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Del. moves slowly toward equality on LGBT issues

COMMUNITY VIEW

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This was the best legislative year in Dover that lesbian, gay, bisexual and transgender Delawareans have ever seen. An unprecedented three out of four gay-friendly bills passed, an anti-gay constitutional amendment was soundly defeated, and an executive order banned anti-transgender discrimination among state employees. This is a notable departure from Delaware's grim treatment of its sexual minorities over the years.

Where we were

Historically, Delaware's punishment for same-gender relations included the death penalty, flogging, the pillory, solitary and non-solitary confinement, and fines. The public flogging of up to 60 lashes "on the bare back, well laid on" was considered severe at the time but continued until the mid-19th century, when it was replaced by the pillory. (Pennsylvania had abolished flogging in 1794 as too barbaric.) Jail terms and fines continued as a punishment for same-gender relations until 1972. Since 1996, gay Delawareans representing themselves as married may be fined or imprisoned.

(A more complete LGBT history in Delaware is on the "Timeline" page of my Web site at www.towardequality.org.)

So Delaware's history in this regard, even by the standards of the time, has not been good. How do we compare with other states in our own time?

Five states allow same-gender marriage, three permit civil union, seven allow domestic partnership and three recognize marriage performed elsewhere. In fact, nearly 40 percent of the U.S. population live in a state with some form of same-gender relationship recognition. But that is not us. Delaware may fine or jail those same-gender couples who present themselves as married -- even if they were legally married in another state.

Thirteen states and the District of Columbia have LGBT anti-discrimination laws. After 11 years and four months, Delaware passed only an LGB anti-discrimination law -- something Wisconsin did in 1982 -- and Delaware's transgender anti-discrimination executive order covers only state employees.

The U.S., 12 states and the District of Columbia have LGBT hate-crime laws. Delaware's hate-crime law covers only LGB persons.

Fifteen states and the District of Columbia have domestic-partner benefits for public employees. Delaware does not.

Thus the so-called "First State" has lagged behind the top quarter to top third of the states in these LGBT protections and we lag behind our regional neighbors. Indeed, though predominantly Democratic, we also trail other blue states in enacting LGBT-protective law. Though this year's legislative progress in Dover was encouraging, it must be seen as nowhere near where we should be, if civil rights equality is our measure. We are thankfully ahead of Alabama but nowhere near Massachusetts. Or even Maine.

The way forward

As the march toward justice continues, perhaps reassurance might be given those anti-equality Delawareans who fear and resist such change.

First, relax, the gays are not going to use up all the marriage licenses. More broadly, your civil rights will not somehow diminish because we receive ours. They are not a scarce commodity to be hoarded by some Delawareans and kept from others. You will not be injured if we attain legal equality with you.

Furthermore, gay and transgender equality does not threaten your religious belief or practice. Among other things, gay people seek civil -- that is, state-recognized -- marriage and the 1,138 rights and responsibilities accruing to it. We will not be seeking to join anti-gay churches and insisting upon religious marriage. Frankly, many gay people are so disgusted by religious intolerance that they would not darken the doors of any house of worship.

Finally, you can travel on the old road of discrimination and anti-gay hysteria, which works well for the James Dobsons and Fred Phelps of the world. Or you can take a more enlightened route. The good news is, itineraries are not something one is born with. They are definitely a lifestyle choice.
