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achusetts experience is telling. At the time of the ruling by the Massachusetts Supreme Court that opened marriage to same-sex couples, the Massachusetts citizenry was deeply divided on the issue. Efforts to take the issue to the public for a vote failed and now, several years later, there is clear majority support for marriage equality. The parade of horribles that those opposed to marriage equality warned against simply did not come to pass.

The debate about access to marriage for gays and lesbians continues in California and elsewhere. How the short-term reaction to the court's ruling will play out is anybody's guess, though Californians are currently about evenly divided on the issue. It is quite certain that, like the interracial marriage issue, down the road people will look back on the court's May 15 ruling as simply no big deal.

Lawrence C. Levine is a Professor of Law at University of the Pacific, McGeorge School of Law and founding member of SacLEGAL.

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SACLEGAL NEWSLETTER

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THE 4-3 MARRIAGE RULING SIMPLY ENDS AN UNCONSTITUTIONAL BAN

By Lawrence C. Levine. This article was originally published in The Sacramento Bee on June 1, 2008.

About 60 years ago, in *Perez v. Sharpe*, the California Supreme Court took what was seen then as the virtually unthinkable step of striking down California's statutes banning interracial marriage.

By a 4-3 vote, the court changed the face of marriage in the state. The decision clearly and forcefully asserted that the California Constitution recognizes that "the right to marry is the right to join in marriage with the person of one's choice."

The dissenters in *Perez*, relying on California's long history of banning interracial unions, scolded the majority for overstepping its bounds. The dissenting justices also reminded the majority that "under our tripartite system of government this court may not substitute its judgement (sic) for that of the Legislature."

Nearly all of us look back on the ban on interracial marriage with shame. It took years but, at some point, the California Supreme Court's action became widely accepted. While it may take some

time, the court's recent decision affording marriage equality to gays and lesbians will become well accepted, too.

While the opponents of marriage equality try to argue otherwise, it is evident that the bold step taken by the state Supreme Court in 1948 provided a sturdy foundation for the court's May 15 ruling that the term "marriage" could not be restricted constitutionally to heterosexual unions. To be sure, the situations are not entirely analogous. For starters, the anti-interracial marriage law provided a complete ban on access to marriage by people wishing to wed a person of a different race; there was no substitute arrangement available like the "domestic partnership" route open to California's gay and lesbian couples. And, of course, the historical mistreatment of many of America's racial and ethnic minorities has been indescribably brutal. But the court's recognition decades ago that the California Constitution recognizes that there is a fundamental right to marry the person of one's choice propelled the move toward marriage equality for gays and lesbians.

Indeed, the recent decision in many ways is not as controversial as was the court's decision to end the ban on interracial marriage. Only a tiny percent of the population supported an end to the interracial marriage prohibition in 1948, while a significant minority of Californians support marriage equality for gays and lesbians. And the court's *Perez* decision was so at odds with the

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"I have a beautiful daughter that constantly gives me inspiration."

-Amy Williams

Member Spotlight: Amy Williams

This issue, the member spotlight belongs to Amy Williams.

Ms. Williams was raised in a migrant farming community in the valley. She graduated from UC Davis, King Hall School of Law. She is a staff attorney with Legal Services of Northern California ("LSNC"). LSNC offers free legal services to low-income individuals in Sacramento county. She assists with a wide variety of civil matters, but specializes in public benefits, housing, and discrimination.

Why did you go to law school?

I was a Criminal Justice major at CSUS. I really enjoyed the classes that were taught by criminal defense attorneys. I started to consider law school during my last year at CSUS, after I saw the "Out and In in Law School" booklet. It showed all of the LGBT-friendly law schools in the U.S. I was excited that "we" were being recruited.

I also talked about it with my mom. She always told me to never be a lawyer, but she would not stand in my way. After some Internet searching, I learned that I had to take a silly thing called the LSAT. With two weeks' notice and a used book from the CSUS library, I studied for the LSAT. Then, everything just went into motion.

As I entered law school, I definitely wanted to help people in the community who could not afford legal assistance. I always try to remove the legalese from lawyering and make it accessible for everyone.

What is your favorite movie, music, and book?

My favorite movie is *Welcome to the Dollhouse.* It is about a middle school aged girl that does not fit in. It is hilarious.

I love music. I am a huge Tupac Shakur fan. I think many of his songs were insightful and inspirational to so many people, including myself. My favorite is "So Many Tears."

My favorite book is *Les Miserables.* It documents the human struggle in a very sincere way.

What is the biggest issue facing the LGBT community today?

Equality. I realize more than ever that we have to change the minds of the people in our communities. Here in California, we have great advocates that have given us inclusive legal protections. Now, we need to spend our time creating acceptance in our communities and families.

Amy Williams also founded the Legal Referral Clinic in 2003, while a law student at UC Davis. Clinic volunteers assist visitors of the Sacramento Gay & Lesbian Center ("SGLC") with appropriate and competent referrals to LGBT-friendly attorneys in the greater Sacramento area. In 2007, the Clinic expanded its capabilities to include intake and representation. The Clinic is currently staffed by law students the 1st and 3rd Mondays each month, and attorneys and advocates from LSNC and Protection & Advocacy, Inc. on the 2nd and 4th Mondays each month.

Ms. Williams is also the in-house counsel for the SGLC. She has facilitated the Wednesday night youth group at SGLC for over three years. The youth group serves LGBT kids, ages 12 to 19, and provides a safe environment to meet, discuss and learn about issues facing the LGBT community. It is primarily a support group with an educational component.

Ms. Williams is also a member of the Sacramento Sirens, a women's full-contact football team, since 2004. She has won two national championships (2004 and 2005).

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will of the California Legislature that it wasn't until 11 years later that the ban, though unenforceable, was repealed by the Legislature. As for marriage rights for gays and lesbians, the state Legislature had twice supported legislation to bring about full marriage equality only to have both bills vetoed by Gov. Arnold Schwarzenegger, who has spoken in support of the court's recent decision.

To be sure, there are strong feelings on all sides of the marriage issue. Some who oppose the ruling do so because they do not accept the idea of gays and lesbians being treated with dignity equal to their heterosexual counterparts. Others support some forms of legal protection such as nondiscrimination laws, but struggle to get their head around the concept of two people of the same sex entering into the institution of marriage. And some others simply cannot understand why there is any controversy at all, viewing the court's decision as an obvious act of fairness and equality.

In light of the different opinions on marriage equality, some, including the dissenters in May's ruling, argue that the court should have deferred to the political process. Did the court overreach in determining that the heterosexual monopoly on marriage was unconstitutional? Should the court have left the decision to end a ban on interracial marriage to the political process as well?

This debate will rage for some time. Indeed, some laud the dissenters for their "restraint." But the issue is not that easy.

The justices did not seek out the issue of marriage rights for gays and lesbians. They knew that the case generated strong feelings on all sides of the issue, and they recognized that the issue was playing itself out in the political process with gradually increasing support for full marriage equality. But the court has a crucial role to play in the interpretation of the reach of constitutional rights and does not have the luxury of deferring to the political process when these rights are violated.

The state's high court is not doing its job when it sidesteps important constitutional issues. Justice Joyce Kennard wrote a separate concurring opinion to explain why the issue before the court was one appropriately decided by the judiciary. She made the case powerfully, explaining that an independent judiciary is necessarily the body charged with protecting "unpopular minority groups" from having their fundamental freedoms denied due to widespread and deeply rooted prejudices. A court is charged with applying constitutional principles to the case before it, regardless of the majority sentiment or the desire of some to cede the issue to the political process.

There is currently a move afoot by some opposed to marriage equality for some sort of plebiscite on the issue. It is likely that an initiative seeking to amend the California Constitution to prohibit members of the same sex from marrying will be on the November ballot. When, if ever, should a minority group's civil rights be put to a vote of the majority? Does anybody doubt for an instant that a public vote in 1948 on whether the court was correct in its decision to obliterate the state ban on interracial marriage would have led to the reinstatement of the ban? (Indeed, national polling in the late 1950s showed most American supported a ban on interracial marriage.)

It is not surprising that California opponents of marriage equality are trying hard to delay same-sex marriages before the November ballot initiative. They know well that as our friends, children, co-workers and neighbors marry, the less likely it is that the initiative will pass. It is likely that there will be thousands of same-sex couples getting married in California very soon.

As we join only one other state in having full marriage equality, the Mass-

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"When, if ever, should a minority group's civil rights be put to a vote of the majority?"

-Lawrence C. Levine