Why Should New York Support Marriage Equality For Same-Sex Couples?

In over a decade’s worth of reports and amicus briefs, the New York City Bar Association has demonstrated that the right to a civil marriage – regardless of a spouse’s sex – is essential for full equality for all New Yorkers. As the New York Court of Appeals concluded in *Hernandez v. Robles* (2006), full marriage equality requires the Legislature to act.

New York’s more than 50,000 same-sex couples, like their opposite-sex counterparts, confront life’s challenges. Many have modest incomes. Approximately 20% are raising children under age 18, and more than 25% have one disabled partner. 32% of individuals in these couples are nonwhite. The inability of these long-term couples to marry has devastating real-world consequences. In death, without inheritance rights, the surviving partner can be thrown out of the family home. Upon relationship dissolution, without the right to maintenance, custody or visitation, the lives of a partner and the couple’s children may be turned upside down.

Instead of its traditional leadership in the area of equality and civil rights, New York lags on marriage equality. Six states, Canada and six other countries have full marriage equality. More jurisdictions are proceeding rapidly toward it. Yet New York’s domestic laws deny same-sex couples at least 1,324 legal rights and duties that married different-sex couples currently receive. Marriage provides the legal stability that many couples, lacking financial resources, knowledge or willingness to plan for the future, fail to create on their own. Half or more of the

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general public has failed to prepare many crucial documents: only 53% of New York State residents have a health care proxy; nationwide, only 40-50% of people have wills, 15-42% have living wills, and a mere 5% have prenuptial agreements.

The Association does not advocate for civil unions or California-style domestic partnerships that technically provide rights equivalent to marriage. In reality, as Vermont and other states have found, these marriage imitations are poorly understood, erratically recognized and viewed as second-class by government officials and the public. Even if technically equivalent rights exist, if one same-sex partner is suddenly hospitalized and the other denied visitation and other next-of-kin rights, a later lawsuit is cold comfort, particularly when some courts simply refuse to give civil unions and domestic partnerships effect.

While New York grants opposite-sex couples who marry, whether in this state or elsewhere, a full, clearly established set of rights and duties, same-sex couples face a confusing array of relationship recognition rules outside New York, and selective recognition within New York. Same-sex couples are not adequately protected by New York's piecemeal recognition of same-sex relationships over the last two decades by statutes, executive orders and

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14 See PUBLIC HEALTH LAW §4201(McKinney 2006) (recognizing registered domestic partnerships for purposes of disposition of partner remains); EXECUTIVE L. § 354-b.2(b) (McKinney 2004) (supplemental burial allowance for domestic partners of deceased military personnel killed in combat); WORKERS’ COMP. L. § 4 (McKinney 2002) (workers’ compensation benefits for surviving domestic partners of September 11, 2001 terrorist attacks); N.Y. Session Laws 2002, c. 73, §1(7) (legislative history stating that domestic partners are intended to be eligible for federal Victims Compensation Fund).
regulations, and court decisions. Despite the efforts of governors, state officials, local executives and legislators of both parties up to this point, the lack of equal marriage rights will generate decades of litigation, complex private domestic partnership agreements, and scattershot legislation and regulations meant to establish inheritance, divorce, child custody, pension and tort rights under a range of relationship recognition rules. Even as lower-income same-sex couples are priced out of the legal services that are needed to obtain recognition for their relationships, and talented workers grow to perceive our state as discriminatory and unwelcoming, New York will incur enormous expenses in determining these rights. In contrast, full marriage equality is projected to add $210 million to New York’s economy in the three years after enactment.


The Marriage Equality Act applies only to government-granted civil marriages. It will not affect opposite-sex couples and their personal marriage choices, and will not affect religious beliefs or worship. No church, synagogue, mosque or temple will be required to marry same-sex couples or endorse their relationships.

There is no legitimate basis for subjecting same-sex couples to second-class status by denying them the right to marry. The Senate, in passing the Marriage Equality Act, will clearly determine who is married under New York law and their rights and duties. When the Act becomes law, it will benefit all New Yorkers.

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Committee on Lesbian, Gay, Bisexual and Transgender Rights
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