Bar Journal No Place for Controversial Topic

To the Editor:

I write to express my sincere dissatisfaction over two articles published in the January 2012 issue of the *Michigan Bar Journal,* which focused on diversity and inclusion. Both the President's Page and the article by Jay Kaplan on "The Invisible LGBT Family" raised a very controversial topic, namely, whether people who live a gay lifestyle should be a protected class under the law.

Rather than highlight a particular area of law to help practitioners better understand the law as is typical of *Bar Journal* articles, Mr. Kaplan's article rails against the decisions made by the Michigan legislature and judiciary. It appears that the *Bar Journal* has given Mr. Kaplan a public platform on which to highlight his particular ideology, which is by no means a mainstream position. As a committed, dues-paying member of the State Bar, I am appalled that Bar member funds have been used to propagate ideas such as Mr. Kaplan's. I seriously doubt that the *Bar Journal* would run an article that provides all the counterarguments to Mr. Kaplan's claims written by a person who holds different moral beliefs. In an age when divisive issues draw out such strongly held beliefs by a variety of parties, I think it would be wise not to run such controversial articles in the *Michigan Bar Journal.*

James Fifelski
Ann Arbor

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Keep Propaganda Out of the *Bar Journal*

To the Editor:

I was disappointed that the *Michigan Bar Journal* chose to run Jay Kaplan's "The Invisible LGBT Family," which bemoaned the fact that same-sex couples cannot jointly adopt children in the state of Michigan. Several passages in the article made me wonder whether he had even read Article I, Section 25 of the Michigan Constitution ("Section 25"). Kaplan does not quote Section 25 in his article and refers to it simply as a "marriage amendment." This provision, which was added in 2004 by a voter-approved ballot initiative, reads as follows:

> To secure and preserve the benefits of marriage for our society *and for future generations of children,* the union of one man and one woman in marriage shall be the only agreement recognized as a marriage *or similar union* for any purpose. (Emphasis added.)

Nevertheless, Kaplan claims that the Michigan Supreme Court (in *National Pride at Work v Granholm*) stretched this marriage amendment to also prohibit "civil unions, domestic partnerships, and other forms of recognition of same-sex relationships" and that Michigan "is the only state in which this prohibition results from a court's interpretation of a 'marriage amendment.'" But the plain language of Section 25 clearly states that the legal recognition of any union similar to a marriage is prohibited. If a civil union or domestic partnership is not similar to a marriage, then what is? The Court itself stated that Section 25 "is unambiguous and plainly precludes the recognition of same-sex domestic partnerships or similar unions" and thereby concluded that it "need not look to extrinsic evidence to ascertain the voters' intent." Therefore, it is inaccurate to claim that an activist court was needed to block the recognition of same-sex unions in Michigan.

Kaplan then goes on to criticize "Michigan judges" who interpret the state's adoption laws to prohibit joint adoption by same-sex couples (because Michigan law requires that the spouse of a person who wishes to adopt a child must join in the adoption process, and same-sex couples cannot marry in Michigan). He states that the "legal logic for this conclusion is suspect" (without explaining why) and calls it a "judicially manufactured interpretation."

Again, this ignores Section 25, and the fact that its stated purpose is the preservation of "the benefits of marriage for…future generations of children." Section 25 is based on the premise that traditional marriage provides certain benefits to children that no other relationship can provide. Because Section 25 ties the exclusive status of traditional marriage to the raising of children, it should be clear that this prohibition of same-sex unions is *especially* relevant in the case of adoption. Accordingly, even if there is any ambiguity in our state's adoption statutes regarding joint adoption by same-sex couples (as Kaplan believes), it is made irrelevant by the Michigan Constitution.

Kaplan concludes by stating that "Michigan's legislature and courts have ultimately let down the children of gay parents." As discussed above, the responsibility for any "let down" rests with the state's voters themselves and not with any branch of the state's government. Furthermore, it is worth noting how the tone of this statement reflects an underlying attitude (which pervades the entire article) that the inability of same-sex couples to jointly adopt children is a bad thing—and that all readers share (or should share) this view. This attitude completely ignores the competing view (i.e., every child has a right to be raised by a mother and a father), which appears to be fairly widely held in Michigan given the passage of Section 25.

In sum, by failing to address Section 25, the article is essentially a propaganda piece rather than a thoughtful discussion of an actual legal issue. I would have expected much better from the *Michigan Bar Journal.*

Marko J. Belej
Southfield

Note: Mr. Belej's views are solely his own and do not reflect those of his employer.

Response from the Author:

I believe that the comments contained in both letters to the editor only underscore

why it is important to address the issues of diversity in our legal system. Contrary to Mr. Fifelski's characterization of my article, I did not raise the issue of whether gay people should be a protected class under the law. Everyone is entitled to equal protection under the laws of both our state and federal government, and I believe the article points out how current Michigan law and practice denies fairness and fundamental rights to lesbian, gay, bisexual, and transgender (LGBT) families by denying the existence of their relationships.

Contrary to Mr. Belej's assertions, the passage of Michigan's constitutional amendment through voter initiative, which limited the right to marry to heterosexual couples, did not address the issue of adoption nor did it provide a blanket license for discriminatory treatment against LGBT people in all areas of the law. The issue of fair treatment of minority and disenfranchised groups has never been solely decided by the will of the majority. It has depended on the engagement and action of both the legislature and the courts, which have been woefully inadequate in Michigan regarding the fair treatment of LGBT families.

Jay Kaplan
Detroit

Inspired Reading

To the Editor:

I really enjoyed and appreciated Nancy Werner's article about mind, body, and spirit ("Be Still and Listen: Mindfulness for Lawyers," February 2012). Thank you for the reminder that we can choose our way of reacting to challenges even if we can't always control things that confront us. This was a thoughtful and generous piece of writing that has inspired me to look further into the resources Ms. Werner cited. I also thank the State Bar of Michigan for including this useful essay as a reminder to us of the importance of balance, kindness, and forgiveness in our careers and lives.

Samuel H. Pietsch
Southfield

The Case on Mason

To the Editor:

As a biographer of the Boy Governor and author of *The Toledo War, the First Michigan–Ohio Rivalry,* I enjoyed the brief article on Stevens T. Mason by Carrie Sharlow in the February issue of the *Michigan Bar Journal.* However, Michigan's first constitutional convention was in 1835, not 1836, as Ms. Sharlow's article stated. And what Ms. Sharlow doesn't say is that young Mason's law career in Michigan and New York was anything but stellar. That said, Mason wrote his name in large letters on Michigan history and his is an honored place in this state's political hall of fame.

Don Faber
Ann Arbor