



1-1-2004

Family / Domestic Partners Rights and Responsibilities Act of 2003: California Extends Significant Protections to Registered Domestic Partners and Their Families, The

Meghan M. Gavin

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>

 Part of the [Legislation Commons](#)

Recommended Citation

Meghan M. Gavin, *Family / Domestic Partners Rights and Responsibilities Act of 2003: California Extends Significant Protections to Registered Domestic Partners and Their Families, The*, 35 MCGEORGE L. REV. 482 (2004).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol35/iss3/16>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

The Domestic Partners Rights and Responsibilities Act of 2003: California Extends Significant Protections to Registered Domestic Partners and Their Families

Meghan M. Gavin

Code Sections Affected

Family Code §§ 297.5, 299, 299.2, 299.3 (new), 297, 298, 298.5 (amended), 299, 299.5 (repealed); Government Code § 14771 (amended).
AB 205 (Goldberg); 2003 STAT. Ch. 421.

I. INTRODUCTION

Lydia Ramos and Linda Rodriguez had been life partners for eleven years when Linda died tragically in an automobile accident.¹ Although the couple had raised three children together, Lydia did not have the authority to make basic funeral arrangements for Linda.² The couple's daughter, who was born to Linda during the relationship, was removed from the family home on the day of the funeral.³ Since Lydia was not considered the child's mother under California law, she was forced to engage in a two-month court battle for custody of her child.⁴

Unfortunately, Lydia Ramos' experience is not unique. In a similar case, Emily Brook was denied legal recourse when her former partner refused to provide financial assistance for the care of their two children.⁵ Likewise, Sharon Smith was ruled ineligible to sue for wrongful death after her life partner Diane Whipple died in an infamous dog mauling incident.⁶ In addition, Kenneth Bradkowski had difficulty receiving payments from the Victim Compensation Fund after his partner died in the September 11, 2001 attacks.⁷ These stories are but a sample of the many difficulties encountered by domestic partners throughout California.⁸

1. See EQUALITY CALIFORNIA, A FEW OF THE CALIFORNIA FAMILIES AFFECTED BY AB 205, [hereinafter CALIFORNIA FAMILIES] (copy on file with the *McGeorge Law Review*) (detailing the hardships domestic partners experience due to the lack of legal protections and benefits under California law); SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 205, at 4 (July 1, 2003) (providing anecdotal information highlighting the problems encountered by domestic partners).

2. CALIFORNIA FAMILIES, *supra* note 1.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. See *id.* (noting problems incurred by several other families, not listed here, due to the lack of legal rights and benefits under California law).

In 1999, the California Legislature established the first statewide domestic partnership registry by enacting the Domestic Partnership Act.⁹ The Act granted registered same-sex partners a limited number of rights and responsibilities previously afforded only to married couples.¹⁰ Since the passage of the Act, California has expanded the scope of benefits available to domestic partners.¹¹

Today, domestic partners are entitled to fifteen separate rights and responsibilities.¹² However, as the stories of Lydia Ramos, Sharon Smith, Emily Brook, and Keith Bradkowsi demonstrate, domestic partners desperately need additional protection.¹³ In order to shield domestic partners and their families from the social and economic consequences of life crises such as abandonment, separation, and the death of loved ones, the California Legislature enacted Chapter 421 to provide registered domestic partners with the rights and responsibilities available to married couples under state law.¹⁴

II. LEGAL BACKGROUND

A. Model State and Nationwide Programs

In addition to California, states across the nation have recognized the legal validity of same-sex partnerships in recent years.¹⁵ In 2000, Vermont attracted nationwide attention when the legislature approved same-sex civil unions.¹⁶ Other states, including Alaska, Arizona, Connecticut, Delaware, Maine, Minnesota, Nevada, New York, Oregon, Rhode Island, Washington,¹⁷ New Jersey, and Hawaii followed suit shortly thereafter, granting domestic partners a limited range of rights.¹⁸ At least eleven other states are currently considering legislation that would establish same-sex marriage, civil unions,

9. CAL. FAM. CODE § 297 (West Supp. 2002).

10. EQUALITY CALIFORNIA, AB 205 FACT SHEET, at www.eqca.org/factsheet_ab205.pdf (last updated May 14, 2003) [hereinafter FACT SHEET] (copy on file with the *McGeorge Law Review*) (granting registered domestic partners hospital visitation rights and providing health benefits to the domestic partners of state employees); *infra* discussion Part II.C (discussing the rights granted to domestic partners with the enactment of the Domestic Partnership Act in 1999).

11. *See infra* Part II.C. (listing the rights granted to domestic partners after the enactment of the Domestic Partnership Act and prior to the enactment of Chapter 421).

12. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 205, at 5 (July 1, 2003).

13. *See id.* (noting how these problems could have been avoided if domestic partnerships received the same rights and responsibilities granted to married couples).

14. *Id.*

15. FACT SHEET, *supra* note 10.

16. *Id.*

17. *Id.*

18. James Dao, *Ohio Legislature Votes to Ban Same-Sex Unions*, N.Y. TIMES, Feb. 4, 2004 at A1 (copy on file with the *McGeorge Law Review*).

or domestic partnerships.¹⁹ In addition, the Massachusetts Supreme Court recently declared that same-sex couples were entitled to full marriage rights, thus paving the way for same-sex marriages to begin in mid-May 2004.²⁰

Outside of the United States, many countries have adopted partner registries for same-sex couples.²¹ Canada,²² Belgium, and the Netherlands allow same-sex couples to marry, while Brazil, Denmark, France, Finland, Germany, Greenland, Hungary, Iceland, Norway, Portugal, South Africa, Sweden, and Switzerland grant same-sex couples significant benefits and responsibilities.²³

B. Domestic Partnership Act

In 1999, the California Legislature established the first statewide domestic partnership registry with the creation of the Domestic Partnership Act.²⁴ By definition, domestic partners are “two adults who have chosen to share one another’s lives in an intimate and committed relationship of mutual caring.”²⁵ In order to establish a domestic partnership, both partners must be of the same sex²⁶ and at least eighteen years of age.²⁷ For insurance purposes, one or both partners must be over the age of sixty-two.²⁸ The Act requires each partner to be capable of consenting to the domestic partnership.²⁹ In addition, the partners must share a common residence³⁰ and agree to be jointly responsible for their living expenses.³¹ Neither person may be married, a member of another domestic partnership,³² or related by blood in a way that would prevent them from entering into marriage in California.³³ If the

19. FACT SHEET, *supra* note 10.

20. Dao, *supra* note 18.

21. *Id.*

22. Michael Foust, *Canadian Court Approve Homosexual ‘Marriage’; Could America Be Next?*, BAPTIST PRESS, June 12, 2003, available at <http://www.savecalifornia.com/press/baptistpress061203.cfm> (copy on file with the *McGeorge Law Review*) (discussing the Ontario Appeal Court decision which changed the definition of marriage from the union of one man and woman to the “voluntary union for life of two persons to the exclusion of all others”).

23. See FACT SHEET, *supra* note 10.

24. CAL. FAM. CODE § 297 (West Supp. 2002).

25. *Id.* § 297(a).

26. *Id.* § 297(b)(6)(A).

27. *Id.* § 297(b)(5).

28. See *id.* § 297(b)(6)(B) (requiring one or both persons to meet the eligibility criteria under 42 U.S.C. § 402(a) for age old insurance benefits or 42 U.S.C. § 1381 for aged individuals).

29. *Id.* § 297(b)(7).

30. *Id.* § 297(b)(1).

31. See *id.* § 297(b)(2) (stating basic living expenses incurred during the domestic partnership to be shared by the domestic partners).

32. See *id.* § 297(b)(3), (b)(8) (requiring that neither domestic partner has filed a Declaration of Domestic Partnership which has not been lawfully terminated).

33. *Id.* § 297(b)(4).

domestic partners meet these qualifications, they may file a Declaration of Domestic Partnership.³⁴

To file a Declaration of Domestic Partnership, each person must provide his or her mailing address, sign the declaration certifying that the representations are correct, and have a notary public acknowledge his or her signature.³⁵ A person may not file a Declaration of Domestic Partnership until six months after the lawful termination of a prior domestic partnership.³⁶

Prior to Chapter 421, a domestic partnership was terminated under the Act when one partner died, married, or sent a written notice terminating the relationship to the other domestic partner by certified mail.³⁷ In addition, a partnership automatically ended when the domestic partners ceased sharing a common residence.³⁸ Upon termination, a partner was required to file a notice with the Secretary of State and send a copy of the letter to the other partner.³⁹ Each domestic partner was required to notify all third parties of the termination if he or she received benefits from that party due to the partnership.⁴⁰ Finally, after termination, neither partner retained any continuing obligations to the other.⁴¹

Before the enactment of Chapter 421, filing a Declaration of Domestic Partnership under the Act did not automatically change the character of any real or personal property owned by either partner.⁴² Nor did it create rights or interest in real or personal property, including community property.⁴³ Instead, any property jointly acquired by the partners was allocated proportionally according to each partner's interest at the time of acquisition.⁴⁴

C. Domestic Partner's Rights Expanded

After the passage of the Domestic Partnership Act, the California Legislature enacted several bills that further expanded the rights of domestic partners.⁴⁵ In 1999, California granted registered domestic partners hospital visitation rights and provided health benefits to the domestic partners of state

34. *Id.* § 297(b)(9).

35. *Id.* § 298(c) (West 2002).

36. *Id.* § 298.5(c).

37. *Id.* § 299(a)(1)-(3) (repealed by Chapter 421).

38. *Id.* § 299(a)(4).

39. *Id.* § 299(b).

40. *Id.* § 299(c).

41. *Id.* § 299.5(b).

42. *Id.* § 299.5(c).

43. *Id.* § 299.5(d).

44. *Id.* § 299.5(e) (barring an exception where the parties have otherwise agreed in writing).

45. See FACT SHEET, *supra* note 10 (noting that registered domestic partners are granted a small but significant base of benefits).

employees.⁴⁶ In 2001, registered domestic partners were granted twelve new rights, including the right to sue for wrongful death, to recover damages for negligent infliction of emotional distress, to be appointed as administrator of a decedent's estate,⁴⁷ to use employee sick leave to care for an ill partner or partner's child, to make medical decisions on behalf of an incapacitated partner, to receive unemployment benefits if forced to relocate for a partner's job, and to adopt a partner's child as a stepparent.⁴⁸ In 2002, domestic partners were also granted the right to an automatic inheritance of a portion of a partner's separate property in the event that his or her partner died without a will.⁴⁹ In addition, domestic partners were exempted from the provision restricting a person from benefiting from a will or trust that he or she helped to draft.⁵⁰ Lastly, domestic partners were granted six weeks of paid family leave to care for a sick partner.⁵¹

III. CHAPTER 421

In order to help California "move closer to fulfilling the promises of inalienable rights, liberty and equality," Chapter 421 provides caring and committed couples, regardless of their sexual orientation, with the opportunity to obtain essential rights and obligations.⁵² To achieve these goals and to promote stable and lasting family relationships, Chapter 421 extends the rights, benefits, and duties of marriage to persons registered as domestic partners.⁵³ Accordingly, domestic partners are conferred the same rights and obligations as married couples with respect to a child or children of either partner,⁵⁴ as well as with discrimination claims.⁵⁵ Chapter 421 also extends the privileges and duties of marriage to domestic partners in legal unions formed in other states and jurisdictions.⁵⁶

To facilitate these changes, Chapter 421 requires the Director of California's State Forms Management Program to inform state agencies and

46. *Id.*

47. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 205, at 9 (Apr. 1, 2003).

48. FACT SHEET, *supra* note 10.

49. *Id.*

50. *Id.*

51. *Id.*

52. 2003 Cal. Stat. ch. 421, § 1(a).

53. CAL. FAM. CODE § 297.5(a)-(c) (enacted by Chapter 421) (granting current, former, and surviving registered domestic partners the "rights, protections, and benefits . . . responsibilities, obligations, and duties under the law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provision or source of law, as granted and imposed" on spouses).

54. *See id.* § 297.5(d) (stating that the rights and obligations of current, former, or surviving registered domestic partners are the same as married spouses).

55. *Id.* § 297.5(g).

56. *Id.* § 299.2 (requiring the legal union to be one other than marriage).

other pertinent organizations that where terms such as “spouse, husband, wife, father, mother, marriage or martial status,” are used, the forms should also include appropriate references to “domestic partner, parent, or domestic partnership.”⁵⁷ In addition, the Secretary of State is required to send a letter on three separate occasions to the mailing address of registered domestic partners in order to notify registered domestic partners of their new rights and obligations.⁵⁸ The letter will inform registered domestic partners that they must terminate their relationship by January 5, 2005 if they do not wish to be subject to the new rights and responsibilities created by Chapter 421.⁵⁹ Additionally, the Secretary of State must provide a notice outlining the changes to parties interested in obtaining a Declaration of Domestic Partnership, as well as provide this information to the general public on the Secretary of State’s website.⁶⁰

A. *Additional Requirements for Domestic Partner Registration*

Chapter 421 amends the requirements for creating a domestic partnership. In addition to the provisions previously enacted under California Family Code Section 297,⁶¹ each partner must consent to the jurisdiction of the California superior courts for proceedings related to domestic partnerships.⁶² The consent of the partners remains effective even if one or both partners discontinue their residency or domicile within the state.⁶³ Furthermore, a person who has filed a Declaration of Domestic Partnership may not file a new Declaration or enter a civil union with anyone other than his or her registered domestic partner unless the domestic partnership has been properly terminated.⁶⁴ Furthermore, domestic partners no longer need to be jointly responsible for each other’s basic living expenses in order to register a Declaration of Domestic Partnership.⁶⁵

57. CAL. GOV’T CODE § 14771(a)(14) (amended by Chapter 421).

58. CAL. FAM. CODE § 299.3(a) (enacted by Chapter 421) (requiring the Secretary of State to send a letter to each registered domestic partner, registered more than one month prior, on or before June 30th, 2004, December 1, 2004, and January 31, 2005).

59. *Id.*

60. *Id.*

61. *See supra* Part II.B (discussing the requirements for creation of a domestic partnership established by the Domestic Partnership Act in 1999).

62. CAL. FAM. CODE. § 298(c)(3) (amended by Chapter 421) (discussing each person to consent to California Superior Court jurisdiction in order to obtain a judgment of dissolution or nullity of the domestic partnership).

63. *Id.*

64. *See id.* § 298.5(c) (requiring a domestic partner to terminate a prior domestic partnership, via the entry of either a final judgment of dissolution or nullity, before entering into a different domestic partnership or civil union).

65. *Id.* § 297 (omitting a requirement that the partners agree to be responsible for their living expenses).

B. Terminating Domestic Partnerships

Chapter 421 repeals existing Family Code provisions governing the termination of domestic partnerships.⁶⁶ Instead, Chapter 421 creates two separate procedures for terminating partnerships: filing a Notice of Termination of Domestic Partnership or filing for legal separation.⁶⁷ In order to terminate the partnership via the Notice of Termination of Domestic Partnership, all of the following circumstances must be present at the time of filing: (1) both parties desire the domestic partnership terminated; (2) both parties sign the Notice of Termination; (3) there are no children born before or after registration, adopted after registration, and neither partner, to their knowledge, is pregnant; (4) the partnership has not existed over five years;⁶⁸ (5) neither party has an interest in real property, excluding a residential lease;⁶⁹ (6) there are no unpaid obligations by either partner in excess of approximately \$4,000;⁷⁰ (7) the total fair market value of the community property and separate property is approximately \$25,000 each;⁷¹ (8) the parties have executed an agreement dividing community property assets;⁷² (9) both parties waive the right to financial support by the other partner;⁷³ and (10) the parties have both read a brochure describing the process of terminating a domestic partnership.⁷⁴ If the registered domestic partners meet these requirements, the partnership is terminated six months after the filing of the Notice of Termination, unless either party files a revocation before that date.⁷⁵ A properly completed Notice of Termination of Domestic Partnership is treated as an entry for a judgment of dissolution;⁷⁶ however, termination via this method does not bar the parties from instituting an action to set aside the termination.⁷⁷

66. 2003 Cal. Stat. ch. 421, § 7.

67. CAL. FAM. CODE § 299(a) (enacted by Chapter 421).

68. *Id.* § 299(a)(1)-(3), (10).

69. *Id.* § 299(a)(4)(A)-(B) (stating that the residential lease must terminate within a year of filing the Notice of Termination and not include an option to purchase the property).

70. *Id.* § 299(a)(5) (mandating no unpaid obligations in excess of the guidelines established by section 2400(a)(6) and 2400(b) of the California Family Code, excluding unpaid obligation for an automobile).

71. *Id.* § 299(9)(6) (requiring no community property assets in excess of the guidelines established by sections 2400(a)(7) and 2400(b) of the California Family Code, excluding unpaid obligation for an automobile).

72. *Id.* § 299(a)(7) (stating that the parties must have executed all “documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement”).

73. *Id.* § 299(a)(8).

74. *Id.* § 299(a)(8)-(9).

75. *Id.* § 299(b) (requiring the revocation to be sent to the other partner by “first-class mail, postage pre-paid, at the other party’s last known address”).

76. *Id.*

77. *Id.* § 299(c) (requiring fraud, duress, mistake, or another legally recognized cause of action in order to set aside the termination; a court will set aside the termination if the requirements for a Notice of Termination of Domestic Partnership were not met at the time of filing).

If the parties are not eligible to terminate the partnership by completing a Notice of Termination, the partners must file a petition for dissolution, nullity, or legal separation.⁷⁸ Chapter 421 grants California superior courts jurisdiction over all proceedings relating to the termination of domestic partnerships.⁷⁹ These proceedings follow the same procedures as the equivalent proceedings for the termination of marriage.⁸⁰ In addition, domestic partners may terminate their legal relationship within the California superior courts even if neither partner resides or is domiciled in the state.⁸¹

IV. ANALYSIS OF CHAPTER 421

A. *Rights and Benefits Conferred by Chapter 421*

In order to guide domestic partners through complex legal situations faced by families such as death, divorce, custody disputes, illness, childbirth, and adoption,⁸² Chapter 421 extends most of the rights and duties of marriage under state law to persons registered as domestic partners.⁸³ However, the legislation does not provide complete equality.⁸⁴ First, Chapter 421 does not amend or modify any sections of the California Constitution or statutes adopted by initiative;⁸⁵ therefore, domestic partners will not receive the benefits provided by these provisions. Second, all rights, benefits, and duties under federal law are excluded.⁸⁶ Consequently, domestic partners will not receive any of the 1,049 federal benefits afforded married couples, including food stamps, social security, and Medicare.⁸⁷ Third, Chapter 421 does not assure domestic partners that their partnerships will be legally recognized in other states,⁸⁸ thus the protections of Chapter 421 are limited to California's borders.

Nonetheless, Chapter 421 grants domestic partners a significant number of rights and obligations.⁸⁹ Although Chapter 421 expressly confers many of these protections, by granting domestic partners the benefits and responsibilities of marriage, partners are entitled to many rights not specifically enumerated by

78. See *id.* § 299(a) (stating that a domestic partnership can be terminated without filing a proceeding for dissolution by filing a Notice of Termination of Domestic Partnership).

79. *Id.* § 299(d).

80. *Id.*

81. See *id.* (stating that domicile and residency is determined at the date of filing).

82. *Id.*

83. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 205, at 4 (July 1, 2003).

84. *Id.*

85. 2003 Cal. Stat. ch. 421, § 1(d).

86. See *id.* § 1(e) (recognizing that California lacks the jurisdiction to control "federal laws or the benefits, protections, and responsibilities related to them").

87. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 205, at 5-6 (July 1, 2003).

88. *Id.*

89. FACT SHEET, *supra* note 10.

the legislation. Some of these protections include: (1) financial support during and after the relationship has terminated; (2) joint ownership of property as well as equitable division of the partnership's property after the relationship has terminated; (3) the right to make funeral arrangements and consent to an autopsy; (4) mutual responsibility for debts to third parties incurred during the relationship; (5) protection from discrimination in employment and housing; (6) the right to exercise the marital communication privilege; (7) the right to receive government benefits, such as workers' compensation and public assistance; and (8) custody, support, and visitation of the children of either or both partners.⁹⁰

1. *Keeping Families Intact: The Right to Custody and Visitation*

By implicitly granting domestic partners rights to child custody, support, and visitation,⁹¹ Chapter 421 aims to promote stable and lasting family relationships.⁹² Prior to the legislation, California family courts had faced difficult decisions regarding the custody and visitation rights of a domestic partner who was not the biological parent of the partner's child.⁹³ For example, in *Curiale v. Regan*, the court denied visitation rights to a plaintiff who had financially supported her partner and their child for over three years.⁹⁴ The court held, *inter alia*, that the Legislature had not conferred upon a non-parent in a same-sex relationship any right of custody or visitation with a child born to the other partner.⁹⁵ Although the plaintiff argued that the court should grant these rights even in the absence of appropriate legislation,⁹⁶ the court declined to act as an "innovator of social policy."⁹⁷ Reasoning that the legislature was better equipped to consider the expansion of state law, the court declined to extend parental rights and obligations to non-biological parents in same-sex relationships.⁹⁸

90. *Id.*

91. *Id.*

92. 2003 Cal. Stat. ch. 421, § 1(b).

93. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 205, at 8 (July 1, 2003).

94. 272 Cal. Rptr. 520, 521, 222 Cal. App. 3d 1597, 1559 (1990) (the child had been conceived by artificial insemination).

95. *Id.*, 222 Cal. App. 3d at 1559.

96. *Id.*, 222 Cal. App. 3d at 1600.

The judiciary's function is to confront controversy. With or without appropriate legislation, the courts must resolve disputes regarding the care of children in non-traditional families. . . . Unlike the Legislature, the courts cannot avoid controversial claims and must deal with real families with real disputes today, not solutions of compromise fashioned for abstract problems tomorrow.

Id.

97. *Id.*

98. *See id.*, 222 Cal. App. 3d at 1600-01 ("Given the complex practical, social and constitutional ramifications of the [de facto parent] doctrine, we believe that the Legislature is better equipped to consider expansion of current California law should it choose to do so.").

In a similar case, *Nancy S. v. Michele G.*, a woman conceived two children through artificial insemination while involved in a long-term, same-sex relationship.⁹⁹ Although the partners had originally shared custody after the termination of their relationship, the biological mother later sought a declaration granting her sole legal and physical custody.¹⁰⁰ The court agreed, holding that the defendant was neither a legal parent under the Uniform Parentage Act¹⁰¹ nor the doctrines of *in loco parentis*¹⁰² or parenthood by equitable estoppel.¹⁰³ Although the court noted the regrettable consequences of its decision,¹⁰⁴ the court felt the legislature was better equipped to fashion a solution to “such a complex and socially significant issue.”¹⁰⁵

Chapter 421 seeks to rectify these problems by granting domestic partners the same rights and obligations afforded married couples with respect to a child of either partner.¹⁰⁶ However, Chapter 421 does not explicitly grant courts the authority to treat a partner who is not the biological or adoptive parent of the child as a legal parent.¹⁰⁷ Even in the absence of express language, California courts, mindful of Chapter 421, would most likely analogize this situations to existing law that recognizes a husband and wife as the legal parents of a child conceived by artificial insemination.¹⁰⁸

B. Are Domestic Partnerships Necessary?

Opponents argue that many of the rights granted by Chapter 421 are available to domestic partners through private contractual agreements.¹⁰⁹ Because these agreements provide domestic partners with a mechanism for governing the rights and obligations of their relationship, opponents contend Chapter 421 is unnecessary.¹¹⁰ In practice, however, many partners do not enter into co-ownership or cohabitation agreements.¹¹¹ Like married couples, many

99. 279 Cal. Rptr. 212, 214, 228 Cal. App. 3d 831, 834 (1991).

100. *Id.*

101. *Id.*, 228 Cal. App. 3d at 836.

102. *Id.*, 228 Cal. App. 3d at 838.

103. *Id.*, 228 Cal. App. 3d at 840.

104. *See id.* (noting that the children will be the most adversely affected).

105. *Id.*, 228 Cal. App. 3d at 841.

106. CAL. FAM. CODE § 297 (enacted by Chapter 421).

107. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 205, at 10 (July 1, 2003).

108. *See* CAL. FAM. CODE § 7613(a) (West 2000) (recognizing a husband and wife as the legal parents of a child conceived by artificial insemination of the wife by a man not her husband); *see also In re Marriage of Buzzanca*, 72 Cal. Rptr. 2d 280, 61 Cal. App. 4th 1410 (holding that spouse who use a surrogate to have a child are both legal parents even if neither spouse has a biological relationship to the child).

109. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 205, at 11 (Apr. 1, 2003).

110. *Id.*

111. Letter from Frederick C. Hertz, Author of *Legal Affairs: Essential Advice for Same-Sex Couples*, to Assembly Member Ellen Corbett, Chair, Assembly Committee on the Judiciary (Feb. 24, 2003) (on file with the *McGeorge Law Review*).

partners find that discussing the possible dissolution of their partnership is contrary to their feelings of love and trust.¹¹²

In addition, contractual agreements are limited in scope and cannot provide partners with all the rights and responsibilities of marriage.¹¹³ For example, private contracts cannot confer protections such as child custody, visitation, and support obligations.¹¹⁴ Furthermore, although California recognizes some oral or implied agreements between non-married partners, same-sex couples have found it extremely difficult to prevail on these types of claims.¹¹⁵

C. Proposition 22: California's Defense of Marriage Act

Opponents contend Chapter 421 amends Proposition 22, an initiative statute adopted by California voters in March 2000.¹¹⁶ Commonly known as the Knight Initiative, Proposition 22 declares that “[o]nly marriage between a man and a woman is valid or recognized in California.”¹¹⁷ Asserting that Chapter 421 changes this definition of marriage, opponents argue that Proposition 22 precludes California from extending the rights and responsibilities of marriage to registered domestic partners.¹¹⁸ As support for this argument, they note that the California Constitution prohibits the Legislature from amending or repealing an initiative passed by the voters.¹¹⁹ A proposed law violates this provision if the bill adds, deletes, or alters the scope or effect of the initiative.¹²⁰ Thus, opponents argue that by granting domestic partners the rights and responsibilities of marriage, the California Legislature has altered the effect of Proposition 22.¹²¹

112. *Id.*

113. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 205, at 11 (Apr. 1, 2003).

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. See *Franchise Tax Bd. v. Cory*, 145 Cal. Rptr. 819, 821, 80 Cal. App. 3d 772, 776 (1978) (citing Article II, section 10, subdivision (c) of the California Constitution, which provides that “the Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors”).

120. See *id.* (holding that an amendment is “any change of the scope or effect of an existing statute, whether by admission, omission, or substitution of provisions, or substitution of provisions, which does not wholly terminate its existence”).

121. See Julie Drake, *Protestors Targeting Domestic Partner Bill*, ANTELOPE VALLEY PRESS, June 28, 2003, available at www.savecalifornia.com/press/antvalpress062803.cfm (copy on file with the *McGeorge Law Review*) (quoting Randy Thomasson, director of Campaign for California Families: “[AB 205] is gay marriage; I don't care that they call it domestic partnerships; when you give all the rights of marriage to gay couples, that's gay marriage”).

In response, proponents assert Chapter 421 does not “pertain to or affect marriage in any way.”¹²² Although Chapter 421 is modeled after existing marriage laws, domestic partnerships will continue to remain distinct from the institution of marriage.¹²³ For example, partners will not receive the 1,049 federal rights and benefits afforded married couples nor will they receive the “full social and symbolic equality of marriage.”¹²⁴ Furthermore, the Legislative Counsel of California observed that Proposition 22 was not intended to affect domestic partnerships.¹²⁵ At the time Proposition 22 was approved, the California Legislature had already established domestic partnerships. Despite this fact, the proposition did not purport to address whether the rights and obligations of marriage could be extended to domestic partners.¹²⁶ Rather, the Official Voter Information guide firmly stated “Proposition 22 does not take away anyone’s rights.”¹²⁷ Based on these findings, the Legislative Counsel of California concluded that Chapter 421 does not amend Proposition 22.¹²⁸

D. Public Opinion: Where Do Californian’s Stand?

Noting that over sixty-one percent of Californian voters approved Proposition 22, opponents assert that Chapter 421 is an attempt to “circumvent the will of the majority.”¹²⁹ While conceding that domestic partners were at one time in need of legal protections, opponents assert that major inequalities have been adequately addressed by prior legislation.¹³⁰ Therefore, granting domestic partners increased rights and obligations has no justification “other than to include same-sex unions in the social and contractual arrangements reserved for marriage.”¹³¹ In effect, opponents claim Chapter 421 subtly changes the definition of marriage, thereby creating “ill-advised changes in public policy.”¹³²

In contrast, however, a statewide poll conducted two years after the passage of Proposition 22 revealed that a majority of Californians support legal recognition of same-sex civil unions.¹³³ In light of the public’s support,

122. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 205, at 12 (April 1, 2003).

123. *Id.*

124. *Id.*

125. Letter from Diane F. Boyer-Vine, Member, Legislative Counsel of California, to Assembly Member Jackie Goldberg, Cal. State Assembly (Mar. 24, 2003) (on file with the *McGeorge Law Review*).

126. *Id.*

127. *Id.*

128. *Id.*

129. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 205, at 14 (Aug. 27, 2003).

130. *Id.*

131. Letter from Edward Dolejsi, Executive Director, California Catholic Conference, to Ellen M. Corbett, Chairperson, Assembly Judiciary Committee (Mar. 27, 2003) (on file with the *McGeorge Law Review*).

132. *Id.*

133. FACT SHEET, *supra* note 10 (citing a statewide poll conducted in June 2002 that showed 55% of California voters support allowing gays and lesbians to form legal civil unions).

proponents assert that there is no longer any reason to deny domestic partners the essential rights and duties of marriage under California law.¹³⁴ Moreover, granting domestic partners the protections of marriage furthers the state's interests of promoting family relationships, protecting family members during life crises, and reducing discrimination in a manner consistent with the California Constitution.¹³⁵

V. CONCLUSION

By extending most of the rights and obligations of marriage under state law to persons registered as domestic partners, Chapter 421 takes a tremendous step towards equality.¹³⁶ However, the legislation falls short of extending all of the rights and responsibilities of marriage to domestic partners.¹³⁷ Legal protections conferred by federal law, the California Constitution, and initiative statutes are withheld from the battery of rights conferred to domestic partners by Chapter 421.¹³⁸ Furthermore, the legislation does not guarantee domestic partners legal recognition outside of California.¹³⁹ Nonetheless, the rights granted to domestic partners by Chapter 421 are significant.¹⁴⁰

Opponents have questioned the need, legality, and public support for Chapter 421. First, they argue that Chapter 421 is unnecessary since many of the rights granted by the legislation are already available to domestic partners through private contractual agreements.¹⁴¹ However, these agreements have proven an inadequate substitute for extending the rights and obligations of marriage to domestic partners.¹⁴² Second, opponents contend Chapter 421 amends Proposition 22, which states that only a marriage between a man and a woman is valid.¹⁴³ However, domestic partnerships continue to remain a distinct and separate legal entity, distinguishable from marriage in many important aspects.¹⁴⁴ Third, in light of California voter's support of Proposition 22, opponents assert that Chapter 421 circumvents public opinion.¹⁴⁵ However, recent surveys indicate that Californians generally support granting domestic partners legal rights and responsibilities.¹⁴⁶

134. ASSEMBLY FLOOR, ANALYSIS OF AB 205, at 3 (June 4, 2003).

135. *Id.*

136. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 205, at 4 (July 1, 2003).

137. *See supra* Part IV.A (discussing the rights not conferred to domestic partners by Chapter 421).

138. *Id.*

139. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 205, at 5-6 (July 1, 2003).

140. *Id.* at 4.

141. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 205, at 11 (Apr. 1, 2003).

142. *Infra* Part IV.B.

143. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 205, at 11 (Apr. 1, 2003).

144. *Id.*

145. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 205, at 14 (Aug. 27, 2003).

146. *See* FACT SHEET, *supra* note 10 (citing a statewide poll conducted in June 2002 that showed 55% of California voters support allowing gays and lesbians to form legal civil unions).

By expanding the rights of registered domestic partners, proponents hope Chapter 421 will help partners and their families cope with life crises such as abandonment, separation, child custody, and the death of loved ones.¹⁴⁷ However, for many opponents of the legislation, extending these rights and benefits is an attack on the traditional notions of marriage.¹⁴⁸ In addition, opponents assert that the Legislation subtly changes the definition of family.¹⁴⁹ However, in today's society, what is the definition of family?¹⁵⁰ Is a family a husband, wife, and child? A single parent? A gay or lesbian couple raising a child?¹⁵¹ As one commentator noted, "There are many... definitions of 'traditional family,' but in reality, we all have our own interpretations based on our experiences."¹⁵²

147. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 205, at 5 (July 1, 2003).

148. *See id.* at 16 (stating that Chapter 421 subtly changes the definition of marriage, ignoring "time-tested tradition" and pushing the limits of "social cohesion").

149. *Id.*

150. *Our Voice: A Step Toward Equality*, THE DESERT SUN, June 23, 2003 available at www.the-desertsun.com/news/stories2003/opinion/20030623014927.shtml (copy on file with the *McGeorge Law Review*).

151. *Id.*

152. *Id.*
