disagree that the marriage movement has sacrificed other families in order to make its gains.

GLAD's Granda pointed out that when other Massachusetts companies previously announced similar intentions to drop DP coverage, marriage activists expressed their concerns and were able to reverse such changes. One employer, the Dana-Farber Cancer Center, not only reversed its decision but expanded its DP system to cover opposite-sex partners as

well.

Shannon Minter, an attorney with San Francisco's National Center for Lesbian Rights, said that many of the more inclusive domestic partnership policies are actually a result of the gay marriage movement, which "historically has been about eliminating discrimination and expanding protections for all kinds of families," he said.

"I don't think same-sex marriage means we aren't also fighting for protections for other people who are living together and taking care of each other," agreed Geoffrey Kors, executive director of Equality California, which sponsored the gender-neutral marriage bill authored by Assemblyman Mark Leno (D-San Francisco) and passed by the state legislature last year (Governor Arnold Schwarzenegger vetoed the legislation).

Kors pointed to other pieces of EQCA-backed legislation, from the state's paid family leave program – which allows many working Californians to take paid time off to care for a parent, child, spouse, or registered domestic partner – to Assemblyman John Laird's (D-Santa Cruz) recent amendments to the Unruh Civil Rights Act, which clarified that businesses cannot discriminate on the basis of marital status.

Minter added that when NCLR won three state Supreme Court victories last year affirming the rights and responsibilities of LGBT parents, it did so based upon the need to protect children regardless of the marital status of their parents.

"I do believe LGBT people in this state are committed to a broad, progressive vision of helping all kinds of families," said Minter, "and I do not think marriage and domestic partnerships are at odds."

But even the best of intentions may not always translate flawlessly.

Marriage-like benefits added to California's domestic partnership registry under AB205, for instance, had the unfortunate result of taking away state-recognized legal status for some couples when poor and disabled gays last year were advised to dissolve their partnerships or risk losing their income eligibility for public benefits.

And nationally, more companies and local governments have begun to see domestic partnership benefits only as a way to remedy marriage inequality, with newer registries and benefits increasingly becoming limited to same-sex romantic couples, said Nicky Grist, executive director of the New York-based Alternatives to Marriage Project.

"What we are seeing is this shift from domestic partner benefits recognizing that people live in alternative family structures – and being offered to everybody – to more and more newer benefits programs only being offered to same-sex couples," said Grist.

Another trend is that DP programs are becoming harder to track, she said, adding that the Human Rights Campaign's national 2006 "State of the Workplace" report only mentions employee policies that cover same-sex couples rather than the variety of LGBT families in existence.

HRC still tracks policies that cover opposite-sex partners, said Daryl Herrshaft, director of the HRC Workplace Project, but it is primarily concerned with same-sex partner policies because "so many employers have decided their policies based upon a romantic involvement, and HRC's focus is to make sure those benefits are administered fairly."

HRC does typically advocate for more inclusive policies, he said. The group notes that a 2005 Hewitt Associates study showed that 64 percent of employers experience a total financial impact of less than 1 percent of total benefits cost, while only 5 percent of employers experience financial impacts of 3 percent or greater of total benefits cost, data which mostly reflects broader coverage than just same-sex couples.

Not either-or

It's difficult to tell exactly when the domestic partnership system became equated with same-sex couples or inseparable in many people's minds from the fight for marriage rights.

"When domestic partnership was created in the early 1980s it was about being an alternative to marriage. The original domestic partner definition included same-sex and opposite-sex couples, and the best definitions weren't about couples at

all, they were about people living in a committed relationship. The movement was about recognizing the equal worth of diverse family forms," said Polikoff, adding that everybody from "a grandson caring for the grandmother who raised him to two people pooling their resources to raise children" were envisioned to be included.

The first major corporate "split" she said, came in the early 1990s, when Lotus decided to offer benefits only to its same-sex coupled employees. As domestic partnerships gradually became about trying to remedy marriage inequality, "it was no longer about valuing diverse family forms," said Polikoff.

A big flaw among supporters of LGBT equality, agree many activists, is the tendency to take an "either-or" approach to domestic partnerships and marriage, a view that ultimately resulted in the *Globe's* decision to terminate DP benefits once marriage passed.

But the LGBT community can take steps to rectify that misperception, and advocate on behalf of all of its families.

Some advocates said the best way to fight for both marriage equality and preserve domestic partnerships to stop using the DP system solely to remedy gay marriage inequality.

Otherwise, where marriage is deemed a threat, domestic partnership may go down with it, on ballot initiatives and constitutional amendments that now target not just marriage but both systems for prohibition. Two constitutional amendments proposed for California intend to do just that if right-wing organizers are able to get them on the ballot. Similar regulations passed in Missouri, Utah, Michigan, and Ohio have forced state universities and colleges to stop offering domestic partner benefits. And yet where the full institution of marriage is won, as some incidents in Massachusetts demonstrate, a "victory" might mean domestic partnership may be deemed no longer necessary or valid.

One way to avoid having the two systems equated and possibly endangering each other would be to fight for DP systems to be more inclusive and beneficial to more people.

Polikoff acknowledged that in many areas that agree to more inclusive domestic partnerships – like the recently passed Salt Lake City, Utah measure that allows all economically interdependent adults to claim benefits – the motives often stem from homophobia or a refusal to sanction gay couples. But she is not alone in advocating that the LGBT community embrace those policies regardless of how they came about.

"It is interesting the Salt Lake City Council got to this definition in large part because it didn't want to do something gay-specific, but if you read the minutes of those meetings, nobody says anything antigay, and gay couples are completely included in the discussion," she said. "It covers everybody's self-definition of family, and as far as I'm concerned that's a win."

EQCA's Kors agreed.

"If the motivation was homophobic but it provides employees true equality, we should support it," said Kors. "More access to benefits to more people is a good thing."

On the other hand, said Molly McKay, media director of Marriage Equality USA, the LGBT community must also be careful to combat homophobia and "not settle for second-class status." McKay believes, as do many marriage activists, that redefining the family through winning same-sex marriage is one of the best ways to earn protections for families outside of marriage.

"There are legitimate questions and concerns. But why should gay and lesbian people have to stand on the outside of marriage in order to take part in the conversation that takes society to the next level?" said McKay. "By allowing us to be married it will allow us to enter into a conversation, as equals, about who is next and what protections we can provide to all families. It's fundamentally who we love and the sex we have that causes the homophobia in our society; let's get to the heart of it and address it at the core, which is about marriage."

But rather than speaking about domestic partnership as "second-class" status, said Duggan, gay marriage advocates either need to value that system equally, or risk losing it.

Duggan also is not convinced that all homophobia is motivated by morality, and believes "save marriage" is often an expression of "economic terror" that motivates voters against gay marriage.

"If their pension is unstable and their Social Security and health insurance is threatened, then they think, 'What happens if the lynchpin of the family is unstable, too?' They fear there's nowhere to go," said Duggan.

Dedicating more resources to fighting against marital status inequality could actually take away the perceived "threat" to marriages, she said; if the LGBT movement worked harder to champion the idea that marriage should not be the way benefits are distributed, and "if it were possible to offer more security to more people who don't live in traditional marriages, we would be addressing that economic fear."

"Most antigay marriage campaigns do much better when they say 'marriage is threatened' rather than using antigay rhetoric," she noted, "and we really need to think about what that is about."

Duggan favors the tactics of Arizona Together (www.aztogether.org) in the fight against this November's "Protect Marriage Arizona" amendment. Rather than playing into right-wing ideology that upholds marriage as a hierarchy, the group instead focuses on building coalitions between heterosexuals and homosexuals to "protect the rights of unmarried couples in Arizona."

LGBT groups may also have a role to play in shaping the dialogue, through media advocacy. Kors noted that the media rarely covers gay issues besides marriage, such as the recent advancements in securing San Francisco-style equal benefits ordinances in 11 other cities to require contracting businesses to offer equal health benefits to the domestic partners of their employees.

More reports also are necessary, said Grist, and such reports must not use the phrases "same-sex couple" and "DP" interchangeably, so that the community can track how many of the policies are inclusive of all kinds of domestic partners.

San Francisco's registry defines "domestic partners" as "intimate committed relationships."

The time to act is now, some activists said, before the community loses a valuable system of family recognition and before newer DP policies are written more narrowly that set up both domestic partnership and marriage for a loss.

Some LGBT people like McLaughlin believe that the loss of domestic partnership recognition is already under way.

"I'm getting married," she said, "largely because we are losing the domestic partner system here in Massachusetts."

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