

CIVIL MARRIAGE FOR SAME-SEX COUPLES

Position Statement

NASW, Iowa Chapter, believes that the state of Iowa should extend to same-sex couples the right to enter into civil marriage and to receive all the accompanying rights, protections and privileges.

Discussion

- *Same-sex households in Iowa*

In the 2000 Census, a total of 4,138 Iowa households were identified as being same-sex households. Such households, representing an equal mix of those headed by lesbians and those headed by gay males, were reported in all but 4 of the state's 99 counties (Iowa Data Center, 2000). Due to fear of reprisal associated with identifying oneself as being lesbian or gay, it is reasonable to assume that the actual number of same-sex households in Iowa was significantly under-reported. Additionally, the Census data revealed that one in three lesbian-headed households and one in five gay-headed households included children. Among those identified, there were 1,103 lesbian- or gay-headed households in the state of Iowa in which children were being reared.

- *Civil marriage vs. religious marriage*

Marriage is the social institution in the U.S. through which couples enter into legal and/or religious unions. Same-sex couples have sought legal recognition of their relationships through civil marriage. Civil marriage is a legal, relational contract between two persons that conveys the rights, protections and responsibilities of marriage under the authority of the state. Because the First Amendment of the Constitution provides for the separation of church and state, religious bodies retain their own separate authority to determine whether or not to affirm, sanctify or conduct sacramental marriages or religious ceremonies for same-sex couples. Religious congregations may choose not to conduct marriage ceremonies for same-sex couples, even when the state legally recognizes same-sex civil marriages; conversely, religious congregations may choose to perform same-sex religious marriages, absent any legal recognition of same-sex civil marriage by the state. Thus, extending civil marriage to same-sex couples in no way infringes upon the separate rights of religious congregations regarding marriage.

- *Marital inequality*

U. S. culture has long valued marriage as a mechanism to support family unity, health and well being. Those opposing the extension of civil marriage argue that same-sex couples are seeking "special rights". This argument is patently false. The U.S. government itself (United States General Accounting Office, 2004) has reported that there are 1,138 rights and privileges *exclusively* afforded to married, heterosexual couples; these rights and privileges are not available to committed same-sex couples because such couples are denied the legal right to marry. Rather than seeking "special rights", same-sex couples are seeking equal rights. These rights include (but are not limited to) the right to:

- access benefits such as family health coverage;
- file joint tax returns, and claim income and estate tax benefits;
- assume pension or Social Security benefits upon the death of one's spouse;
- be entitled to hospital visitation and medical decision-making on behalf of an incapacitated spouse;
- petition for a spouse to immigrate;
- take a work-related leave of absence (up to 12 weeks) to care for a seriously ill spouse or the spouse's child or parent;
- be entitled to legal protection regarding child custody and parenting;
- assume automatic inheritance of spouse's property in the absence of a will;
- receive exemptions from property tax increases upon the death of one's spouse; and
- be entitled to child support and legal protection of communal property upon relationship dissolution and divorce.

The absence of such rights means that, unlike their heterosexual counterparts, same-sex families face special challenges that threaten to undo their unity, health and well being.

- *Health insurance access and cost*

Being denied legal recognition as a family means that same-sex couples often are not eligible for spousal and family insurance coverage. Consequently, same-sex couples may be forced to buy two policies, or, because of the high cost, forgo health insurance altogether. According to a recent national study (Ash & Badgett, 2006), 20 percent of same-sex couples were uninsured, compared with only 10 percent of married couples and 15 percent of the overall population. As a result, a same-sex family may risk financial devastation if one member is injured or becomes seriously ill. Across Iowa, a few municipalities and other government entities have extended healthcare coverage to same-sex couples. However, because of their lack of marital status, health care premiums must be paid on an after-tax basis (married couples pay on a pre-tax basis), thus adding to the financial burden that is placed on same-sex couples as a result of not being granted the right to marry.

- *Financial impact*

Research has shown that the denial of marital rights to same-sex families seriously impacts their financial security. A study by the National Gay and Lesbian Task Force Policy Institute (Dougherty, 2005) found that because same-sex couples are unable to claim the financial benefits related to marriage, they lose hundreds of thousands of dollars over their lifetimes. This loss comes from provisions such as the added lifetime tax burden resulting from the requirement to file taxes singly rather than jointly; the absence of Social Security spousal benefits for those who stayed at home to raise children or Social Security survivor benefits following the death of one's partner; the inability to transfer assets to one's partner without incurring state and federal gift tax or estate tax liabilities; and the added cost of health care. The cumulative effect of having to spend more resources to maintain themselves financially imposes an undue penalty on same-sex couples and families, and increases the risk of poverty, especially among seniors. Extending the rights of civil marriage would afford same-sex couples and families the same resources for self-sufficiency that married couples currently receive, thereby reducing their need to utilize social programs for financial support.

- *Civil marriage vs. other options*

While several states have passed laws in favor of domestic partnerships or civil unions, these laws fall seriously short of extending to same-sex couples and families the equal protections and privileges of civil marriage. Since neither domestic partnerships nor civil unions confer a legal spousal status, none of the approximately 400 statutes in the Iowa Code applicable to married couples would be extended to same-sex couples within such arrangements. Only a civil marriage automatically activates the spousal benefits encoded in Iowa law.

- *Current Situation*

Currently, there a case is pending in the Iowa Supreme Court regarding same-sex couples and their right to marry. Lambda Legal filed the marriage lawsuit in December 2005 on behalf of six same-sex couples who sought to marry in Iowa (Demian, 2007). On August 30th, 2007, Judge Robert B. Hanson, of the Iowa District Court for Polk County, issued a finding that would stop the unconstitutional discrimination against same-sex couples and allow them to marry. The following day, the Judge issued a stay against his own ruling, but not before two men from Ames became the first same-sex couple to legally marry in Iowa (KCCI, 2007). In March 2008, NASW – Iowa Chapter, along with several other organizations representing thousands of members, filed an amicus brief in support of the marriage lawsuit (One Iowa, 2008). On December 9th, 2008, the Iowa Supreme Court heard oral arguments in the Varnum v. Brien case: docket number 07-1499 (Iowa Courts Online Search, 2008). The Iowa Chapter of NASW looks forward to the Supreme Court's ruling in this case in the hope that it will achieve equal civil rights for all of Iowans.

Recommendations

NASW recommends the following provisions:

- Enact legislation that extends to same-sex couples the right to enter into civil marriage in Iowa.
- Provide legal recognition in Iowa of same-sex civil marriages, civil unions, and domestic partnerships bestowed in other states.
- Oppose all efforts to impose a constitutional ban on non-heterosexual marriages.

References

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