SAME-SEX MARRIAGE IN NEW YORK

by
The Committee on Lesbians and Gay Men in the Legal Profession,
The Committee on Civil Rights, and
The Committee on Sex and Law
with Addendum by
The Committee on Matrimonial Law

There is currently a national debate over the right of same-sex couples to state-sanctioned marriage. This Report considers the current state of New York law and concludes that New York should permit same-sex couples to marry and should recognize same-sex marriages entered into in sister states.

This Report addresses the issue of whether New York should permit same-sex couples to marry and also considers the ancillary issue of whether New York should recognize same-sex marriages entered into in sister states. These are the very issues at the center of a national debate over the right of same-sex couples to state-sanctioned marriage.

Much of the debate stems from a lawsuit in Hawaii that appears will make it the first state to permit same-sex marriages.[1] In reaction, many states have already considered legislation that would attempt to prevent recognition of such marriages performed in sister states.[2] Most notably, Congress enacted the Defense of Marriage Act ("DOMA"), which seeks to give

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[1] In *Baehr v. Lewin*, 852 P.2d 44, 67 (Haw. 1993), the Hawaii Supreme Court held that the denial of marriage licenses to same-sex couples is subject to strict scrutiny under the Equal Protection Clause of the Hawaii Constitution. On remand, the trial court found that the state had failed to establish any adverse consequences to the public fisc resulting from same-sex marriage and held that the prohibition on same-sex marriage is unconstitutional. 65 U.S.L.W. 2399, 1996 WL 694235 (Haw. Cir. Ct. Dec. 3, 1996). The trial court stayed its order pending appeal to the Hawaii Supreme Court.

[2] Bills to deny recognition of sister-state same-sex marriages have passed in sixteen states: Arkansas, Arizona, Delaware, Georgia, Idaho, Illinois, Kansas, Michigan, Missouri, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, and Utah. Conversely, in twenty states, such bills have either been rejected, vetoed, or legislatively stalled: Alabama, California, Colorado, Florida, Hawaii, Iowa, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, New Mexico, New York, Rhode Island, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

those states further ammunition in their efforts not to recognize any eventual same-sex marriages from sister states, and which denies any eventual same-sex marriages any effect in the eyes of the federal government.[3]

The constitutionality of those measures is in doubt, however. For example, there has apparently been a shift in the United States Supreme Court's consideration of constitutional rights and lesbians and gay men. Only ten years ago, the Court found that a state sodomy statute enforced only against homosexuals violated no constitutional rights.[4] Conversely, last Term the Court overturned a state constitutional amendment barring anti-discrimination measures that protected lesbians and gay men and in so doing took the remarkable step of invoking the landmark dissent in *Plessy v. Ferguson* in the opening paragraph of its decision:

> the Constitution "neither knows nor tolerates classes among citizens." Unheeded then, those words now are understood to state a commitment to the law's neutrality where the rights of persons are at stake.[5]

As part of this on-going debate, this Report argues that same-sex couples should be permitted to marry in New York because both the federal and New York Constitutions require that the fundamental right of marriage be available to *all* couples of suitable capacity regardless of their sex, because the marriage laws of New York are gender neutral, and because same-sex marriage is entirely consistent with New York's public policy. Additionally, this Report argues

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[3] Pub. L. No. 104-199, 110 Stat. 2419 (1996) (to be codified at 28 U.S.C. § 1738C and 1 U.S.C. § 7). For a discussion of the constitutionality of DOMA, see *A Recommendation Against the Passing of H.R. 3396; S. 1740*, 51 THE RECORD 654 (1996). For a list of the federal laws impacted by DOMA's definition of marriage, see the January 31, 1997 Report of the General Accounting Office to Senator Henry J. Hyde (GAO/OGC-97-16).

[4] Bowers v. Hardwick, 478 U.S. 186 (1986) (citation omitted).

[5] Romer v. Evans, 116 S. Ct. 1620, 1623 (1996) (quoting 163 U.S. 537, 559 (1896) (Harlan, J., dissenting)).

that New York should recognize same-sex marriages entered into in sister states in accordance with the Full Faith and Credit Clause and New York's conflict-of-laws jurisprudence.[6]

I. SAME-SEX COUPLES SHOULD NOT BE EXCLUDED FROM EXERCISING THE RIGHT TO MARRY IN NEW YORK.

At its heart, marriage is a voluntary personal commitment between two people and in certain respects is similar in nature to a contract. But marriage is also a state-created status, conferring countless benefits and burdens on the members of the marriage. Consequently, the right to marry is recognized as a fundamental constitutional right. The state can, therefore, only establish neutral, appropriately tailored rules for regulating the status of marriage, such as by setting out how to enter into and leave that status and ensuring the benefits and burdens of that status.[7]

Although same-sex couples have always formed committed, loving partnerships, their unions have been deprived of state recognition and the benefits and burdens the marriage status offers throughout the life cycle. Those benefits and burdens are of great significance emotionally, socially, and financially. Most of them cannot be achieved through alternative means, and even those that can require burdensome transaction costs. For example, under state law, a married couple is automatically entitled to the baseline rights or abilities to act for each other in healthcare decisions, to hold real estate as a tenancy by the entirety, to file joint tax returns, to apply for joint insurance policies, to inherit whether there is a will or not, to obtain joint healthcare coverage, to receive pension and annuity payments, to attend to funeral

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[6] It should be noted that this Report does not consider the numerous constitutional issues that might be presented by any proposed or enacted legislation that seeks to preclude same-sex marriage or the recognition of a same-sex marriage entered into in a sister state. Also, although it is recognized that there is a diversity of opinion on the institution of marriage, this Report takes no position. Rather, this Report focuses solely on the fundamental right of all couples, regardless of their sex, to enter into state-sanctioned marriage if they determine that it is appropriate for them.

[7] Zablocki v. Redhail, 434 U.S. 374, 383-87 (1978); Loving v. Virginia, 388 U.S. 1, 12 (1967).

arrangements and estate administration, and to pursue orderly dissolution or divorce proceedings. There are also myriad federal marriage benefits that DOMA seeks to deny same-sex married couples, such as sharing in Social Security and Medicare benefits, COBRA protection of health insurance coverage, family and medical leave protection, filing of joint federal tax returns, and recognition for immigration and residency purposes. But with these rights come economic burdens, too, such as those of liability for a spouse's debts, for child support, and possibly for alimony.[8]

In order to ensure same-sex couples the fundamental right to marry, along with the benefits and burdens of the marriage status, the state need not "approve" of same-sex relationships; rather, it need merely be gender neutral as to which adult commitments it recognizes. By refusing to recognize committed unions even-handedly, the state makes a moral judgment that is beyond its role and that perpetuates the stereotyped identity of the isolated and outcast "homosexual," whose deviant sexuality is incompatible with committed familial relationships.[9] Conversely, by recognizing same-sex marriages, the state would promote the desirable societal goals of familial stability and economic interdependence, as one who marries accepts responsibilities towards an unrelated person and submits to the laws of marital obligations.

A. The New York and Federal Equal Protection Clauses Require that the Fundamental Right to Marry Not Be Denied Same-Sex Couples.

Because marriage is a fundamental right,[10] the choice of *whom* to marry is, with narrow exceptions, beyond the reach of state regulation: "the government has been prevented

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[8] *See* Evan Wolfson, *Why We Should Fight for the Freedom to Marry*, 1 J. GAY, LESBIAN, AND BISEXUAL IDENTITY 79 (1996).

[9] William M. Hohengarten, *Same Sex Marriage and the Right of Privacy*, 103 YALE L.J. 1495, 1528 (1994).

[10] *E.g.*, Loving v. Virginia, 388 U.S. 1; Zablocki v. Redhail, 434 U.S. 374.

from interfering with an individual's decision about whom to marry."[11] Thus, the government should not be allowed to dictate that a person cannot marry another simply because of that person's sex, and, like previous attempts to regulate whom a person could marry, such a prohibition should be found unconstitutional.

An example of such a previous attempt is the miscegenation laws. In 1967, many citizens still considered interracial marriage unnatural and immoral, and indeed the courts of Virginia consistently declared interracial marriages void because the Deity had deemed such unions intrinsically unnatural and because marriage had always been construed to be between people of the same race. But when a challenge to a ban on such marriages reached the United States Supreme Court in *Loving v. Virginia*, the Court found that even deeply-rooted traditions are insufficient to justify continued prohibition of marriage for couples otherwise qualified to enter this status.[12]

As a debate raged in the 1960's about recognizing interracial marriage, so one rages today about same-sex marriage, and the assumption that only opposite-sex couples are privileged to marry is subject to the same serious challenge under the Equal Protection Clauses of both the New York and federal Constitutions.[13]

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[11] People v. Shepard, 50 N.Y.2d 640, 644 (1980); *see* Doe v. Coughlin, 71 N.Y.2d 48, 52 (1987) ("The right to privacy, in constitutional terms, involves freedom of choice, the broad general right to make decisions concerning oneself and to conduct oneself in accordance with those decisions free of governmental restraint or interference"), *cert. denied*, 488 U.S. 879 (1988).

[12] Loving v. Virginia, 388 U.S. 1.

[13] The Equal Protection Clause of the New York State Constitution has been interpreted in some contexts to afford even more protection than its federal counterpart. *See, e.g.*, People v. Kern, 75 N.Y.2d 638 (1990) (finding that the use of peremptory challenges to exclude jurors of a particular race violates the Equal Protection Clause of the state constitution). Particularly in areas of individual liberties and fundamental rights, the New York Court of Appeals has articulated a willingness to expand state constitutional protections. *See, e.g.*, People v. P.J. Video, Inc., 68 N.Y.2d 296, 303 (1986) (protection against searches and seizures), *cert. denied*, 479 U.S. 1091 (1987); Immunio AG v. J. Moor-Jankowski, 77 N.Y.2d 235, 249-50 (freedom of speech and the press), *cert. denied*, 500 U.S. 954 (1991). Even where the state constitutional provision is identical to the federal provision, this expansive view of state constitutional protection is taken if the court finds state statutory or common law defining

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Any classification by which one group is denied a fundamental right is discriminatory and subject to strict scrutiny.[14] Consequently, the state must demonstrate a compelling interest in excluding same-sex couples from the right to marry and that so doing is narrowly tailored to that interest. However, even were a prohibition on same-sex marriage to be analyzed only under the lowest level rational basis standard, the state would still have to show that the prohibition bears a rational relation to a legitimate state interest.[15] The only apparent interest the state might claim for excluding same-sex couples from marrying is that of fostering a traditional conception of marriage, defined as being between people of the opposite sex and for the purpose of procreation.

Such an interest is not a valid reason for restricting marriage to opposite-sex couples. As *Loving v. Virginia* demonstrated, traditional or religious notions of the institution of marriage (for example, that it is limited to same-race couples) are insufficient bases for prohibiting otherwise qualified couples from marrying.[16] As well, the concept of procreation as the basis for sanctioning marriages is similarly without foundation. The Supreme Court describes the fundamental right to marry as an expression of emotional support, public commitment, personal dedication, and religious faith, with no limitation of marriage as solely or primarily an institution for sanctioned procreation.[17] Indeed, many opposite-sex married couples do not raise

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[13](...continued)
the individual right, a history and tradition in the state of protecting the right, or that the right is of a peculiar state or local concern. *See* People v. Alvarez, 70 N.Y.2d 375, 379 (1987). Given New York's public policy expressed in the cases and executive orders discussed below in point I.C, as well as the state's history of tolerance for lesbians and gay men, the Court of Appeals may very well find a basis to interpret New York's Equal Protection Clause as prohibiting a ban on marriage for same-sex couples even if the federal Equal Protection Clause does not.

[14] *E.g.*, Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985); Kramer v. Union Free Sch. Dist. No. 15, 395 U.S. 621 (1969).

[15] *E.g.*, Romer v. Evans, 116 S. Ct. at 1627.

[16] "[A]s *Loving* amply demonstrates, constitutional law may mandate, like it or not, that customs change with an evolving social order." Baehr v. Lewin, 852 P.2d at 63.

[17] Turner v. Safley, 482 U.S. 78, 94 (1987); *see* Loving v. Virginia, 388 U.S. 1; Griswold v. Connecticut, 381 U.S. 479 (1965).

children, while many same-sex couples already do, and allowing same-sex marriage would serve to support the interest of fostering marriage by making it available to more couples who share the emotional bonds that characterize marriage and by allowing their children to be raised by parents with a state-recognized relationship.

The only New York case to consider directly the issue of same-sex marriage is *Storrs v. Holcomb*, in which the Supreme Court, Tompkins County, conducted a cursory constitutional analysis and declined to recognize same-sex marriage.[18] That case, however, should not be considered as controlling precedent. First, the court engaged in no analysis whatsoever of the marriage statute or its plain language. Consequently, the court ignored the statute's gender neutrality and the absence of any statutory basis for imposing an opposite-sex requirement.[19] Second, the court's equal protection analysis consisted entirely of relying on dicta from *In re Cooper*,[20] which did not even consider the marriage statute, but rather found only that the term "surviving spouse" as used for estate purposes did not encompass the survivor of a same-sex relationship. Additionally, the equal protection analysis in *In re Cooper* focused almost solely on a Minnesota case[21] that relied on the concept (discussed above and inconsistent with *Loving v. Virginia* and *Turner v. Safley*) of marriage as a union between a man and a woman uniquely involving the procreation and rearing of children.

Following the rationale of the United States Supreme Court's subsequent decision in *Romer v. Evans*, to exclude same-sex couples from the institution of marriage would violate equal protection principles (and the core principle of "neutrality where the rights of persons are

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18 645 N.Y.S.2d 286 (Sup. Ct. Tompkins County 1996).

19 See point I.B below.

20 187 A.D.2d 128, 130 (2d Dep't), *app. dismissed*, 82 N.Y.2d 801 (1993).

21 Baker v. Nelson, 191 N.W.2d 185 (Minn. 1971).

at stake") because to do so would essentially rely upon the constitutionally indefensible position of precluding a group from exercising a right based upon the animosity of others.[22]

B. New York's Marriage Statute Is Gender Neutral.

In New York, the status of marriage is governed by various provisions of the Domestic Relations Law. Article 3 sets out the requirements and procedure for entering into a marriage and starts by providing that "[m]arriage, so far as its validity in law is concerned, continues to be a civil contract, to which the consent of parties capable in law of making a contract is essential."[23] There is no requirement in the statute that applicants for a marriage license be of opposite sex, nor are same-sex marriages listed in article 2 among those marriages that are void or voidable.[24]

Indeed, all of article 3's requirements for entering into marriage are specifically gender neutral, with one minor exception: section 15(1)(a) provides that town and city clerks are to obtain certain information from the "groom" and from the "bride."[25] Viewing that section in the context of the entirety of article 3, which everywhere else is gender neutral, demonstrates that this singular gendered reference cannot form the basis for creating a requirement of opposite-sex partners that nowhere else exists in the plain language of the marriage statute. Thus, on its face,

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[22] 116 S. Ct. at 1628-29. The Due Process Clauses of both Constitutions are also offended, as limiting marriage to opposite-sex couples denies a fundamental right to a distinct group. *See* Planned Parenthood v. Casey, 505 U.S. 833, 847 (1992) ("It is also tempting . . . to suppose that the Due Process Clause protects only those practices, defined at the most specific level, that were protected against government interference by other rules of law when the Fourteenth Amendment was ratified. But such a view would be inconsistent with our law"; then citing *Loving* for the proposition that marriage is "an aspect of liberty protected against state interference by the substantive component of the Due Process Clause.")

[23] N.Y. DOM. REL. LAW § 10 (McKinney 1988).

[24] Article 2 makes only incestuous and bigamous marriages void and provides that marriages are voidable only due to certain defects in contracting capacity, such as being under age, under duress, or subject to mental illness. *Id.* §§ 5-7.

[25] There are also sporadic gendered references in articles 9, 10, and 11, which respectively govern actions for annulment, divorce, and separation.

New York's marriage law is gender neutral and can be applied to same-sex couples without statutory revision.

As discussed above in point I.A, only one New York court has directly considered the issue of same-sex marriage knowingly entered into, and it found that New York does not authorize such marriages.[26] That court, however, did not engage in any analysis of the marriage statute and proceeded directly to a cursory constitutional analysis on the apparent assumption that the statute applies only to opposite-sex couples. The gender neutrality of the statute, therefore, has yet to be analyzed.

Additionally, it is true that there are two cases from the early 1970's that each considered the validity of a same-sex marriage and found the marriage void.[27] However, both of those decisions were based upon the doctrine of mistake, in that the plaintiff in each case had entered into what was believed to be an *opposite-sex* union only to learn the spouse's true sex after the wedding.

Therefore, the conclusion that New York's marriage law can be applied to same-sex couples without statutory revision remains consistent with that reached, although in dictum, by the court in *In re Petri*:

> [T]he requirement of a solemnized marriage may not be assumed to be based on sexual orientation. Section 13 of the Domestic Relations Law has no requirement that applicants for a marriage license be of different sexes. The only authority in this state for the prohibition of same-sex marriage is contained in two lower court decisions[28] . . . . With no clear precedent, the assumption that same sex marriages are prohibited in New York is premature. . . . It is questionable whether, in this era of domestic partnerships and alternative lifestyle education in grammar schools, it can

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[26] Storrs v. Holcomb, 645 N.Y.S.2d 286 (Sup. Ct. Tompkins County 1996).

[27] Frances B. v. Mark B., 78 Misc.2d 112 (Sup. Ct. Kings County 1974); Anonymous v. Anonymous, 67 Misc.2d 982 (Sup. Ct. Queens County 1971).

[28] These are the cases discussed above and cited in note 27.

> still be said that marriage has one universal meaning which does not include couples of the same sex.[29]

Even if New York's marriage law were not gender-neutral, well-established rules of statutory construction would require that it be read to be gender neutral in order to avoid the equal protection problems highlighted above in point I.A. For example, in *Goodell v. Goodell*, the court preserved the constitutionality of New York's alimony statute, which imposed financial obligations only against the husband, by reading it expansively to apply to all spouses.[30] Similarly, in *People v. Liberta*, the Court of Appeals interpreted New York's forcible rape and sodomy statutes in a gender-neutral fashion in order to cure the statutes' liability exemption for women.[31] The United States Supreme Court most recently employed this rule of statutory construction in *United States v. X-Citement Video, Inc.* when it applied a federal statute's scienter provision beyond its grammatical reading in order to avoid finding the statute violative of the First Amendment.[32]

C. New York's Public Policy Supports Permitting Same-Sex Marriages.

That New York's marriage statute should be taken at face value and applied in a gender-neutral fashion to include same-sex couples is supported by New York's public policy. New York courts have increasingly recognized that long-standing, committed same-sex relationships deserve the protections that were previously afforded only more traditionally recognized associations. The hallmark of these decisions is a willingness to evaluate intimate relationships based on how they function, not on the sex of the participants. Several recent cases involving housing, adoption, and funeral arrangements illustrate this trend.

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[29] N.Y.L.J., April 4, 1994 at 29 (Sur. Ct. N.Y. County) (stated in reaching conclusion that surviving gay partner could not inherit absent both a will and a marriage license).

[30] 77 A.D.2d 684, 685 (3d Dep't), *appeal denied*, 51 N.Y.2d 704 (1980).

[31] 64 N.Y.2d 152, 171-72 (1984), *cert. denied*, 471 U.S. 1020 (1985).

[32] 513 U.S. 64 (1994).

In *Braschi v. Stahl Associates*, the New York Court of Appeals held that the gay life partner of a tenant in a rent-controlled apartment is to be considered a family member under the rent control statute and entitled to protection from eviction.[33] As the term "family" is not defined in the rent control code, the appellate division had found that the non-eviction provision applies only to "family members within traditional, legally recognized familial relationships."[34] The Court of Appeals reversed, holding that, "[i]n the context of eviction, a more realistic, and certainly equally valid, view of a family includes two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence," and finding that to define "family" in this manner fulfilled the legislative intent of extending "protection to those who reside in households having all of the normal familial characteristics."[35]

Another recent landmark decision is *In re Jacob/In re Dana*, the "second-parent" adoption case in which same-sex and opposite-sex live-in partners of the children's biological mothers sought permission to adopt without the termination of the mothers' parental status required by section 117 of the Domestic Relations Law. The Court of Appeals held that the second-parent adoptions can be granted because they permit the creation of stable legal ties between one partner and the biological or adopted children of the other partner.[36] In reaching its decision, the court stressed many emotional, social, and financial factors of legal parent-child status that are very similar to those accompanying the status of being married:

> [The best interest of the child] would certainly be advanced in situations like those presented here by allowing two adults who actually function as a child's parents to become the child's legal parents. The advantages which would result from such an adoption include Social Security and life insurance benefits in the event of a parent's death and disability, the right to sue for the wrongful death of a parent, the right to inherit under rules of

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33 74 N.Y.2d 201 (1989).

34 143 A.D.2d 44, 45 (1st Dep't 1988).

35 74 N.Y.2d at 211.

36 86 N.Y.2d 651, 659 (1995).

> intestacy and eligibility for coverage under both parents' health insurance policies. In addition, granting a second parent adoption further ensures that two adults are legally entitled to make medical decisions for the child in case of emergency and are under a legal obligation for the child's economic support. Even more important, however, is the emotional security of knowing that in the event of the biological parent's death or disability, the other parent will have presumptive custody.[37]

A further example of New York's supportive public policy is found in *Stewart v. Schwartz Brothers-Jeffer Memorial Chapel, Inc.*, in which the plaintiff — decedent's gay partner — sought to represent his partner's wishes as to the treatment of his remains, which was different from the treatment requested by the mother and brother.[38] Even though the general rule is that only the surviving spouse or next of kin determines disposition absent testamentary directives to the contrary, the court looked to the nature of the relationship between the plaintiff and the decedent, rather than to any formal legal definition, and granted the surviving partner standing. The court characterized the couple as having had a "close, spousal-like relationship" and found that to deny the partner standing as the surviving spouse would "illustrate a callous disregard of [their] relationship" and would effectively ignore the decedent's wishes "merely because the Plaintiff does not fit neatly into the legal definition of a spouse or next of kin."[39]

Despite the courts' increased willingness to recognize same-sex relationships in case-specific situations and grant certain corresponding rights such as those described above, it remains enormously important for New York to allow same-sex couples to avail themselves of the presumptions flowing from marital status and thereby bring some certainty to their domestic relations.

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37 *Id.* at 658-59 (citations omitted).

38 159 Misc.2d 884 (Sup. Ct. Queens County 1993).

39 *Id.* at 888.

A poignant example of what can happen in the absence of those presumptions is seen in *Alison D. v. Virginia M.*[40] In that case, a lesbian couple planned to have a child together, had a son after one of them was donor inseminated, and shared all responsibilities of child rearing for nearly two and a half years until the non-biological mother moved out of the home when the couple separated. The couple worked out a visitation schedule for the child, who continued to call both women "Mommy," but after several years the couple severed their economic ties and the biological mother first restricted, and then cut off, the child's contacts with her former partner. The Court of Appeals refused to grant the non-biological parent visitation rights, finding that awarding visitation "to a third person" would hinder the biological parent's right to custody, but Chief Judge (then Judge) Kaye's compassionate dissent chided the majority for failing to look "to modern-day realities in giving definition to statutory concepts."[41]

Although some saw this case as a set-back for same-sex families, the majority opinion may be read as supporting the use by same-sex couples of the "licensing mechanisms," such as marriage, that formalize family ties. For if the petitioner in *Alison D.* had adopted the child, as would now be possible, the court would most likely have ordered that visitation resume under Domestic Relations Law section 70.[42] But this just illustrates the "catch-22" that same-sex couples face, because to legitimize their familial roles in the eyes of the law, they need the help of the law to make that legitimacy possible. Only as the law evolves to provide such mechanisms does it become fair for courts to place expectations on those who come before it asserting their rights. For example, only after *In re Jacob/In re Dana* could Alison have signified

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[40] 77 N.Y.2d 651 (1991).

[41] *Id.* at 656; *id.* at 661 (Kaye, J., dissenting).

[42] Indeed, in *In re Jacob/In re Dana*, the Court of Appeals expressly recognized that second-parent adoption would have allowed the parties in *Alison D.* to avoid their disruptive visitation battle. 86 N.Y.2d at 659.

her assumption of responsibility by adopting the child she raised as her own and been able to satisfy the requirements imposed by the majority in *Alison D.*

Moreover, New York's supportive public policy is not just evident in judicial decisions, but also in executive orders. Nowhere is New York's endorsement of the unions of same-sex couples more evident than in the fact that Governor Pataki continued the executive orders of Governor Cuomo prohibiting discrimination based upon sexual orientation and providing health insurance benefits to same-sex domestic partners of state employees.[43] Similarly, in New York City, Mayor Koch issued an executive order banning sexual orientation discrimination, and Mayor Dinkins established a domestic partner registry with the City Clerk.[44]

The essence of the marriage relationship is a couple's decision to become an economic and emotional partnership, with the intention to remain so for life. Although that essence is assumed to exist when opposite-sex couples marry, the courts must currently engage in searching enquiries to determine whether it is present in a same-sex relationship. For example, in *Braschi*, the Court of Appeals stated that

> In making this assessment, the lower courts of this State have looked to a number of factors, including the exclusivity and longevity of the relationship, the level of emotional and financial commitment, the manner in which the parties have conducted their everyday lives and held themselves out to society, and the reliance placed upon one another for daily family services. These factors are most helpful, although it should be emphasized that the presence or absence of one or more of them is not dispositive since it is the totality of the relationship as evidenced by the dedication, caring and self-sacrifice of the parties which should, in the final analysis, control.[45]

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[43] 9 N.Y. CODES R. & REGS. § 4.28 (1983) (Cuomo, Gov.); *id.* § 5.32 (1996) (Pataki, Gov.) (continuing § 4.28); *see also id.* § 4.28.1 (1987) (Cuomo, Gov.); *id.* § 5.33 (1996) (Pataki, Gov.).

[44] Exec. Order 94 (June 20, 1986) (Koch, Mayor); Exec. Order 48 (Jan. 7, 1993) (Dinkins, Mayor).

[45] 74 N.Y.2d at 212-13 (citation omitted).

Committed same-sex relationships deserve the same protections and benefits enjoyed by opposite-sex couples without the uncertainty and second-guessing of an extensive, multi-factored analysis. This is entirely consistent with, and is the next logical step in, New York's public policy as to same-sex relationships.

II. NEW YORK SHOULD RECOGNIZE SAME-SEX MARRIAGES ENTERED INTO IN SISTER STATES.

It appears probable that in the near future same-sex marriage will be allowed in Hawaii. When that happens, many same-sex couples who live and work in New York will travel to Hawaii, marry, return home, and demand recognition of their marital status.[46] Until the right of same-sex couples to marry under New York law is recognized, the intermediate question thus becomes whether New York will recognize same-sex marriages from sister states.[47]

In considering out-of-state marriages, New York courts have, for over one hundred years, held that the law of the state where the marriage was celebrated governs its validity, thereby serving to provide interstate stability and freedom of movement to the couple. This principle is based upon both the Full Faith and Credit Clause and New York's conflict-of-laws jurisprudence and is overcome only when it can be established that New York has a strong public policy against the marriage in question.[48]

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[46] Hawaii has no residence requirement for marrying.

[47] DOMA does not affect this analysis. On the one hand, if the Full Faith and Credit Clause of the federal Constitution requires New York to recognize such marriages, then DOMA is unconstitutional. On the other, if there is no such constitutional requirement, then New York is free to grant or withhold recognition in accordance with its own legal and policy views even without DOMA. *See A Recommendation Against the Passing of H.R. 3396; S. 1740*, 51 THE RECORD 654 (1996).

[48] *E.g.*, Van Voorhis v. Brintnall, 86 N.Y. 18 (1881) (based upon the basic tenets of contract law, the status of a marriage is determined by the law of the state in which it was celebrated, unless the marriage affronts the public policy of New York); People v. Ezeonu, 155 Misc.2d 344 (Sup. Ct. Bronx County 1992); *see also* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 283(2) (1971) ("A marriage which satisfies the requirements of the state where the marriage was contracted will everywhere be recognized as valid unless it violates the strong public policy of another state which had the most significant relationship to the spouses and the marriage at the time of the marriage.")

As for marriages performed in New York, the Domestic Relations Law makes incestuous and polygamous marriages void, makes voidable marriages entered into when under the age of consent, under duress, or under mental illness, and imposes various procedural formalities such that common-law marriages are not allowed.[49] Nonetheless, when considering out-of-state marriages, New York has consistently invalidated only polygamous marriages.[50] For example, in *In Re May's Estate*, the Court of Appeals upheld a marriage between a Jewish uncle and niece validly entered into in Rhode Island (because Jews were there exempt from the incest law), finding that such relationships were "not universally condemned" and noting that before 1893 such a marriage was permissible in New York.[51] Similarly, New York courts have repeatedly recognized proxy and common-law marriages created in other states[52] and marriages involving a minor.[53] This is so even where a New York couple purposefully left the state solely in order to avoid New York's internal marriage law and substitute that of another state.[54]

As discussed above in point I.C, New York has a clear and growing public policy that is favorable to recognizing the bonds between same-sex couples. Moreover, there is no

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[49] N.Y. DOM. REL. LAW art. 2 & 3.

[50] *See* Earle v. Earle, 141 A.D. 611 (1st Dep't 1910) (annulling a marriage between two New York residents solemnized in Venice, Italy, because the husband had not properly been divorced from his first wife in France); People v. Ezeonu, 155 Misc.2d 344 (Sup. Ct. Bronx County 1992) (rejecting a criminal defendant's defense that the woman he raped was his "junior" wife under Nigerian law).

[51] 305 N.Y. 486 (1953); *see also* Campione v. Campione, 201 Misc. 590 (Sup. Ct. Queens County 1951) (recognizing a marriage between a niece and her uncle).

[52] *E.g.*, In re Valente's Will, 18 Misc.2d 701 (Sur. Ct. Kings County 1959) (recognizing an Italian proxy marriage); Ferraro v. Ferraro, 192 Misc. 484 (Fam. Ct. Kings County 1948) (recognizing proxy marriage from the District of Columbia); Mott v. Duncan Petroleum Trans., 51 N.Y.2d 289 (1980) (sister-state common-law marriages do not violate the positive law or public policy of New York); Shea v. Shea, 294 N.Y. 909 (1945) (same); In re Gates, 189 A.D.2d 427 (3d Dep't 1993) (same).

[53] Carr v. Carr, 104 N.Y.S.2d 269 (Sup. Ct. Chautauqua County 1951) (recognizing Michigan marriage to a minor); Hilliard v. Hilliard, 24 Misc.2d 861 (Sup. Ct. Greene County 1960) (recognizing Georgia marriage to a fifteen year-old). *But see* Holland v. Holland, 212 N.Y.S.2d 805 (Sup. Ct. Kings County 1961) (recognizing that the Oregon marriage to a minor was valid in Oregon and would have been valid in New York if performed in New York, but using its discretion to annul the marriage based on the husband's cruel and inhuman treatment, abandonment, and lack of support).

[54] For example, in *In re May's Estate*, the incestuous marriage was recognized even though both were New York residents and returned to New York two weeks after the ceremony. 305 N.Y. 486.

impediment in New York's marriage statute to allowing same-sex marriages, let alone any reference to the sex of the spouses in regulating what marriages are void or voidable, as discussed above in point I.B. Further, as discussed above in point I.A, to deny same-sex couples the fundamental right to marry would violate both the New York and federal Equal Protection Clauses. Therefore, New York's courts should recognize same-sex marriages entered into in sister states.

III. CONCLUSION

New York should allow same-sex marriages because of the mandates of the Equal Protection Clause of both the New York Constitution and the federal Constitution, the gender neutrality of the marriage statute, and New York's established public policy, and can presently do so without any amendment to the marriage statute. New York should also recognize same-sex marriages entered into in sister states because New York has very narrowly applied the public-policy exception to recognizing out-of-state marriages and that exception should not be extended to same-sex marriages.

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Addendum to Joint Committee Report on Same-Sex Marriage
By The Committee on Matrimonial Law

The Matrimonial Law Committee of the Association of the Bar of the City of New York ("Matrimonial Law Committee") supports the recognition of same-sex marriages in New York. The report on same-sex marriage prepared jointly by the Committees on Lesbians and Gay Men in the Legal Profession, Civil Rights, and Sex and the Law ("Joint Committee Reports") sets forth persuasive legal arguments why same-sex couples should be permitted to marry in New York and why New York should recognize same-sex marriages entered into in other states.

Undoubtedly, those who oppose the recognition of same-sex marriage will challenge the legal conclusions contained in the Joint Committee Report. The Matrimonial Law Committee believes that all parties to the debate should understand the numerous rights and responsibilities that accompany marriage. Whether to recognize same-sex marriage is a question of society's fundamental values and public policy. The Matrimonial Law Committee has concluded that basic considerations of fairness and equity dictate that same-sex couples in New York be able to marry so that they have access to the same rights and responsibilities that apply to opposite-sex married couples. The Matrimonial Law Committee has also concluded that the recognition of same-sex marriage will promote a number of social objectives. First, recognition of same-sex marriage is a simpler, more encompassing and more efficient way for society to accommodate same-sex couples than creating a separate set of laws and regulations that would apply only to same-sex couples in the myriad of areas described in this report. Second, recognition of same-sex marriage avoids the likely substantial administrative costs of implementing a separate regime for same-sex couples. Third, recognition of same-sex marriage is fairer to all persons who choose to form a legally recognized emotional partnership. For example, why should same-sex couples who choose to register as domestic partners in order to obtain certain benefits not have the burden of paying additional taxes just as married opposite-sex

couples are required to pay in certain circumstances? Finally, recognition of same-sex marriage ensures our country's core value of equal protection of the laws to all citizens.

Laws change to reflect evolving social values. Rarely does a society have such a neat solution to the many emotional and economic issues raised by same-sex unions as the simple recognition of marital status.

During the process of cataloguing the vast array of laws that distinguish married persons from single persons, the Matrimonial Law Committee discovered a recent law review article written by Professor David L. Chambers of the University of Michigan Law School.[55] Professor Chambers does an exhaustive review of the benefits and obligations which arise when two people are married.

To underscore the public policy interests in recognizing same-sex marriage and to further the debate on this issue, the Matrimonial Law Committee has created the following catalogue of the rights and responsibilities discussed by Professor Chambers, referencing the specific area of New York and Federal law from which each right and responsibility stems.[56] This catalogue should be useful to New York practitioners when they advise clients about marriage in general, and when they prepare prenuptial contracts for opposite-sex couples. It also should be useful until same-sex marriage is legalized in New York, to same-sex couples and their

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[55] David L. Chambers, What If? The Legal Consequences of Marriage and The Legal Needs of Lesbian and Gay Male Couples, 95 Mich. L. Rev. 447 (1996).

[56] Congress last year passed the Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (1996) (to be codified at §1738C and 1 U.S.C. §7), which declares that all Federal legislation referring to married persons shall be read as referring to heterosexual couples only. (This Association opposed that legislation. See 51 Record of the Association of the Bar of the City of New York, 654 (1996)). Any rights which inure to spouses under Federal law would thus be unavailable to same-sex couples even if they were legally married under Ne York law. The Defense of Marriage Act is likely to be challenged on several fronts, however, particularly on whether it is constitutional. If it is overturned, same-sex couples married in New York would have access to the rights and responsibilities which arise under Federal law, as well as under New York law.

counsel who wish to provide contractually some of the rights and responsibilities which come with marriage.

In the coming months, the Matrimonial Law Committee, with the involvement of other Association committees with relevant expertise, plans to undertake a fuller study of these rights and responsibilities, and their implications for same-sex marriage.

Catalogue of Rights and Responsibilities Accompanying Marriage

1. Decision Making Powers Upon Incompetency

New York generally grants decision-making powers to relatives when individuals are incompetent to make the decisions themselves. N.Y. Mental Hyg. Law § 81.19 (McKinney's 1996) authorizes the courts to appoint someone, preferably next of kin, to make decisions when an individual becomes incompetent and has not appointed someone to be the decision maker on his or her behalf. If a person is not married, then his or her parents, children, or other relatives will be appointed as the decision-maker.

The one exception to this rule in New York pertains to same-sex couples who live in New York City and have chosen to register as domestic partners under the Domestic Partnership Act. New York, N.Y., Admin. Code Ch. 27, §§ 2003, 2004.4 (1993); Rules of the City of N.Y. Tit. 51, §§4-01 to 4-04 (1993). Under the Domestic Partnership Act, same-sex couples have the option of designating their significant others to be the decision-makers should they become incapacitated.

2. Obligation to Pay For Necessaries

A married person has an obligation to pay for the support of their spouse if the spouse is currently receiving public assistance or is likely to become dependent on public assistance. N.Y. Soc. Serv. Law §101 (McKinney 1992).

3. Right to Not be Taxed on Health Insurance Benefits To Spouse

In some instances, employers (including the City of New York) voluntarily provide health benefits to employees with a same-sex domestic partner. Vincent C. Green, Same-sex Adoption:

An Alternative Approach to Gay Marriage in New York, 62 Brook. L. Rev. 399, 405 (1996). Lesbian and gay employees, however, do not reap the benefit of a New York or Federal tax exemption for the value of their partners' health coverage, as do legally married employees who insure their spouses under the company plan. I.R.C. §§ 105, 213 (1996). Rather, lesbian and gay employees must pay taxes on the value of the benefits going to their same-sex partners.

4. Non-Taxable Transfers

Under Federal tax law, when a spouse transfers property to his or her spouse during the marriage, the transfer is not subject to the Federal gift tax that applies to most other gifts. I.R.C. §§ 1041, 2523 (1996). Also, when appreciated assets held in the name of one spouse are transferred at divorce to the other spouse, no capital gains tax or gift tax is due upon transfer. I.R.C. § 1041 (a)-(c) (1996). Similarly, when one spouse dies, bequests to his or her spouse are not taxed under Federal estate tax laws. I.R.C. § 2056 (1996).

5. Penalties Under Federal Income Tax Law[57]

a. Standard Deduction

The standard deduction under the Internal Revenue Code for a single person is $650.00 greater than it is for a married person. I.R.C. § 63(c) (1996).

b. Income Rates

Married people who both earn income are disadvantaged under the Internal Revenue Code because the amount of combined income which can be taxed at a lower rate (for example, at a

[57] The penalties discussed are true for a couple in which both parties have relatively equivalent incomes. This analysis may not be true if one person has no income or little income compared to the other.

15% rate rather than a 28% rate) for two single people is greater than it is for a married couple. I.R.C. § 1 (1996).

c. Earned Income Credit

To use the earned income credit, a couple must have a child and earn less than a specified amount each year. An unmarried couple need not combine their income to determine whether they earn above the designated threshold amount. I.R.C. § 32 (1996).

d. Personal Exemptions and Itemized Deductions

Personal exemptions and itemized deductions phase out with higher incomes. An unmarried couple need not combine their incomes, which would result in a higher phase out. The rates for married couples also are higher than for non-married couples. The combined exemptions for two single people is therefore greater than a married couple's exemption. I.R.C. § 151(d)(3) (1996).

e. IRA

If one spouse has a Qualified Pension Plan and earns income over a specified amount, the other spouse is precluded from putting $2,000.00 into an IRA and getting a tax advantage. I.R.C. § 219(g) (1996).

f. Capital Losses

Unmarried couples may take double the tax deduction each year that married couples may take for capital losses. I.R.C. § 1211 (1988).

g. Passive Trades

Unmarried couples make take double the tax deduction each year for passive trades, such as real estate, than married couples may take. See I.R.C. § 469 (1996).

6. Right Under Federal Income Tax Law To Deduct Spousal Maintenance

A person can tax deduct alimony or spousal maintenance payments only if he or she was once married to the person to whom he or she makes the payments. See I.R.C. § 215 (1988).

7. Pension Rights

Federal law requires that certain benefits of a retirement plan participant be provided to a surviving spouse. Furthermore, an employee cannot "elect" out of such benefits without obtaining a properly formalized consent from his or her spouse. I.R.C. §§ 401(a)(11), 417 (1996).

8. Rights Upon Death

a. Right to Claim Decedent's Remains

When a spouse dies, the other spouse has rights as "next of kin" to claim the deceased person's remains and, if the deceased person has made no directive of his or her own, the spouse has the right to make anatomical contributions with respect to the decedent's body. N.Y. Pub. Health Law § 4301(2) (1997). If a person is not legally married to his or her significant other, then other relatives have these rights.

b. Intestate Rights

Under New York's Estates, Powers & Trusts Law there also are a panoply of rights which inure to the benefit of surviving spouses, but which are not available to surviving partners of same-sex relationships. These rights include: the right of election, N.Y. Est. Powers & Trusts Law § 5-1.1-A (McKinney's 1997)[58], the right of exemption, N.Y. Est. Powers & Trusts Law §

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[58] The Appellate Division has held that a survivor of a homosexual relationship is not entitled to a right of election as a surviving spouse. Matter of Cooper, 187 A.D.2d 128, 592 N.Y.S.2d 797 (continued...)

5-3.1 (McKinney's 1997), and intestate rights, N.Y. Est. Powers & Trusts Law § 4-1.1 (McKinney's 1997). These rights entitle a surviving spouse to receive a share of the deceased spouse's probate estate and certain property transferred during the deceased spouse's lifetime.

9. Right To Bring Wrongful Death Claims

If a third party causes the death of a spouse through the third party's negligence or unjustified deliberate act, the decedent's distributees, which include his or her spouse, but not an unmarried long-term partner, may recover in a wrongful death action for economic losses. See N.Y. Est. Powers & Trusts Law § 5-4.1 (McKinney's 1997).

10. Right To Bring Loss of Consortium Claims

If a third person negligently injures a married person and his or her spouse is consequently deprived of care and companionship, the spouse may sue the third person for loss of consortium, otherwise referred to as loss of companionship. Briggs v. Julia L. Butterfield Mem. Hosp., 104 A.D.2d 626, 479 N.Y.S.2d 758 (A.D. 2d Dep't 1984). This cause of action is not available to long term, but unmarried, significant others.[59]

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[58](...continued)
(2d Dep't), appeal dismissed, 82 N.Y.2d 801, 624 N.E.2d 696, 604 N.Y.S.2d 558 (1993). The court reasoned that the Legislature has expressly defined a surviving spouse in EPTL §5-1.2 as a husband or wife.

[59] It has specifically been held in New York that only a spouse may sue for loss of consortium. See Seymour v. Brookdale Hospital Medical Center, 145 Misc. 2d 450, 546 N.Y.S.2d 922, 923-24 (N.Y. Sup. Ct. 1989) (court denied loss of consortium claim when cause of action accrued before the parties were married). The court in Seymour held that "There are strong public policy reasons behind limiting a defendant's liability in a loss of services action to cases involving the injured person' lawful spouse. A line must be drawn in tort law as to persons permitted to recover for loss of services. If this Court were to approve plaintiff's motion for loss of services, courts deciding these motions in the future would have the burden of individually evaluating each case to determine which plaintiffs have relationships 'sufficiently meaningful' to permit them to (continued...)

11. Right to Receive Financial Award If Spouse Is Crime Victim

Pursuant to N.Y. Executive Law § 624 (McKinney's 1996), a surviving spouse is eligible to receive a financial award if his or her spouse dies as the result of being a crime victim.

12. Right to Spousal Privileges and Immunities

When people are criminally prosecuted, the government may not force the spouse of the accused person to testify against the accused. See N.Y. Crim. Proc. Law § 60.10 (McKinney's 1992). Similarly, a spouse need not reveal confidential marital communications during a civil trial. Fed. R. Evid. 501; N.Y. C.P.L.R. § 4502 (McKinney's 1992).[60] A corollary of these privileges is that a person can share otherwise privileged information (for example, information protected by the attorney-client privilege) with his or her spouse without waiving the underlying privilege. Matter of Will of Pretino, 150 Misc. 2d 371, 567 N.Y.S.2d 1009, 1011 (N.Y. Sur. Ct. 1991).

13. Right to Waive Physician-Patient Privilege of Deceased Spouse

Pursuant to N.Y. Civil Procedure Law and Rules § 4504(c)(1) and (3) (McKinney's 1992), a spouse has the power to waive the physician-patient privilege of a deceased spouse and gain access to medical records, for purposes of litigation or otherwise.

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[59](...continued)
claim loss of services." Id. (citations omitted).

[60] Pursuant to C.P.L.R. § 4502, a spouse in a civil litigation "shall not be required, or, without consent of the other if living, allowed, to disclose a confidential communication made by one to the other during the marriage.

14. Right To Be Immune From Certain Tort Claims

Under New York law, a spouse is immune from certain tort claims. Spouses have limited immunity with respect to claims for tortious interference with contract based on the argument that they convinced their spouses to back out of a contract. Joel v. Weber, 153 Misc. 2d 549, 581 N.Y.S.2d 579, 581 (N.Y. Sup. Ct. 1992). There is no spousal immunity, however, if there are allegations of "wrongful conduct, such as physical threats or fraud."[61] Id. In addition, in New York communication between spouses is not actionable as slander. Romer v. Portnick, 78 Misc. 2d 404, 356 N.Y.S.2d 424, 426 (N.Y. City Civ. Ct. 1974).

15. Rights Under Bankruptcy Laws

Only married people may hold real property by the entirety. See N.Y. Est. Powers & Trusts Law § 6-2.2 (McKinney's 1997). Joint tenancies by the entirety will effectively protect a non-bankruptcy-filing spouse's title and occupancy in real property from the attack of creditors of the filer. Moreover, if the filer predeceases the other spouse, the other spouse has complete title and the creditors of the filer get nothing.

Spouses may also file joint bankruptcy petitions. See 11 U.S.C.A. §§ 301, 302 (1993).

16. Right to Have Foreign Spouse Become U.S. Citizen

The Federal government places significant restrictions on the opportunities for foreign-born nationals to immigrate legally to the United States. A foreign-born national who enters into a nonfraudulent marriage with an American citizen, however, may immediately enter the United States as a long-term resident. 8 U.S.C.A. §1430 (1996).

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[61] "Partners to a marriage should have the unfettered ability to discuss all aspects of domestic economics, including the suitability or unsuitability of any business venture, without fear of being called to account for the resulting steps either spouse may take that affect existing contractual relationships." Joel v. Weber, 581 N.Y.S.2d at 581.

17. Right to Take Time Off to Care For Spouse

The Family and Medical Leave Act of 1993 requires all employers with fifty or more employees to give up to twelve weeks per year in unpaid leave to employees who need to care for a spouse with a "serious health" condition. 29 U.S.C.A. §2612 (1996). It makes no similar provision for unmarried significant others.

18. Right To Privacy In Matrimonial Court Proceedings

Matrimonial files generally are not available to the public. N.Y. Dom. Rel. Law § 235 (McKinney's 1986). Records in actions to enforce, or for breach of an express contract and partition actions (two forms of action which a non-marital breakup can take) are available. Courts are hesitant to seal records, and such a motion is costly to the parties. If one party does not object to the public access, he or she may use that as leverage in negotiations, in addition to opposing the sealing.

19. Right to Equitable Distribution and Spousal Maintenance

Since July 19, 1980, marriage has been treated as an economic as well as social partnership under New York law. Thus, when a marriage dissolves, New York courts equitably distribute all marital assets. N.Y. Dom. Rel. Law § 236 (McKinney's 1986). Even a spouse who does not work outside of the home, or who earns less money than the other spouse, will receive an "equitable" portion of all marital property. In fact, New York courts may take into account the imbalances in earning capacity by considering the disparate financial positions of the parties in the distribution of property. Conner v. Conner, 97 A.D.2d 88, 468 N.Y.S.2d 482 (2d Dep't 1983). Large assets may be divided between the parties, including pension contributions earned or made during the marriage. Majauskas v. Majauskas, 61 N.Y.2d 481, 463 N.E.2d 15, 474 N.Y.S.2d 699 (N.Y. 1984). Spouses also may be compensated for helping the other spouse to

obtain a professional license or advanced degree during the marriage which ultimately enhances the other spouse's earning capacity. O'Brien v. O'Brien, 66 N.Y.d 576, 489 N.E.2d 712, 498 N.Y.S.2d 743, 748 (N.Y. 1985). In addition, upon divorce, spouses may be entitled to receive spousal maintenance to assist them in becoming self-supporting. Hartog v. Hartog, 85 N.Y.2d 36, 647 N.E.2d 749, 623 N.Y.S.2d 537 (N.Y. 1995).

Neither the equitable distribution of assets nor spousal maintenance are available to couples who are not legally married. A New York court has held that a couple cannot assume the rights and responsibilities of a marital relationship which are imposed upon divorce without the recognition of their relationship through marriage. Robin v. Cook, N.Y.L.J., Oct. 30, 1990, at 22 (lesbian plaintiff sought support from former partner after the couple broke up); see also, Vincent C. Green, Same-sex Adoption: An Alternative Approach to Gay Marriage in New York, 62 Brook. L. Rev. 399, 405 (1996). Same-sex couples, therefore, will not be subject to the rights and responsibilities enumerated in New York's divorce laws unless they are able to marry legally.

Conclusion

Numerous New Yorkers are involved in long-term same-sex relationships. The Matrimonial Committee believes that a fundamental sense of fairness and important social objectives dictate that these couples have equal access to the rights and responsibilities which are available to opposite-sex couples through marriage.

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