

P E N N S Y L V A N I A LAW WEEKLY

July 6, 2009; 32 PLW 738

DON'T ASK, DON'T TELL

On the 40th anniversary of the gay rights movement, Pennsylvania has far to go

By Dorothy K. Phillips
Special to the Law Weekly

In 1969, police raided the Stonewall Inn in New York City setting off the gay rights movement in the United States.

Until recently, two states, Massachusetts and Connecticut, recognized same-sex marriages. In the last few months, four more states have approved same-sex marriage, specifically Iowa, New Hampshire, Vermont and Maine. The progress in 40 years from a raid on a "gay bar" to six states approving same-sex marriage seems, at first blush, dramatic and progressive. A careful analysis, however, shows that while certain states have fostered the rights of same-sex couples, the federal government has moved at a snail's pace. There is still no policy that permits gays and lesbians to serve openly in the military. In fact, gays and lesbians who have "come out" in the military and disclosed their sexual orientation are facing courts-martial proceedings. The "don't ask, don't tell" policy is alive and well, notwithstanding President Obama's campaign promises to the contrary.

On the federal level, in 1966, legislation known as the Defense of Marriage Act was passed by Congress defining marriage as a legal union between a male and female. That act is still in place, and gay people still cannot provide health insurance or survivor benefits to their partners if they are employed by the federal government. These federal rights have been sought vigorously by gay couples who believed that with the election of Obama, progress would be swift. LGBT Americans have been severely disappointed. What the president has done is to allow domestic partners of federal employees with such chronic conditions as Alzheimer's disease to be covered by long-term health insurance. By presidential fiat, in June, Obama provided that federal workers can take sick leave to care for a partner or a child who is not his or hers by birth. But Obama put on the brakes when it came to providing health care benefits to the partners of federal workers.

How has Pennsylvania fared with gay rights issues? Not well. Pennsylvania has long been against marriage for gays, against civil unions and against employee benefits for gay couples, unlike its sister state, New Jersey. On Jan. 15, 2007, I wrote an article for *Pennsylvania Law Weekly* regarding New Jersey's decision to permit civil unions between same-sex couples, which

For more information about Dorothy K. Phillips, visit <http://www.mydivorceattorney.com>

P E N N S Y L V A N I A LAW WEEKLY

legislation afforded those couples the same state rights and benefits of married heterosexual couples. The New Jersey legislature stopped short of granting the right to marry to same-sex couples, but accomplished awarding couples who entered into civil unions the right to own property, to transfer property during life and at death and the right to divide property upon death in the same manner as married heterosexual couples. With that legislation, those couples joined by civil union were entitled to health insurance; pension benefits; to worker's compensation benefits; to family leave; public assistance benefits, including Medicaid; domestic violence protection, and the right to adopt children. However, state legislation on civil unions does not extend to federal rights. For instance, state rights do not give a gay couple the right to file a joint federal tax return, the right to receive Medicare; or any other federal benefit. There are no Social Security benefits for the partner of a civil union or of a same-sex marriage.

Steps Forward — and Backward

A recent review of Pennsylvania's efforts with respect to its gay citizens evidences both steps forward and steps backward. For instance, the Pennsylvania Human Relations Act offers no protection for sexual orientation or gender identity. There is no protection for gay individuals in Pennsylvania against discrimination in the work place, and in the housing market. In an effort to remedy this situation, earlier this year, state Rep. Dan Frankel, D-Allegheny, introduced House Bill 300, which provides the same non-discriminatory protection in employment and in housing industry for sexual orientation, gender identity or expression as is afforded regarding race, color, religious creed or ancestry. The Philadelphia Bar Association passed a strong resolution in support of HB 300. Notwithstanding, state Sen. John Eichelberger, R-Blair, introduced an amendment defining marriage as a legal union between a man and woman. Further, Eichelberger's legislation would expressly ban gay marriage even though a 1996 law in Pennsylvania specifically defining marriage as between a man and a woman still exists. Thereafter, state Sen. Daylin Leach, D-Montgomery/Delaware, introduced legislation that would legalize same-sex marriage. Obviously, the proposed legislation from both senators Eichelberger and Leach are antithetical. With the poor state of the economy at present being the top priority, there is not optimism that either will pass. Meanwhile, House Bill 300 has languished in the General Assembly.

The headline of my article for the Law Weekly in November of 2006 was "[Separate, But Not Equal](#)." That article discussed the rejection of same-sex marriage and domestic partnerships during the elections of Nov. 20, 2006. I wrote another article on Jan. 15, 2007 headlined "[Separate, But Still Not Equal](#)", exploring the fact that although the New Jersey Legislature passed legislation approving civil unions, which granted same-sex couples state's rights, there were still no benefits from the federal government. Obama's efforts for gay couples earlier this month are far less than that which the LGBT community was hoping for. The front page of the Sunday *New York Times* for June 28, featured an article headlined "Political Shifts on Gay Rights Are Lagging Behind Culture." A reading of that article indicates that while gay issues are

P E N N S Y L V A N I A LAW WEEKLY

being discussed and considered in the nation's capitol, LGBT Americans are far from being treated equally. There was tremendous hope by gays and lesbians that Obama, together with a Democratic Congress, would afford gays the rights which they had been long seeking. However, Obama and Congress are moving slowly, like the proverbial tortoise.

While the United States took a giant step forward in electing a president of mixed race, there is not equality in the area of sexual orientation or gender identity. The state government remains hostile to LGBT Pennsylvanians, affording very little in the way of equal rights to the partners of gay employees or to gay couples. Ironically, Pennsylvania's neighbors, New York and New Jersey, afford protection for sexual orientation and gender identity. However, Pennsylvania continues to remain a state where gay couples are still separate, not equal, and do not even have a Human Relations Act providing for non-discrimination in the workplace or with respect to housing. As gay citizens continue to capture positions of prominence along with the concomitant financial accession, they will yield the economic and political power to secure the civil rights which other groups have already secured. •

Dorothy K. Phillips is the founder and managing partner of Dorothy K. Phillips & Associates in Philadelphia. She focuses her practice on domestic relations law. A former family therapist, she is a frequent author and lecturer on a variety of family law issues.