

THE DAILY RECORD

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MCBA PRESIDENT'S MESSAGE

Why the MCBA supports marriage equality

"Simply put, fundamental rights are fundamental rights. They are not defined in terms of who is entitled to exercise them."

— CHIEF JUDGE JUDITH S. KAYE, *DISSENTING OPINION IN HERMANDEZ V. ROBLES (2006)*

The Monroe County Bar Association board of trustees recently voted overwhelmingly to join the New York State Bar Association and 20 other bar associations across the state in urging the state legislature to pass marriage equality legislation providing same-sex couples the legal benefits and responsibilities of marriage.

The board of trustees did not make this decision lightly. We understand that this is an issue about which many of our members feel strongly on both sides, for legal, moral and religious reasons.

While recognizing the moral and religious implications, the board ultimately decided that this was a legal issue, an issue of equal rights, and therefore an appropriate issue upon which a bar association could and should opine and support. One of the guiding principles of our country is separation of church and state. The legislation does not require clergy to perform marriage ceremonies or for churches to sanctify same-sex marriages. It simply provides same-sex couples the same legal and contractual rights and responsibilities that opposite-sex couples already have.

Many of our members in various areas of practice have told us of the discrimination and the difficulties that their clients who are same-sex couples face in trying to provide legal protection to their spouses and children. They often cannot obtain employer health insurance, and when they do, they must pay additional taxes. They do not have the same rights as opposite-sex married couples in making medical decisions about each other and their children. They do not have rights under workers' compensation. They must enter into expensive and elaborate contractual agreements to achieve inheritance and real estate rights that are granted automatically to opposite-sex married couples. Over 1,000 laws provide legal rights to married couples.

Some have questioned, why marriage? Why not "civil unions" or "domestic partnerships"?

The NYSBA studied the matter in 2004, and in 2005 voted to support same-sex couples being provided the same legal

rights as opposite-sex couples, whether by marriage, civil union or domestic partnership. More recently, the NYSBA studied the matter again, and issued a very comprehensive report in 2009, which is available on the NYSBA website and which I recommend to you.

The 2009 report thoroughly reviewed case law and legislation in New York state, nationwide and around the world, and in particular studied how civil unions and domestic partnerships had worked in jurisdictions that had adopted them.

The report's conclusion: civil unions and domestic partnerships are not well-understood, they cause confusion, and despite their intentions, they do not provide the same rights as marriage. Based on the report, the NYSBA decided that "separate but equal" does not work, and the only way to achieve equal rights for same-sex couples was to endorse full marriage equality.

We have had some members question whether this is an appropriate issue on which the MCBA should take a position. A few members have suggested that we should have polled our full membership before taking such a position.

While the MCBA is a membership organization, it is governed by its elected representatives, the board of trustees. The trustees represent the diversity of our membership, with our bylaws requiring representation of women and minorities, a variety of firms (both large and small), various areas of practice, differing ages and years of experience, and varied types of practice (private practice, government, etc.).

Although the board is clearly empowered to take action on this and other issues on behalf of the organization, and while a few members have expressed their opposition to the position, the responses we have received from our members have been overwhelmingly supportive, indicating that our board is, indeed, representative of the membership on this issue. The most recent Quinnipiac poll shows voters in New York state backing legislation legalizing marriage between same-sex couples 58 to 36 percent.

However, this matter should not be decided based on a popularity poll. As Mayor Tom Richards recently responded when asked why he supported marriage equality when his electorate

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was divided on the issue, "being the mayor of all the people doesn't mean you do what you're told. It means you provide leadership. And I think on this particular issue, it's an issue whose time has come."

On the issue of marriage equality, the board of trustees has decided to lead and support equal rights to marriage for all New Yorkers, male and female, straight and gay.

The history of our country has been an ongoing struggle for an ever broader recognition of who is protected by the Constitution, who is granted fundamental rights under the law, who is "We the people." When our country was formed, "We the people" was

limited to white men who were landowners.

Over the decades, we have come to realize that "We the people" includes men and women of all races, all religions and all nationalities. Rochester has a strong tradition with Susan B. Anthony and Frederick Douglass of leading the fight for equal rights for all Americans. I am proud that the MCBA has chosen to support marriage equality and I hope our state legislators will do the same.

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