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**A Fleeting Moment of Democracy for California's Same-Sex Couples
Inclusion**

**By The Reverend Irene Monroe
BlackCommentator.com Editorial Board**

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I have learned as both a pastor and also as a member belonging to several minority groups – African American, women and lesbian - that a popular opinion on an issue does not always reflect the right choice. Too often the right choice and the moral high ground on an issue derive from a small struggling group trying both to be seen and heard among the cacophony of dissenting voices and opposing votes. And it is with this group we see democracy's tenacity working, where those relegated to the fringes of society can begin to sample what those in society take for granted as their inalienable right.

Last week we saw democracy work. In a 4-to-3 decision, the California Supreme Court ruled that a "separate and unequal" system of domestic partnership for same-sex couples is not only blatantly discriminatory but it is also unconstitutional.

"In contrast to earlier times, our state now recognizes that an individual's capacity to establish a loving and long-term committed relationship with another person and responsibly to care for and raise children does not depend upon the individual's sexual orientation, and, more generally, that an individual's sexual orientation - like a person's race or gender - does not constitute a legitimate basis upon which to deny or withhold legal rights," the Court wrote.

But the knot is not completely tied for California's same-sex couples.

A conservative backlash in California has already begun with opponents

gathering signatures to place on the November ballot, a referendum defining marriage as between a man and a woman.

But California won't be alone in its efforts. Florida will vote on a constitutional amendment in November, and, Arizona, presidential hopeful John McCain's state, is considering doing the same. Twenty-seven states already have constitutional amendments prohibiting same-sex marriage, defining marriage as a union between a man and a woman.

But with heterosexual marriage being so sacred, conservatives fail to see how it is constantly desecrated on any given weeknight by being slotted for family entertainment - television shows like "The Bachelor" that cavalierly join people together for high Nielsen ratings.

Also when society narrowly defines marriage as the union between a man and a woman, it is not only policing the sexual behaviors of lesbian and gay people, but society is also policing the sexual behaviors of heterosexuals. Handcuffing marriage to a heterosexual paradigm merely chokes its possibility of ever flourishing and lasting, especially as we are coming to understand the fluidity of not only gender and sexual identities but also of the constant changing configuration of family units.

In the Court's need to deal fairly with same-sex couples given the widespread public sentiment against same-sex marriage did it ignore the will of the people?

For Tony Perkins of Family Research Council the court unquestionably did.

On the day of the Court decision Perkins sent out his FRC Action Update news alert titled "California Marriage Law: 4,618,673 to Four" stating, "After a brief period of judicial restraint, California voters watched in horror this afternoon as judicial activism returned with a vengeance in one of the most egregious rulings in American jurisprudence. It took just four activist judges to overturn the historical definition of marriage, not to mention the vote of more than four and a half million Californians, as the state supreme court issued a much-anticipated ruling on the question of same-sex "marriage."

But the California Court's decision can be read two ways.

The Court upheld the democratic process by offering same-sex couples marriage and not "marriage-lite" with civil unions. Or, the Court overstepped its authority, imposing its will on an issue the country, let alone the state of California, is not ready for.

We were told here that if the state of Massachusetts legalized such an ungodly act as same-sex marriage not only would it bring about the death of the institution of marriage, but it would also bring about the demise of civilization.

Many also said the righteous hand of God would be in that defining moment to stop same-sex marriage with ugly protests, with town clerks engaging in civil disobedience by refusing to issue licenses, and with just those last minute unavoidable and inexplicable legal snafus.

But none of that happened.

And guess what? The sky didn't fall either!

The ugly rhetoric against same-sex marriage is all too familiar to this country's legal battle against miscegenation. And here are the four arguments used:

First, like the judges against interracial marriage, judges against same-sex marriage claimed that marriage belonged under the control of the states than the federal government.

Second, just as anti-miscegenation judges defined and labeled interracial relationships as illicit sex, so too do anti-marriage equality judges.

Third, anti-miscegenation judges insisted that interracial marriage was contrary to God's will.

With purportedly more than 1.2 million signatures gathered to place on the November ballot, more than twice the requisite number needed to initiate the process of passing a constitutional amendment to put the question on the 2008 election ballot, is the democratic process thwarted?

To put lesbian, gay, bisexual and transgender people's equal rights on the ballot for a popular vote is both wrong-hearted and wrong-headed. If I waited for slaveholders to free my ancestors predicated on a ballot vote we all wouldn't be living in the America we know today.

The proponents of the ballot question are a well- financed and well-organized voting constituency. And as a tyrannical majority they represents themselves as a formidable might that have power and money, and not as a group of people advocating a moral right. Marriage for them is defined solely as between a man and a woman, and any variation of their gender prescription within this institution is vehemently beaten down. They use the ballot not to promote justice but instead to promulgate their bigoted agenda, and democracy works only when their side wins.

I have learned, however, that democracy is an ongoing process where people are part of a participatory government working to dismantle all existing discriminatory laws that truncate their full participation society. The work of democracy is rooted in justice and social change allowing us to see, along this troubling human time line, those faces and to hear those voices in society of the damned, the disinherited, the disrespected, and the dispossessed.

And democracy can only begin to work when those relegated to the fringes of society can begin to sample what those in society take for granted as their inalienable right. But sometimes for that to happen people, like our Massachusetts lawmakers and now California's, have to overstep the "will of the people" in order to make the democratic process work for us all.

While LGBTQ families in California have not seen the last in this ballot battle, they are getting, at least for now, a sample of what we LGBTQ families in Massachusetts can take for granted - democracy.


BlackCommentator.com Editorial Board member, the Rev. Irene Monroe is a religion columnist, theologian, and public speaker. A native of Brooklyn, Rev. Monroe is a graduate from Wellesley College and Union Theological Seminary at Columbia University, and served as a pastor at an African-American church before coming to Harvard Divinity School for her doctorate as a Ford Fellow. Reverend Monroe's *Let Your Light Shine Like a Rainbow 365 Days a Year - Meditations on Bible Prayers* will be out in June, 2008. As an African American feminist theologian, she speaks for a sector of society that is frequently invisible. Her website is irenemonroe.com. [Click here](#) to contact the Rev. Monroe.

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