



April 7, 2008

### Commentary

*Roger Severino: Legalizing gay marriage will spark lawsuits against churches*

#### WASHINGTON -

After years of litigation and debate, the California and Connecticut supreme courts are about to decide the question of marriage. If, as some suspect, the courts redefine the institution to include same-sex couples, they will have entered a minefield of unintended consequences — especially with regard to religious liberty.

The experience of legalizing same-sex marriage in Massachusetts, and of civil unions elsewhere, cannot be ignored. It shows that, even with the best of intentions, legalizing same-sex marriage will seriously undermine the religious freedom citizens have enjoyed since the founding.

Although the First Amendment protects dissenting houses of worship from being forced to perform same-sex wedding ceremonies against their will, that is not the end of the story — it is barely even the beginning.

Simply changing the definition of marriage opens the door to a flood of lawsuits against dissenting religious institutions based on state public accommodation and employment laws that prohibit marital status and sexual orientation discrimination.

Additionally, religious institutions that refuse to recognize a new state-imposed definition could be stripped of access to government programs, have their tax

exemption denied and even lose the ability to solemnize civil marriages.

We need only look at Massachusetts for a preview of what to expect. There, in 2004, justices of the peace who refused to solemnize same-sex unions due to religious objections were summarily fired. It did not matter that other justices of the peace were available to do the job because, by Massachusetts law, same-sex unions were now entitled to equal treatment. A religious belief became a firing offense.

It is but a small step for the state to impose this rationale on churches and other houses of worship and end legal recognition of religious marriage ceremonies that do not comply with the state's expanded definition of marriage. This is not the only example of what is to come. Massachusetts, like many other states, strictly regulates private adoption agencies through licensing. Historically, this has not posed any difficulties for religious institutions, but Massachusetts now demands that all licensed adoption agencies be willing to place children with legally married same-sex couples.

However, Catholic Charities, the largest private social service provider in the state, could not in good conscience place its orphan children into homosexual households. After a bitter struggle, Boston Catholic Charities was forced out of the adoption business because it refused to embrace the state's new definition of marriage. The result was doubly tragic because both orphan children and religious

liberty took the hit for this misguided attempt at equality.

Two more real-world examples illustrate the danger. In New Jersey, the city of Ocean Grove recently yanked a Methodist institution's real estate tax exemption because it refused to perform civil unions in its outdoor wedding pavilion.

In Iowa, the Des Moines Human Rights Commission found the local YMCA in violation of public accommodation laws because it refused to extend "family membership" privileges to a lesbian couple that had entered a civil union in Vermont.

Based on the ruling, the city forced the YMCA to recognize gay and lesbian unions as "families" for membership purposes, or lose \$102,000 in government support for the YMCA's community programs. Equal provision of benefits to all couples was not enough — only the YMCA's explicit adoption of the state's new definition of family fulfilled the government's requirements.

This list barely mentions the avalanche of employment discrimination lawsuits religious institutions will face, if, for example, employees at religious institutions publicly enter same-sex unions in violation of the institution's teachings and employment policies.

Likewise, religious colleges and universities would run afoul of housing discrimination laws if they were to offer housing benefits for husband-and-wife couples but decline to do so for married same-sex partners.

Are we better off as a community if religious charities are forced to close their doors because the state redefines what is and is not a marriage? Are we better off if, for example, the Salvation Army is forced to close because of employment lawsuits, or if Catholic adoption agencies are forced

to shutter their offices? What would such a result say about tolerating diversity and respect for religious liberty?

Lawmakers and judges need to consider all the consequences, intended and unintended, before embarking on this path.

*Roger Severino is a lawyer with the Becket Fund for Religious Liberty.*