Title
King and King: Learning to Treat Others Royally Through Diversity Education

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Of the hate crimes reported to the FBI in 2007, 16.6% were the result of a sexual orientation bias. In the wake of horrific hate crimes such as the shooting and death of Lawrence King earlier this year, killed because of his sexual orientation, and the murder of Matthew Shepard ten years ago, homophobia and its effects must be addressed. A proposed solution to the problem is mandatory diversity education in public schools, with no parental opt out.

The constitutional rights of homosexual individuals has for a number of years been a topic of controversy and litigation. A notable beginning to the development of recognition of homosexual rights began with the 2003 United States Supreme Court decision in Lawrence v. Texas (539 U.S. 558 (2003)). The Court held the Texas law criminalizing sodomy unconstitutional because it infringed upon the rights of homosexual individuals to engage in intimate, consensual conduct within the privacy of their own homes.

The Court took an even bolder step towards expansion of homosexual rights when it deemed moral convictions an inappropriate factor in determining the constitutionality of laws. The morals of certain individuals were not to be imposed upon all of society through laws prohibiting homosexuals from engaging in activities permitted for heterosexual individuals.

The supreme courts of California, Massachusetts, and recently Connecticut, followed the forward thinking reasoning of Lawrence and extended homosexual rights into “holy grounds” – marriage. The considered bans on homosexual marriage did not meet the requirements under any standard of review. Any purported justifications for the discrimination were found to be unsatisfactory and insufficient to warrant the ban.
Seven other states (Hawaii, New Jersey, New Hampshire, Maine, Oregon, Washington, and Vermont) and the District of Columbia have also extended the concepts in Lawrence and legally recognize homosexual relationships, whether in the form domestic partnership, civil union, or reciprocal beneficiary relationships.

At the same time, the Defense of Marriage Act (DOMA), passed by Congress in 1996, clearly defines “marriage” as a legal union between a man and a woman, and a “spouse” as a partner of the opposite sex. Congress also does not require states to legally acknowledge unions between two partners of the same sex that might be treated as a marriage in another state. However, states are given the freedom to decide whether to honor marriages of other states, and legal recognition of homosexuals and homosexuality is not prohibited. Civil marriage is created and regulated through the exercise of a state’s police power.

The Massachusetts court wrote that the “deep-seated religious, moral and ethical convictions that marriage should be limited to the union of one man and one woman,” and the equally strong convictions that homosexuals should be treated equally, did not provide the answer to the question before it—whether homosexuals should be able to marry one another (Goodridge v. Dep’t of Pub. Health, 798 N.E.2d 941, 968 (Mass. 2003)). The court exposed the possible true reason behind a ban on same-sex marriage – a prejudice against persons who are homosexual. After acknowledging that the state’s constitution could not control such prejudices, the court wrote, however, that it would not tolerate them and that the law could not give them effect. The court concluded that to prohibit civil marriage to homosexual individuals is to “arbitrarily deprive[] [them] of membership in one of [the] community’s most rewarding and cherished institutions,” which is “incompatible with the constitutional principles of respect for individual autonomy and equality under the law.”
All of the eleven states and the District of Columbia have anti-discrimination laws or rules that apply to the state’s public education. These laws prohibit discrimination based on sexual orientation. However, very few states implement diversity education into the public school curricula.

California is one of the few states that recognize homosexuals in its public school curricula. The state has chartered a noble path when the state Senate approved the California Student Civil Rights Act in 2007. The legislation effectively bans any teaching that is not tolerant of homosexuality, bisexuality, and transsexuality. Other states have included information about homosexuality in the public school curricula in the form of children’s books (the subject of the recent Massachusetts case, Parker v. Hurley (514 F.3d 87, 95 (1st Cir. 2008), made famous by the advocates of Prop 8), school assemblies featuring homosexual speakers, and participating in a day of silence acknowledging discrimination against homosexuals.

The next logical step in acknowledgment of homosexual rights is the mandatory implementation of diversity education into the public school systems of at least the states that legally recognize homosexual relationships. In fact, it is “entirely rational” for states that legally recognize homosexual relationships to educate its students regarding that recognition. The integration of diversity education begins with schools taking a closer look at the existing discrimination and homophobia amongst its own students and initiating proactive steps towards eradicating it.

The Massachusetts schools took a brave lead with the implementation of diversity education, and the courts upheld their choice in the subsequent Parker litigation. The reading of books about children with two mommies and a prince marrying another prince (cartoon depiction of the couple kissing included), was used “to educate its students to understand and respect gays,
lesbians and the families they sometimes form.” The parents opposed the teaching because of their religious convictions and opinion that marriage was reserved for the union of a man and a woman. The court rejected all their alleged constitutional violations.

School districts in Maryland also included information about homosexuality in the curriculum; however, the information was mostly included in the sexual education courses. The resulting litigation, Citizens for a Responsible Curriculum v. Montgomery County Public Schools (2005 WL 1075634 (D. Md. May 5, 2005)) ensued. The points of opposition were similarly based to those brought before the court in Parker. Parents were opposed to the inclusion of the information because of the confliction with their religious beliefs and the lack of information about the “other side” of the topic – their opinion that homosexuality is not necessarily permanent and that people can change their orientation.

The courts in both cases correctly held that all alleged constitutional violations were without substance and ruled in favor of the school districts. There was no free exercise violation because the children were not forced to do or refrain from doing an act forbidden or required by their religion, or to affirm or disavow a belief forbidden or required by their religion. There was no free speech violation because the clause does not necessitate viewpoint neutrality in schools’ curriculum, nor does it require the inclusion of all viewpoints. A broadcaster of information, like a public school, “by its nature will facilitate the expression of some viewpoints instead of others” (Citizens, citing Arkansas Educ. Television Comm’n v. Forbes, 523 U.S. 666, 674 (1998)). There was also no Establishment Clause violation because the schools were not teaching “Secular Humanism” views, but were instead teaching the civic value of tolerance of diversity. Public schools are the vehicle through which values are transmitted – values upon which our society rests.
One of the strongest arguments against the implementation of diversity education in public schools is the infringement on the parental substantive due process rights, but this argument too must fail. Concededly, there is a fundamental interest of parents in the care, custody and control of their children. However, this interest does not extend so far as to prevent public schools from educating students about the realities of homosexuality in our society. Parents do not have a constitutional right to control each and every aspect of their children’s education.

The parental right in relation to their children’s education is not broad enough to allow for the determination or changing of public school curriculum. It is “limited to the coarse decision of whether to enroll a child in a public school, private school, or if the child is sufficiently mature, to dis-enroll a child from school altogether” (Littlefield v. Forney Independent Sch. Dist., 268 F.3d 275 (5th Cir. 2001)).

Though it is a controversial topic with emotions raging on either side of the argument, the fact remains that no constitutional violations exist in diversity education inclusion in public school curricula. Minimally, the extension of homosexual rights recognition, through the mandatory teaching of diversity education, should be made in the eleven states and District of Columbia which legally acknowledge homosexual relationships. The states have shown a willingness to extend rights recognition and encourage tolerance, and should begin this task by diversely educating children – the future of our nation.

The Parker court succinctly listed the proper use of diversity education and its potential benefits. Teaching students about homosexuality should be used as “an effort to eradicate the effects of past discrimination, to reduce the risk of future discrimination and, in the process, to
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Teaching students about homosexuality should be used as “an effort to eradicate the
effects of past discrimination, to reduce the risk of future discrimination and, in the process, to
reaffirm our nation’s constitutional commitment to promoting mutual respect among members of
our diverse society.” Adolescence is a difficult and turbulent time where youths are confronted
with issues of identity and self-discovery, including exploring sexual attractions. Teaching
students to tolerate differences in sexual orientation is “rationally related to the legitimate
pedagogical purpose of fostering an educational environment in which gays, lesbians, and the
children of same-sex parents will be able to learn well.” A school environment that is not tolerant
of their differences is detrimental to the educational development as well as psychological health
and well-being. Truancy and academic underachievement can be attributed to the violence and
abuse homosexuals experience at school. Among teenage victims of homosexual discrimination,
one study found that “75% experienced a decline in academic performance, 39% had truancy
problems and 28% dropped out of school.” (Courtney Weiner, Sex Education: Recognizing Anti-
Gay Harassment as Sex Discrimination Under Title VII and Title IX, 37 Colum. Hum. Rts. L.
Rev. 189, 225 (2005)). Gay students might also fear for their safety while at school and
consequently experience difficulty concentrating. Educational success and eventual potential for
success in life can be harmed by discrimination experienced at school.

Students must be prepared to enter a diverse society, and one recognized dimension of
diversity is differences in sexual orientation. In the states that have acknowledged that members
of sexual minorities can enter into relationships that are legally recognized – legally recognized
in a society in which these students will live – students need to be prepared for this aspect of
civic life. In all those states that prohibit discrimination based on sexual orientation, the schools are promoting and furthering the anti-discriminatory views already expressed in law by affirmatively teaching respect for individuals, regardless of sexual orientation. The volatility of the children’s minds only furthers the goal of instilling these values because they can learn at an early age to appreciate diversity before the biases or ignorance of others can infiltrate and dilute their perspectives.

Discrimination and intolerance are problems faced by homosexuals every day. A proposed partial solution to the problem is mandatory diversity education in public schools with no parental opt-out. Our nation prides itself on the respect, equality, and recognition of rights afforded to individual citizens. American students should be educated about the different types of individuals that make up our diverse citizenship, including homosexuals. Homosexuality should not be a taboo topic that is avoided or hushed in public schools. It should be openly addressed and talked about in a way that promotes tolerance, teaches respect, and informs students about homosexuality. Students like Lawrence King should feel free to express themselves at school without fear of humiliation or abandonment by other students, friends, or teachers. The teaching of diversity education without parental opt-out is constitutionally permissible. Eleven jurisdictions have taken a forward-thinking stance and proactive steps towards extending homosexual rights by legally recognizing homosexual relationships. Public schools, in at least these eleven jurisdictions, should follow suit and attack homophobia at the place where it can be most efficiently eradicated – public schools – where the children of our country learn the fundamentals of civic life, perhaps most importantly, respect of others.