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A Winding Path to Gay Marriage

The distress of gay and lesbian couples was understandable in San Francisco when the California Supreme Court voided 4,000 same-sex marriages. But the court's reasoning, in finding that Mayor Gavin Newsom had overstepped his authority, was understandable as well. We agree with its reasoning on this narrow question of mayoral powers. We also sympathize with the affected couples and hope for a happier outcome on the far more substantive challenge, now working its way through the courts, of whether state law is unconstitutional in limiting marriage to a union of a man and a woman.

This week's decision found that a mayor could not be allowed to pick and choose among the array of state laws, deeming some not worthy of enforcement. Nor, the court carefully hypothesized, may a mayor accede to constituents' counterpressures by ignoring the limited domestic-partner protections already on the books to benefit gay couples. Should the state ban on gay marriages be judicially over-

turned as unconstitutional, same-sex couples would then be free to enter valid marriages, the court emphasized.

The ruling was only an early step in a civil rights tradition: a testing of a questionable law by a public official and citizens. Mayor Newsom had already honored a preliminary injunction against officiating at more gay marriages while the courts took up the issue. Even as President Bush and other opponents try to make a simplistic campaign issue out of opposing gay marriage, the road toward greater fairness is already being mapped in the 50 states.

The San Francisco decision — which somehow drew no new conservative outcries against "activist judges" — should be seen as but a bump on the way to progress. Just as California was the first state to strike down its own laws against interracial marriage, we expect that it will ultimately find a constitutional basis for the human right to same-sex marriage.