



## Marriage Partners

What heterosexuals can do on behalf of gay marriage.

By Kenji Yoshino

**The recent California Supreme Court** decision granting gays the right to marry creates a novel predicament. In November, California voters will quite likely have to decide whether to take marriage away from gay couples rather than whether to grant it to them. If Golden State voters decide to preserve that right, the freedom to marry will no longer be the product of “activist judges” but will acquire a democratic imprimatur. This high-stakes vote squarely poses the question of whether and how gays can get the support of straights on this issue.

By definition, when minorities seek civil equality in a democratic society, their success turns on their ability to garner support outside their group. In the context of race, the legal scholar Derrick Bell has argued for this “interest convergence” thesis, noting that the African-American civil rights movement only took off when whites discovered an independent interest in it. For instance, Bell maintains that *Brown v. Board of Education* happened in part because it provided “immediate credibility to America’s struggle with Communist countries to win the hearts and minds of emerging third world peoples.”

We have already seen this interest convergence at work in the context of same-sex marriage. In 2006, Arizona voters turned down an amendment to the state Constitution defining marriage as between a man and a woman. The measure’s failure has been attributed to the impact it would have had on unmarried straight couples. Oppo-

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nents of the amendment stressed that under its broad wording, unmarried heterosexual couples might lose health-care coverage or other entitlements.

In both examples, the majority “interests” at stake were primarily self-regarding. That may not bode well for the vote in California, since straight people are unlikely to suffer direct harm to their prestige or well-being if they vote to take marriage away from gays. But such a narrow framing of the “straight interest” scants the other interests voters may have, like an interest in living in a more just society or an interest in securing marriage for gay friends or relatives.

Faced with a close vote this fall, proponents of the freedom to marry need to find innovative ways for supportive straight couples to express and deepen their commitments. Prior strategies have either asked too much of straights (like asking them to renounce marriage altogether) or, perhaps, too little (like asking them just to do the right thing at the ballot box). There is, however, a middle way.

Most heterosexual couples are engaged for some period of time before marriage. What if, after getting engaged but prior to getting married, straight couples entered “marriage lite” arrangements akin to those available to gay couples in the state in which they marry? What I would call the Temporary Domestic Partnership Strategy could have several variations.

First, straights who wish to marry in California or Massachusetts should just do so, as those states do not discriminate against gays and should be rewarded for their inclusive stance by the boost more marriages will give to their economies. In Maine and the District of Columbia, straight couples should consider entering formal domestic partnerships, which are

available to straights and are already conveniently structured to terminate when they get married. Seven other states offer civil unions or legal domestic partnerships to gay people but do not let most straight people enter those arrangements. In these jurisdictions, and elsewhere, straight couples could create their own temporary domestic partnerships by writing up contracts that give each partner some of the legal rights and responsibilities associated with marriage.

The Temporary Domestic Partnership Strategy asks straights to cross over, in a limited way, from sympathy (pity for the plight of others) to empathy (direct experience of that plight). It seems plausible that if a straight couple experienced a T.D.P. for even a day, they would have a more visceral sense of why gays need the right to marry. For instance, straight couples will find that no contractual arrangement can give them rights against the federal government (which would refuse to issue either partner a green card). Moreover, these couples would experience the importance of the word “marriage” when confronted with the question of their marital status in the myriad places that question is posed.

Perhaps most important, the exercise would underscore the universality of the marriage right by demonstrating how much human flourishing is enabled by the right and how much is impeded by its denial. As many gay rights advocates have claimed, the issue is less one of gay equality than individual liberty. If more straights could come to see marriage as a universal right that belongs to all human beings, that would, indeed, be a convergence of interest. ■