

Why California's Three Parent Law Was Inevitable

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A California bill allowing children to have three legal parents will not help children, but instead will unnecessarily complicate their lives. The supposed need for California's SB 1476 flowed directly from the drive to normalize same sex parenting and legalize same sex unions.

Can a child have three parents? If California State Senator Mark Leno has his way, children in California will be able to have three legal parents. Before we dismiss SB 1476 as another example of California Weird, we had best look into it more closely. I believe this development was inevitable, more inevitable in fact than the much-vaunted inevitability of gay marriage. Once we headed down the road of attempting to normalize parenting by same-sex couples and redefine marriage to remove the dual gender requirement, we had to end up with triple parenting.

A deeper look at the whole picture surrounding SB 1476 reveals that not only should the three-parent law fail; same-sex "marriage" should fail as well. As we will see, embedded in this bill is an appalling power grab by the state, and a grotesque misrepresentation of the facts by the bill's authors.

Why normalizing same-sex parenting inevitably led to triple parenting

Let us state an obvious fact: a same-sex couple cannot have a child unless someone gives them one, or part of one, namely either an egg or a sperm. If two women, for instance, decide they want to have a baby, they must still involve a man in the process. They can use some form of artificial reproductive technology with sperm from a man who is unknown to them. Or, they can find an accommodating friend to have sex with one of them, or to otherwise donate his sperm.

The question is this: how is the same-sex couple going to manage the relationship with this third party? In some cases, the women do not want any relationship with the father. Our government will give them this. Through the legal institution of anonymous sperm donation, the government agrees to perpetually separate a mother and father from a legal relationship with each other.

If all same-sex couples were completely and permanently committed to ensuring that their child would never have a relationship with his or her other biological parent, there would be no particular drive for same-sex parenting to lead to triple parenting. But this is obviously a very strong condition. Some female couples will want their children to have an ongoing relationship with their father. Some fathers will want a relationship with their children. Hence, we can see that through situations like these, normalizing same-sex parenting creates momentum for triple parenting.

Some of these three-party relationships will be agreeable and cooperative and amicable. But again, it is obviously a very big presumption to suppose that every such relationship will be completely harmonious for a lifetime. Only some known-donor fathers will be fathers on exactly the terms desired by the two women. Other fathers will desire something different, either more or less involvement than the women want. We cannot count on private agreements among the parties to solve all problems and manage all disputes. A subset of these cases is going to end up being settled by the family courts. Therefore, not only does same sex parenting create an impetus

to triple parenting, it creates an impetus for state involvement in the on-going management of these complex relationships.

It all sounds very nice and agreeable to allow people to make any parenting agreements they want on the front end of their relationships. But when a relationship breaks down, the long arm of the law will end up involved in the life of the family, on the back end, to resolve disputes. We are replacing the natural pre-political concept of biological parenthood, with an artificial, government-created concept of parenthood that is entirely socially constructed. Instead of the government simply recognizing and recording the pre-political reality of biological parenthood, we are giving agents of the state the authority to construct parenthood, all in the best interests of the child, of course.

In one sense of the word, you could say that this is the circumstance that led to Senator Leno's bill. This is the new "real world." Children in this situation have three people involved and interested in their lives who desire to take care of them. Why shouldn't the law have the power to create a legal structure that supports this situation?

The problem is that Senator Leno's bill will create legal structures which cannot be confined to this one type of relatively benign case. SB 1476 attempts to solve this problem through the family courts in this way:

In an appropriate action, a court may find that a child has more than two natural or adoptive parents if required to serve the best interest of the child. In determining a child's best interest under this section, a court shall consider the nature, duration, and quality of the presumed or claimed parents' relationships with the child and the benefit or detriment to the child of continuing those relationships.

"A court may find" covers the case of three cooperating parents, which is the scenario that advocates of redefining marriage emphasize. Such cases appeal to a person with libertarian inclinations as well. But this expansion of judicial discretion also covers cases in which multiple adults are not cooperating at all, but are contesting custody rights and support responsibilities.

Under this bill, the judge can make this determination without the consent of the other parents. None of the three parties would necessarily have to give their consent to being counted or discounted as a parent. The judge decides based on the best interests of the child.

Judges don't normally have this much discretion. Biology, marriage, and adoption are usually pretty bright-line indicators of who counts as a parent. The only reason we are giving judges this much discretion is so we can accommodate the triple-parenting cases that are sure to arise when the law normalizes same-sex parenting. I would think that anyone who values liberty and limited government would get the shivers thinking about judges having power of this type and magnitude.

The Case Behind the Three Parent Law: *in re M.C.*

Same-sex marriage itself generates triple parenting situations. We can see this by considering the specific case that inspired Senator Leno's bill. In principle, the triple parenting bill might have been motivated by a case of three cooperating parents, consisting of the loving, stable same-sex

couples we hear so much about, and an agreeable opposite sexed friend. But this was not the impetus for Mark Leno's three parent bill. According to [NBC News](#):

Leno said inspiration for the bill came from a 2011 state appellate court case in which a young girl had two mothers. When one of the mothers was sent to prison and the other was hospitalized, the girl's biological father wished to care for her.

The court, however, ruled the biological father could not be a legal guardian because of California's current law allowing only two parents per child.

The state took custody of the child.

This is an extremely abbreviated characterization of the case *in re M.C.* What led to one mother being hospitalized and the other imprisoned? Was this some kind of ill-fated alignment of the stars, an unfortunate, but random series of events that could have happened to any innocent parties?

Not exactly. The biological mother, Melissa, went to prison because her boyfriend, Jose, had stabbed Irene, the "other mother," so severely that she had to be hospitalized. Melissa was charged with accessory to attempted murder.

Little M.C. had three parents, recognized under different parts of the law. Melissa counted as a mother because she gave birth to the child. Irene was married to Melissa when Melissa gave birth to M.C., so Irene counted as a presumed mother under a gender neutral reading of the statute that was formerly used to establish paternity. Jose, the boyfriend who stabbed Irene, was not M.C.'s father. A man named Jesus was the biological father. Melissa had a relationship with him during one of her separations from Irene.

No court ever denied that Jesus was a father. Nor did any court find him an unfit father in any way. So with Melissa in prison and Irene in the hospital, why couldn't the court simply give M.C. to Jesus, her biological father?

The reason M.C. was placed in foster care was that the courts found that this would jeopardize the child's interest in reunification with Irene. Bear in mind that Irene was not the biological mother. She was not an adoptive mother. She had lived with Melissa and M.C. for about three or four weeks after the child was born. Let us face facts: Irene was not a mother to M.C. in any meaningful sense.

Irene was a "presumed" mother for one reason and one reason only: same-sex marriage. Irene and Melissa were married in October 2008, during the window of time when same-sex couples were permitted to marry in California. Their marriage is what prompted the court to call Irene a "presumed mother," under a gender-neutral reading of the Uniform Parentage Act.

This part of the statute was designed to assign paternity, that is, fatherhood. A woman's husband is presumed to be the father of any children she gives birth to during the life of their union. One of the attorneys for M.C. pointed out the absurdity of a gender-neutral reading of this statute, substituting for the husband, who is almost always the child's other biological parent, a female partner who can never be the child's other biological parent.

But no matter: the court was attempting to do its job, impossible though that may have been in the circumstances. Irene was found to be a “presumed mother.”

The solution to this tragic case is not to amend the law to allow three parents. The solution is to amend the law to remove the possibility of a person unrelated to the child either by biology or adoption, being counted as a parent. The solution is to stop requiring a gender neutral reading of a statute that is based on the biological, gendered facts of human reproduction.

In other words, the way to have kept M.C. out of foster care was to abandon the idea of “marriage equality.” In fact, the voters of California did exactly that, when they passed Proposition 8, affirming that the term “marriage” can only be used to refer to the union of a man and a woman. It is “marriage equality” that created the tragic circumstances of this case.

Marriage is a complex social institution. Not everyone agrees that the essential public purpose of marriage is to attach mothers and fathers to each other and to their children. But I do not see how anyone can deny that attaching children to their mothers and fathers is *one* of the significant social purposes of marriage. And I do not see how any reasonable person can deny that same-sex couples and opposite sex couples are situated differently with respect to this purpose. It is simply not possible to treat same-sex couples and opposite sex couples identically in all the areas of law that marriage touches.

Let us return to Senator Mark Leno and his bill and his characterization of this case. His description of *In re M.C.*, while not technically false, is so incomplete as to be deeply misleading. He surely knew of the volatile history of the parties to this case, which includes drug abuse, mental illness, homelessness and domestic violence. He surely knew that without the “marriage” between Irene and Melissa, the courts would have placed M.C. with her father immediately.

I have no idea why he wanted to use this case as a pretext for his three parent bill. If I were on his side of this issue, I would not call attention to this case, filled as it is with unappealing facts for gay marriage proponents. Irene was not a parent in any meaningful sense. In addition, Melissa was not a lesbian in any meaningful sense. She had not one, but two boyfriends during the course of this drama: Jose who attacked her ex-girlfriend and Jesus who fathered her child.

And this case had an obvious and much less radical solution: give the child to her father. There was and is no rational basis for granting such unprecedented power to the family courts by allowing them to declare a third party to be a parent. Triple parenting and genderless marriage are destructive policies. They must be stopped.

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