

Guardian Ad Litem

The Path Of Courage

*Children lose when parents are denied
benefits of marriage*

By **CHRIS A. MILNE**

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Nearly two years ago, the state of Vermont gained national attention when, after being mandated to take action by the state's supreme court, the legislature enacted a law recognizing civil unions of gay and lesbian couples. The courage of, first, the state supreme court, and then the governor and the legislature to the north, has paved the way for the Commonwealth of Massachusetts to take up the debate, as well.

These brave politicians and jurists also recognized that this is an issue of human rights and is in the best interest of children.

As a lawyer who works day-in and day-out representing, advocating for, and developing systems of support for children, I suggest that secular recognition of same-sex unions in Massachusetts would benefit the health and well-being of children. Moreover, as the proud son of a Vermont legislator—who was soundly voted out of office for her vote in favor of civil unions and her unyielding defense of human rights—I suggest that our political leaders rise above simple political expediency and turn to John F. Kennedy's "Profiles in Courage" for guidance.

Then Sen. Kennedy cautioned "we have not fully understood the ... difficulty facing a politician conscientiously desiring, in Webster's words, 'to push [his] skiff from the shore alone' in a hostile and turbulent sea." He continued, "perhaps if the American people more fully comprehended the terrible pressures which discourage acts of political courage, which drive a ... [politician] to abandon or subdue his conscience, then they might ... be more appreciative of those still able to follow a path of courage."

My mother and many others set great examples for our leaders when a vote was cast knowing that the stakes included political death. These political leaders listened to the facts and learned that there has been great loss and suffering for many, including innocent children held hostage by debate, on this basic issue of human rights.

Innocent children whose gay or lesbian parents seek the benefits of marriage for their offspring—and those children in foster care in need of adoptive families who potentially may be placed with same-sex parents—are being unfairly penalized by the Commonwealth's failure to recognize same-sex marriages. According to the last quarterly report of the Department of Social Services, there are over 3,000 children in DSS custody who have a service plan goal of adoption but have not found homes.

However, proposed legislation (House Bill 3375) would make it unlawful for a committed relationship of same-sex parents to "be recognized as a marriage, or its legal equivalent, or to receive the benefits of marriage." This legislation seeks to destabilize the homes of children who are blessed with two loving parents who seek that stability.

The benefits at stake for these innocent children are profound. Family leave following birth or adoption will be denied. Access to health care and the right to seek child support for the basic necessities of food and shelter also will be withheld from them. In addition, they will never

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know the sense of affirmation and normality that comes from knowing one's parents are married and considered legally equal to heterosexual married couples.

On the other hand, allowing same-sex parents to marry would increase the stability and commitment in their family unit, thereby creating a more consistent and permanent environment for the child. They would enjoy the economic advantage of having rights to both parents' financial resources, as opposed to just one or the other. Allowing same-sex marriages would provide the security and rights of probate and family law in case of divorce. And in the tragic circumstance of death, survivor's benefits, whether from Social Security, military service, intestate laws or the wrongful death statute, would provide financial security for the child.

SJC To Take Action?

In *Goodridge v. Dept. of Public Health*, Superior Court Judge Thomas J. Connolly now has under advisement the question of whether same sex marriages—or their civil equivalent—will be recognized in Massachusetts. It seems, however, that in dealing with the related issue of same-sex adoptions, the SJC may have signaled its intent on this issue. Recognizing the worth of same-sex parents to a child, the Supreme Judicial Court, in *Adoption of Tammy*, permitted same-sex parents, Susan and Helen, to adopt their child. The court recognized the importance of two functional parents as being in Tammy's best interest. It also found that Tammy had strong emotional and psychological bonds with Helen and Susan, and further, that Tammy had been provided with "a comfortable home and...a warm and stable environment which is supportive of Tammy's growth and over-all well-being."

The SJC's ruling in the case, which it took from the appeals court on its own initiative, came three months after the Vermont Supreme Court's recognition of same-sex adoptions. The SJC, in fact, cited the Vermont decision for authority. Thus, the recognition of same-sex marriages or their equivalent may be imminent in Massachusetts. As this day approaches, the words of Senator Kennedy must guide our leaders: "integrity and courage" must outweigh the "desire to maintain office."

The Vermont experience with civil unions revealed that the power, opposition and beliefs of the Catholic Church and others in the name of religion loomed large. However, significant factions of the Jewish and Protestant faiths freely accept same-sex marriages.

The words and actions of our first Roman Catholic president at a pivotal moment in his quest for the White House provide guidance. In his landmark Sept. 12, 1960 address to the Greater Houston Ministerial Association, Kennedy declared: "I believe in an America where the separation of church and state is absolute ... where no religious body seeks to impose its will directly or indirectly on the general populace or the public acts of its officials."

It is hoped that our leaders will consider the children who are being held hostage by what is at its essence a religious debate that has no place in denying equal rights to a segment of the population. The separation of church and state, which lies at the bedrock of our nation, does not allow the view of one or another religion to be imposed on a group of innocent citizens. The Commonwealth of Massachusetts should, at each opportunity, through legislation, executive action and court decisions, provide all of the civil rights of marriage to children who have same-sex parents. ■