

STUDY COMMISSIONS CAN BRING MODERATION TO THE DEBATE ON WHETHER TO LEGALLY RECOGNIZE MARRIAGES OF SAME-SEX COUPLES

Meaningful dialogue is conspicuously absent from the current political debate over the impending legalization in Hawaii of marriages by gay and lesbian couples. Unless something is done to change the process, it will be politics as usual as legislators in the other 49 states begin to focus on the issue.

Two years ago, the Hawaii Supreme Court ruled that it is probably unconstitutional for the state to deny marriage licenses to same-sex couples. The court ordered the state to show compelling reasons why only opposite-sex couples should be allowed to marry.

A trial on this issue is scheduled for September 1995. The losing side will take the case back to the Supreme Court, which many legal experts predict will order the state to begin issuing marriage licenses to gay and lesbian couples sometime in 1997.

In anticipation of such a result, some state Legislatures are considering bills to prevent the recognition of same-sex marriages. The procedure has been politically divisive and anything but educational as media sound-bites dominate the debate.

South Dakota was the first state to consider a preemptive measure to deny legal recognition of same-sex marriages that might be performed in Hawaii. With little discussion, the measure sailed through the House of Representatives on a vote of 54 to 13. Ultimately, it was defeated on a procedural technicality by one vote in the state Senate.

A bill in Utah to accomplish the same result moved quickly through both legislative houses and was overwhelmingly approved. The speed of the legislature's vote precluded any thoughtful or objective analysis of the complex constitutional and policy issues involved.

Legislation to prohibit legal recognition of same-sex marriages is now pending in Alaska. Before long, every state legislature in the nation faces the prospect of taking sides on the issue. If a quick vote on the merits is all that occurs, the gay and lesbian community is a sure loser.

Some advocates who promote the legalization of marriages by same-sex couples have expressed hopes that a formal discussion would educate the public by dispelling myths and stereotypes about gay and lesbian families and inform lawmakers about unjust discrimination. So far, those hopes have proven unfounded.

Instead of an evaluation of the injustices suffered by same-sex couples and a thoughtful analysis of public policy, the current political process has been either a rush to judgment or a

procedural game. Unless these dynamics are changed, the same unhelpful approach may be replicated in each state that takes up the issue. There must be a better way.

Elected officials in other states, and the gay and lesbian community in those jurisdictions, might take a cue from the political scene in Hawaii in developing strategies to elevate the issue to a legitimate public policy debate.

Although lawmakers and voters in the Aloha state are opposed to the prospect of court-mandated gay marriages, the legislature and governor did more than simply pass a law limiting marriage to opposite-sex couples. They created a commission to probe deeper into the issue. The commission will determine whether the government is treating same-sex couples unjustly and make suggestions to the Legislature on how to eliminate any unfair discrimination. It will issue its report by December 1995.

The creation of study commissions in each of the other 49 states makes a lot of sense. By convening a Commission on Full Faith and Credit, a governor or a state legislature could initiate a useful educational process. Such a commission could be directed to perform three tasks: (1) identify public policies that support or oppose recognition of same-sex marriages performed out of state; (2) if such policies tend to favor recognition, inform the state about any legislative changes that may be in order; and (3) if recognition of marriage should be denied, recommend alternatives that might be adopted to eliminate unjust discrimination against same-sex couples who live together in long-term committed relationships.

A bipartisan agency of reputable citizens appointed by the governor or by the legislature could hold public hearings and conduct independent research for a year or so, and publish its report before same-sex marriage becomes a reality in Hawaii. In the meantime, specific bills dealing with the marriage issue could be tabled pending completion of the commission's work.

Liberal, moderate, and conservative officials should support such a process. Gay and lesbian republican clubs and their democratic counterparts could work together to convince lawmakers of the need for public hearings, research, and education before a final political vote is taken on such an important matter.

After all, there's no need for immediate legislation since the Hawaii Supreme Court won't issue its final verdict until 1997.

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