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The Problem of Same Sex Divorce

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With New York State's recent legalization of gay marriage, it is a good time to discuss another pressing issue: same sex divorce. Many same sex couples travel to states which have legalized same sex marriage or to a Canadian province in order to get married.

Same sex couples will face a number of difficulties if their marriage breaks down, just like heterosexual couples. Same sex divorce is an issue that not many groups are focused on at this juncture. This is becoming a major issue and further emphasizes the need for marital equality through the United States.

A Limping Marriage

This difficulty stems from a term known as limping marriage. A limping marriage occurs when a same sex couple becomes validly married in one jurisdiction, such as Ontario which has no gender requirements under the *Marriage Act*, and then returns to a jurisdiction which does not recognize their marriage. They are married in one jurisdiction, and not in another—this is a limping marriage.

A same-sex couple which travels to Ontario, or another jurisdiction, and gets married is legally married in that jurisdiction, but gains none of the benefits or corresponding responsibilities a married couple would have in their home state.

One of the most important parts of a marriage that the same-sex couple does not receive in their home state is the ability to get a divorce.

The Divorce Problem

While it may sound counter-intuitive, divorce is one of the most important aspects of marriage. Normally, upon the break down of a marriage, the couple would divorce and follow their jurisdiction's system for dividing up assets and establishing custody and support.

However, same-sex couples in jurisdictions which do not recognize their marriage, are faced with the difficult prospect of trying to divide a life built together without the tools to fairly distribute the pieces of that life.



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Spouses are left without the necessary protection to obtain the support they need to transition into a new life, and children do not have the protection of the courts to ensure that the custody arrangement is in their best interest.

While same-sex couples have developed a number of alternative options, these are legally complicated and difficult to implement. Perhaps most distressingly, they require very close cooperation between the parties.

The Need for Reform

Ultimately, the only way to address this problem is for the United States to finally and unequivocally recognize marital equality. Many jurisdictions in the United States expect same sex couples to return to the jurisdiction in which they were married in order to become divorced.

This is not as simple as it sounds. In Ontario, the *Divorce Act* requires at least one of the individuals to be a resident in the province. Becoming a resident would require that person to stay in the province for a full year, leaving their home, career, and life behind.

Further, due to Canadian visa requirements, it would be unlikely that a same sex partner could legally work in Canada during that time. This is clearly not an option for most people.

Some individuals state that Ontario needs to do more to warn same-sex couples who visit the province about the consequences of their limping marriage.

It is difficult to believe this will be very effective. Relatively few individuals willing to travel to another jurisdiction in order to enter into a valid marriage are likely to believe that their marriage will eventually break down and they will need a divorce.