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Partners safe in marriage amendment

By SHANNON L. GOESSLING

The American Civil Liberties Union and Lambda Legal Foundation are at it again. The two organizations are using legal maneuvering to affect the outcome of the Nov. 2 Georgia ballot question on marriage.



Shannon L. Goessling is the executive director of Southeastern Legal Foundation, an Atlanta insurance-based public interest law firm and policy center.

A similar lawsuit to the one filed in Georgia was attempted in Missouri, which voted by an overwhelming 71 percent in favor of a constitutional amendment recognizing traditional marriage.

In Georgia, however, the legal challenge raised by the ACLU and Lambda also includes the allegation that Georgia's proposed marriage amendment will prohibit employers from providing so-called "domestic partner" health insurance benefits to employees and their dependents by recognizing "domestic partner" programs for city employees, the question has been raised and answered. In its 1995 decision, City of Atlanta v. McKinney, the Georgia Supreme Court struck down the city's program because "the city exceeded its power under the Home Rule Act to provide benefits to employees and their dependents by recognizing domestic partners as a 'family relationship.'"

Following the decision, the city amended its program by removing any reference to "family relationship," traditionally recognized under federal tax law and the Georgia Constitution. A lawsuit challenging the city's program followed, resulting in a 1997 Georgia Supreme Court decision, City of Atlanta v. Morgan, which upheld the new program.

The Georgia high court held that Atlanta's domestic partner program, turning on the definition of "dependent," was legal because it merely defined the nature of the dependency. The employees must financially support the dependent partner for at least six months and must continue to do so after registering with the city as domestic partners.

To suggest that the Georgia marriage amendment will now prohibit employers from providing domestic partner benefits is either obligatory ignorance of existing Georgia law or intentionally misrepresentative of the amendment language.

Large private employers in Georgia provide domestic partner benefits for their employees because they believe they can attract and retain good employees. That's private industry's prerogative. Georgia insurance Commissioner John Oxendine has agreed in the past. The marriage amendment would do nothing to inhibit the right of private companies to provide such benefits.

Likewise, although it may be a clever legal question, local governments that provide such benefits should not be threatened by the marriage amendment. The Georgia Legislature has the power to limit the ability of local governments to provide these benefits, and that's where the battle should take place.

However, the ACLU and Lambda Legal Foundation have sought to derail the constitutional process by attacking the form of the amendment. Georgia Attorney General Thurmond Baker, along with some lawmakers who seek to increase the responsibility to insure the truth-question and protect the rights of Georgia voters to cast ballots on this issue.

In terms of domestic partner benefits, which cost taxpayers and run counter to public opinion, the amendment will not harm the program — far better or worse.



Iranian Interior Minister Abdullahi Musavi Lari (front, center) joins reformist lawmakers at an all-in protest at the Parliament in Tehran in January, after they were disqualified by hard liners from running in the February legislative elections. The election results were met with skepticism.

INTERNATIONAL ATLANTA

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Diplomacy, not force, the best plan for Iran

By AMIR FAROKHI



Amir Farokhi is an Atlanta attorney.

I visited Iran for the first time in August. It was a trip to see the land where my father grew up and to visit with family. Iran is a beautiful, striking place. The geography is stunning, the history lustrously rich and the people readily open. The trip offered a new understanding of the nuances of Iran and how the West might choose to go forth.

After the Islamic Revolution in 1979, Europe chose dialogue and the United States chose isolation, trade sanctions and now, a bolder, more cautious. The effectiveness of either can be questioned because Iran has steadfastly held its course since the Islamic Revolution.

Iran cannot be defined simply by the default words and actions of its religious leaders. Hawkish calls for military action, aside from their doubtful international legality, fail to grasp the nature of Iranian change in Iran. The recent history of Iran, notably before the Islamic Revolution in 1979, exhibits a connection with and appreciation for the West.

This is the wedge America must learn to use, coupled with respect for the Iranian pride of the Persian people.

The West must also grasp Iran's unique demographics. Iran is remarkably young. In a nation of almost 68 million, somewhere between 90 percent and 70 percent of the population is under the age of 30. The

young are educated and exhibit a highly secular sense of their nation's place in the world. They reject the moderate reformer, Mohammed Khatami, in 1997 and have since been disappointed in his inability to create change.

As I toured one of the former Shah's palaces, a young engineer looked at the magnificent French furniture and stunning grounds and said, "The middle is far better than this now. It was a revolution for nothing."

The Internet, BBC, CNN and MTV have played a significant role in shaping the expectations young Iranians have for their society. Yet, young Iranians are also quick to defend the Islamic state and note that their frustration lies with Iran's inability to evolve into a modern, more flexible Islamic state.

Iranians are clearly seeking something more from their country, but any change, if it is going to take hold, must come from within.

The West's current alarm over Iran's refusal to halt uranium enrichment presents a difficult diplomatic challenge, notably

because the West holds little influence as an agent of change in the Middle East. The Iranians insist they are simply seeking peaceful uses for nuclear power. However, the United States proceeds, it must first reconcile the domestic realities of Iran with its hawkish reaction against the current regime.

Iran is capable of evolving toward the modern Islamic state because its people will demand it. The sheer size of the voice of dissent, however small, will slowly create a government palatable to both the West and to Iranians. How we behave in the interim will determine how the eventual Iran will view the United States.

The instinctive, short-term answer to Iran's nuclear ambitions is to let American missiles in the hopes Iran will back down. Yet, given the questionable success American muscle is having in Iraq and Iran, 25 years of existing American threats, America would be wise to lead a vigorous diplomatic front instead.

Iran instead allow the International Atomic Energy Agency to continue applying scrutiny, work within the international legal channels the United States once championed and demonstrate a better understanding of Iranian motives.

Change will come in Iran, but if it comes as the banks of direct Western influence, especially military action, we will continue to lead a precarious slide into global chaos.

Oh, baby, baby, it's a wild world

Last week, the U.S. government deported the artist formerly known as Cat Stevens, now named Yusuf Islam, on grounds that he posed a terror threat. The news is startling, especially given that the former pop star had strongly condemned the attacks of Sept. 11 and other attacks on innocent people. But officials nonetheless insisted that they had good grounds for their decision.

The intelligence community has come into possession of additional information that further raises our concern," a spokesman said, refusing to explain further. "It's a serious matter."

In other words, trust us. In times such as these, there's a natural instinct to want to trust our government. But that trust would be much stronger if not for cases such as that of Capt. James Yee, the 1960 Most Pure grad and Muslim chaplain at Guantanamo Bay who was arrested and charged with spying for al Qaeda. After holding Yee in solitary for 76 days and threatening the death penalty, military authorities were finally forced to admit they had no case. Yee was returned to his duties and just received his honorable discharge.

Then there's Brandon Mayfield, a convert to Islam and an attorney in Portland, Ore. He was arrested by the FBI on suspicion of involvement with deadly militant bombings in Madrid, even though Mayfield hadn't left the country in years and had no contact with Islamic extremists.

Spanish authorities reportedly told the FBI that Mayfield's fingerprints did not match those linked to the bombing, but that didn't matter either. Overseas federal authorities refused to admit their mistake until they were forced to appear in court and justify Mayfield's arrest, which they could not.

In such cases, our system eventually worked. Yee, lives were altered and careers and reputations ruined. Innocent people were imprisoned for extended periods under harsh conditions. But in time, because their accusers were forced to try to prove their case to a third party, the truth became known and justice was done.

That's not our case with Yusuf Islam, who has no way of knowing the basis for the ban now placed on his entry to the United States, and thus no way to try to overturn it. The U.S. government is creating a similar pass/no-pass system called Secure Flight, for use inside the country. But officials have been less than forthcoming about how people will be able to appeal if the system bans them from flying.

That's not a theoretical concern, U.S. Sen. Ted Kennedy (D-Mass.), surely one of the more recognizable public figures in the country, and U.S. Rep. John Lewis (D-Ga.) have repeatedly been denied the right to fly because they were somehow listed as potential terrorists in the current patchwork system. Both men died repeatedly using their contacts in government, to have their names removed, but with little initial success. For ordinary Americans, the difficulty of that task would be immense, and the likelihood of success very low.

Any passenger screening system must guarantee citizens the right to challenge their inclusion on a no-fly list. Freedom to travel, after all, is an integral part of the American concept of liberty. If government can arbitrarily decide which citizens can fly and which cannot, without having to justify that decision, we will have adopted an internal visa system just like that used by totalitarian countries to dictate the movement of their citizens. That's not acceptable, not in this country.

By Jay Bybee is the deputy editor of the opinion page. He also writes for the Atlanta Journal-Constitution.

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EQUAL TIME

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Needs of wheelchair-bound ignored

Henry Claypool, co-director of the policy forum, Advancing Independence, testified before the U.S. Senate Finance Committee last April during a hearing on "fraud and abuse in the power wheelchair program." Here are excerpts.

I had Medicare coverage from 1984-1994 after I sustained a spinal cord injury at college. Back then I was eligible for both Medicare and Medicaid. Medicare would only pay for a standard manual wheelchair that was suitable for use in my home. Without Medicaid paying for a sturdier, yet lightweight, manual wheelchair that enabled me to move about the hilly campus of the University of Colorado, I

would not have finished my education. I eventually returned to work left the Medicare and Medicaid rolls and several years later went to work for Health Care Financing Administration Director Nancy-Ann DeParle. It was when I was at HCFCA that I obtained my power wheelchair, using my private coverage. I did so because I needed it to go to work and because my shoulders would soon wear out from over-exertion.

Had I been on Medicare, the claim likely would have been rejected because I do not need a power wheelchair to move about the four walls of my home. April is an elderly woman with chronic obstructive pulmonary

disease who has had a portion of her lung removed. She requires continuous oxygen therapy all day every day, but lives independently in her own home.

She drives her own car but has difficulty walking the distance necessary to complete the tasks that allow her to live at home. Medicare will not buy April a wheelchair because she does not need one within the four walls of her house. The agency cannot possibly curb fraud and abuse as long as it continues to assume that it enforces a coverage policy that completely ignores the medical and very practical needs of people who use wheelchairs.