SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

MATTER OF THE ESTATE OF H. KENNETH RANFTLE, *Deceased.* RICHARD R. RANFTLE, *Appellant.* J. CRAIG LEIBY, *Respondent.*	:	**DOCKET NO.: 4585/2008 (Surr.NY)**

NOTICE OF MOTION OF THE NEW YORK CITY BAR ASSOCIATION TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENT J. CRAIG LEIBY'S OPPOSITION BRIEF

PLEASE TAKE NOTICE that, upon the affirmation of Eve Preminger, dated the 1st of October 2010, and annexed hereto as Exhibit A, the undersigned will move this Court, at the courthouse thereof, located at 27 Madison Avenue, New York, NY 10010 on the 11th of October 2010, or as soon as counsel may be heard, for an order granting permission to the New York City Bar Association to file an *amicus curiae* brief in support of Respondent J. Craig Leiby's Opposition Brief in the above-referenced matter. A copy of the Notice of Appeal in this action is annexed hereto as Exhibit B. A copy of the proposed brief is annexed hereto as Exhibit C.

Respectfully submitted,

KRAMER LEVIN NAFTALIS
& FRANKEL LLP

Dated: New York, NY
October 1, 2010

By: _____

Eve Preminger
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To:

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Susan Sommer
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
120 Wall Street
New York, NY 10007

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

MATTER OF THE ESTATE OF H. KENNETH RANFTLE, *Deceased.* RICHARD R. RANFTLE, *Appellant.* J. CRAIG LEIBY, *Respondent.*	:	**DOCKET NO.: 4585/2008 (Surr.NY)** **AFFIRMATION OF EVE PREMINGER**

Eve Preminger, an attorney duly admitted to practice before the courts of the State of New York, hereby affirms under penalty of perjury as follows:

1. I am Counsel at Kramer Levin Naftalis & Frankel LLP and a member of the Bar of the State of New York. I make this affirmation in support of the application of the New York City Bar Association ("NYCBA") to file an *amicus curiae* brief in support of Respondent J. Craig Leiby's Opposition Brief. I am authorized by the proposed *amicus* to bring this motion and to submit the proposed brief filed together with this motion.

2. A decision in favor of Respondent J. Craig Leiby was rendered by the

Surrogate's Court of the County of New York on December 15, 2008. That decision denied Appellant's petition to vacate the probate of the will of his brother, H. Kenneth Ranftle.

3. The New York City Bar Association ("NYCBA") is one of the oldest and largest professional associations in the United States. It was founded in 1870 to improve the administration of justice, promote the rule of law, and elevate the legal profession's standards of integrity, honor, and courtesy. It was among the first bar associations to have a standing committee dealing with lesbian and gay issues. NYCBA has over 23,000 members who serve hundreds of thousands of clients, and who have a vital interest in ensuring that New York grants equal rights to people regardless of sexual orientation and sex.

4. Many of NYCBA's members practice in the area of trust and estate law. These and other members represent clients whose interests may be deeply impacted by the resolution of this case. With respect to the particular questions raised here, NYCBA has long taken an active interest in protecting the legal rights of the diverse types of families that compose modern American Society.

5. NYCBA anticipates that Respondent's briefing will fully address the

legal reasons why the marriage of Respondent Leiby and the deceased Ranftle should be recognized as valid in New York. As *amicus curiae*, NYCBA seeks to assist the Court by supplementing Respondent's legal arguments with an account of the relevant probate laws and the policies motivating those laws, as well as an explanation of how the lower court's decision in favor of Respondent Leiby comports with those laws and policies. Given its long-standing involvement with New York trust and estate law and laws relating to same-sex couples, and given its many members who specialize in these areas of the law, NYCBA is uniquely qualified to furnish the Court with this information.

WHEREFORE, the New York City Bar Association respectfully requests that this Court grant their motion to file an *amicus curiae* brief in support of Respondent J. Craig Leiby's Opposition Brief, which is to be heard during the November 2010 term.

Respectfully submitted,

KRAMER LEVIN NAFTALIS
& FRANKEL LLP

Dated: New York, NY
October 1, 2010

By: _____
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Exhibit B

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

In the Matter of the Estate of

H. KENNETH RANFTLE,

Deceased.

----------X

File No.: 4585/2008

NOTICE OF APPEAL

PLEASE TAKE NOTICE that RICHARD R. RANFTLE hereby appeals to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, from an Order of the Surrogate's Court, County of New York, dated July 24, 2009 and entered by the Clerk of the Court on July 27, 2009.

Dated: Brooklyn, New York
October 5, 2009

Yours, etc.,

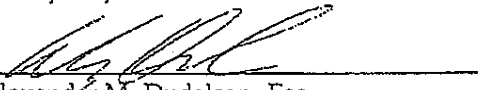

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Exhibit C

New York Supreme Court

Appellate Division — First Department

DOCKET NO.:
4585/2008 (Surr.NY)

MATTER OF THE ESTATE OF H. KENNETH RANFTLE,

Deceased.

RICHARD R. RANFTLE,

Appellant.

J. CRAIG LEIBY,

Respondent.

BRIEF OF THE NEW YORK CITY BAR ASSOCIATION AS *AMICUS CURIAE*

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REPRODUCED ON RECYCLED PAPER

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

LEGISLATIVE MATERIALS

REPORTS

SECONDARY SOURCES

INTEREST OF *AMICUS CURIAE*

The New York City Bar Association ("NYCBA") is one of the oldest and largest professional associations in the United States. It was founded in 1870 to improve the administration of justice, promote the rule of law, and elevate the legal profession's standards of integrity, honor, and courtesy. It was among the first bar associations to have a standing committee dealing with lesbian and gay issues. NYCBA has over 23,000 members who serve hundreds of thousands of clients and who have a vital interest in ensuring that New York grants equal rights to people regardless of sexual orientation and sex. Many of NYCBA's members practice in the areas of domestic relations law and trusts and estates law. These and other members represent clients whose interests may be deeply impacted by the resolution of this case. With respect to the particular questions raised here, NYCBA has long taken an active interest in protecting the legal rights of the diverse types of families that compose the modern American Society.

NYCBA submits this brief because of its interest in ensuring that the law is applied consistently and equally to same-sex and different-sex surviving spouses. NYCBA strongly urges the Court, in keeping not only with the long-established marriage recognition rule and New York estate law, but also with the policies motivating those long-settled legal standards, to uphold the decision of the court below admitting Mr. Ranftle's will to probate.

INTRODUCTION AND SUMMARY OF ARGUMENT

At issue here is whether, consistent with New York's long-standing common law rule of recognizing out-of-state marriages valid in the jurisdiction where entered and consistent with long-established probate law, Respondent J. Craig Leiby's ("Mr. Leiby" or "Respondent") marriage to the deceased, H. Kenneth Ranftle ("Mr. Ranftle"), qualifies Mr. Leiby as a surviving spouse for purposes of the disposition of Mr. Ranftle's estate.

Mr. Ranftle lived in a committed relationship with Mr. Leiby for nearly two decades. (R. 26). The couple legally married on June 7, 2008 in Canada. (R. 27). On or about December 4, 2008 – a little over a month after Mr. Ranftle's death on November 1, 2008 – Respondent filed for probate of Mr. Ranftle's will and requested that letters testamentary be issued to him. (R. 26, 37). Consistent with the requirements of EPTL 4-1.1, Mr. Leiby designated only himself as a distributee, because a surviving spouse of a childless decedent is the decedent's sole distributee. (R. 39).

Mr. Ranftle's siblings – including Appellant – were served with a Notice of Probate as required by SCPA § 1409. (R. 49). Receipt of such notice by itself does not confer standing to contest a will. *See* SCPA § 1410 (defining who may file objections to the probate of a will). The Surrogate's Court, County of New York entered a decree granting probate on December

15, 2008. (R. 25). In accordance with the law, the Surrogate's Court issued an order determining that Mr. Leiby is Mr. Ranftle's surviving spouse and sole distributee because of their valid Canadian marriage. (R. 54). Appellant sought to vacate the decree of probate by challenging Mr. Leiby's designation as a surviving spouse, but his attempt was strongly rejected by Judge Glen in a decision entered on June 27, 2009. *In the Matter of the Estate of H. Kenneth Ranftle,* No. 4585/2008, Slip Op. at 3-4 (Sur. Ct. N.Y. County 2009); (R. 5).

As Judge Glen emphasized in her order, it is settled New York law that valid out-of-state marriages between same-sex couples are given full recognition here, and that where the deceased was married and is not survived by children/issue, only his or her surviving spouse – not surviving siblings – must be served with a citation of probate. Respondent, and not Appellant, should be recognized as the only party with standing to challenge Mr. Ranftle's will here.

This result not only is required by controlling legal authority, but also comports with the policies underlying New York law. Among those policy goals are: (1) achieving certainty for families and an orderly disposition of their estates, (2) honoring the wishes of deceased spouses who die intestate, and (3) protecting surviving spouses from disinheritance. These three policies

and others – as well as New York's estate law itself – are advanced by recognizing Mr. Ranftle's marriage to Mr. Leiby.

Appellant seeks to ignore these laws, their policy goals, and the overwhelming legal authority respecting and recognizing valid out-of-state marriages from other jurisdictions. Instead, Appellant contends that, since same-sex couples may not marry *within* this state, their legally valid marriages performed *out*-of-state should not be recognized. As demonstrated in Mr. Leiby's brief and further supported below, this argument has been repeatedly rejected by New York courts because it flouts the long-established marriage recognition rule. Appellant's argument so clearly flew in the face of overwhelming contrary authority that the Surrogate's Court described it as being "on the edge of sanctionable." *Ranftle*, Slip Op. at 3; (R. 9). For the reasons stated below, the Order of the Surrogate's Court of the County of New York, dated December 15, 2008, which granted probate of the decedent's last will and testament, should be affirmed.

ARGUMENT

The solemn oath of marriage taken by the deceased, Mr. Ranftle, and his surviving spouse, Mr. Leiby, not only expressed their love and commitment to one another, but also was a means to ensure that their wishes

would be respected regarding the administration of their legal and financial affairs. The certainty that comes with entering into the marital relationship is an enormous motivating factor that leads committed couples to marry, and is also a primary reason that the marriage recognition rule and New York probate law were established in the first instance. The marriage of Messrs. Ranftle and Leiby should be recognized in connection with administering Mr. Ranftle's estate not only because it is the law in New York, but also because it is consistent with the policies motivating those laws.

I. IT IS SETTLED LAW IN NEW YORK THAT SAME-SEX COUPLES WHO ENTER VALID OUT-OF-STATE MARRIAGES ARE ENTITLED TO LEGAL RECOGNITION.

The long-settled marriage recognition rule requires that Messrs. Ranftle and Leiby's valid Canadian marriage be respected. It has been the law for more than a century that out-of-state marriages valid where entered are honored in New York even if they could not have been entered in this state. The Court of Appeals has clearly articulated this rule: "[T]the legality of a marriage between persons *sui juris* is to be determined by the law of the place where it is celebrated." *In re Estate of May*, 305 N.Y. 486, 490 (1953). *See also Thorp v. Thorp*, 90 N.Y. 602, 605 (1882) ("[T]he validity of a marriage contract is to be determined by the law of the State where it is entered into. If valid there, it is to be recognized as such in the courts of this State . . . ."); *Van Voorhis v. Brintnall*, 86 N.Y. 18, 25

(1881); *Decouche v. Savetier*, 3 Johns.Ch. 190 (N.Y. Ch. 1817). This rule is still fundamental today and has been repeatedly affirmed by the Court of Appeals, this Court, and the other departments of the Appellate Division. *See, e.g., Mott v. Duncan Petroleum Trans.*, 51 N.Y.2d 289, 292 (1980); *In re Estate of Watts*, 31 N.Y.2d 491, 495 (1973); *Black v. Moody*, 276 A.D.2d 303 (1st Dep't 2000); *In re Estate of Catapano*, 17 A.D.3d 672 (2d Dep't 2005); *In re Estate of Yao You-Xin*, 246 A.D.2d 721 (3d Dep't 1998).

The robustness of the marriage recognition rule is evidenced by its application in many contexts. *See, e.g., May*, 305 N.Y. at 492 (upholding marriage between uncle and niece even though prohibited as incest under New York law); *Fernandes v. Fernandes*, 275 A.D. 777, 777 (2d Dep't 1949) (upholding proxy marriage – one entered into with only one party present – though void under New York law); *Hilliard v. Hilliard*, 24 Misc. 2d 861, 863 (Sup. Ct. Greene County 1960) (upholding marriage of couple too young under DRL §7(1) to marry in New York); *Katebi v. Hooshiari*, 288 A.D.2d 188, 188 (2d Dep't 2001) (upholding common law marriage, even though such marriages have been prohibited by New York Legislature for over 70 years).

It is thus not surprising that New York courts have consistently applied the marriage recognition rule to require recognition of the valid out-of-state marriages of same-sex couples. *See, e.g., Lewis v. N.Y.S. Dep't of Civil*

Serv., No. 504900, 2009 N.Y. App. Div. LEXIS 415 (3d Dep't Jan. 22, 2009), *aff'd on other grounds*, 13 N.Y.3d 358 (2009); *Martinez v. County of Monroe*, 50 A.D.3d 189 (4th Dep't 2008), *lv. dismissed*, 10 N.Y.3d 856 (2008); *Golden v. Paterson*, 23 Misc. 3d 641 (Sup. Ct. Bronx County 2008). While the Court of Appeals has not yet expressly reached the question, it affirmed the general vitality of the marriage recognition rule in the course of affirming, as an appropriate exercise of discretion, the actions of public officials extending recognition to marriages of same-sex couples. *Godfrey v. Spano*, 13 N.Y.3d 358 (2009). The Court of Appeals also recently extended comity to a Vermont civil union for purposes of applying Vermont law to establish the parentage of a child born and residing in New York. *Debra H. v. Janice R.*, 14 N.Y.3d 576 (2010). This case demonstrates the Court's endorsement of applying comity principles in New York to recognize validly executed out-of-state legal unions between same-sex couples.

A primary policy motivating the marriage recognition rule is that it ensures for spouses the vital degree of certainty they expect and enjoy upon marrying. Married couples build their families and their lives around laws relating to marriage, and the marriage recognition rule ensures that their ability to rely on those laws is not diminished when a family member crosses a state or national border. *See, e.g., Scrimshire v. Scrimshire*, 161 Eng. Rep. 782, 790 (Consistory Ct.

1752) (marriage recognition rule promotes certainty "with respect to legitimacy, succession and other rights"); *Van Voorhis*, 86 N.Y. at 26 (noting certainty afforded parties who enter into marriage in another state even if they did so merely to evade marriage laws of New York); *see also Strauss v. Horton*, 207 P.3d 48, 122 (Cal. 2009) (upholding validity of 18,000 California marriages entered into prior to Proposition 8 and noting that invalidating those marriages "would disrupt thousands of actions taken . . . by these same-sex couples, their employers, their creditors, and many others, throwing property rights into disarray, destroying the legal interests and expectations of thousands of couples and their families, and potentially undermining the ability of citizens to plan their lives . . . .").

The wide range of legal contexts in which the marriage recognition rule has been applied evinces just how central certainty is to that rule. *See, e.g.*, *May*, 305 N.Y. at 493 (marriage recognition rule used to determine surviving spouse for issuance of letters of administration in probate proceeding); *Van Voorhis*, 86 N.Y. at 38 (applying rule to determine legitimacy of child for purposes of inheritance); *Fernandes*, 275 A.D. at 777 (2d Dep't 1949) (applying marriage recognition rule for purposes of awarding child support); *Katebi*, 288 A.D.2d 188, 188 (2d Dep't 2001) (applying rule to obtain maintenance in divorce action); *Beth R. v. Donna M.*, 19 Misc. 3d 724 (Sup. Ct. N.Y. County 2008) (applying rule in context of divorce and child custody dispute between same-sex

partners who married in Canada); *C.M. v. C.C.*, 21 Misc. 3d 926 (Sup. Ct. N.Y. County 2008) (recognizing validity of Massachusetts marriage of same-sex couple for purposes of divorce).

Indeed, the New York Assembly and Senate memoranda accompanying the passage of the recent no-fault divorce legislation affirm the marriage recognition rule, a step neither legislative body needed to take to preserve the rule. According to those memoranda, the "intent of [the no-fault divorce] legislation [is] to grant full recognition and respect to valid marriages of same-sex couples" for the purposes of obtaining a divorce. Assemb. 103A-A09753 (N.Y. 2010) *and* S. 321-S3890A (N.Y. 2010).

In short, Appellant's argument against application of the marriage recognition rule here should be rejected. Not only does case law expressly apply the rule to the marriages of same-sex couples but, as a policy matter, it has also been applied to provide certainty and predictability for a wide range of family law and probate purposes. New York law does not allow a third party to interfere with the recognition of a valid out-of-state marriage – which here, given the preexisting will, would throw into disarray financial arrangements that Messrs. Leiby and Ranftle made in reliance on the validity of their marriage. The guarantee of certainty afforded by New York's marriage recognition rule is directly contrary to such third party intervention.

II. THE NUMEROUS POLICY GOALS UNDERLYING THE LAW OF THE DISPOSITION OF ESTATES UNDERSCORE THE PARTICULAR IMPORTANCE OF RECOGNIZING RESPONDENT'S VALID MARRIAGE TO MR. RANFTLE.

Beyond specific application of the marriage recognition rule, upholding the Surrogate's Court ruling in this case is also consistent with New York's broader statutory scheme regarding estates. Refusing to recognize the marriage of Messrs. Ranftle and Leiby would flout the very estate and probate laws that protect them and their marriage. Further, refusing to recognize their marriage would undermine the policy rationales those laws seek to promote.

A. Where There Is A Surviving Spouse And No Issue, A Citation of Probate Need Be Served Only On The Surviving Spouse, As He Or She Is The Sole Distributee Under EPTL 4-1.1.

Mr. Leiby is the only party in this action with a right to receive service of process under SCPA § 1403 and, accordingly, authorized under the law to challenge Mr. Ranftle's will. When commencing a probate proceeding, process need be served only on "those who have an interest in seeing the will denied probate," such as the testator's heirs at law who would stand to inherit under intestacy and other classes of people as specified by § 1403.[1] 58A Margaret Valentine Turano, Practice Commentary to SCPA 1403, c 1403 (McKinney 1994). *See also In re Baender's Will*, 81 N.Y.S.2d 689, 689 (Queens

[1] While this is not a case where the deceased died intestate, the rules of intestacy are relevant because they establish who has the ability to challenge a will.

County Sur. Ct. 1948) (only necessary parties, as opposed to mere legatees under a will, "may have the decree [of probate] vacated upon proof that [he or] she was not served with process"). Under the laws of intestacy, surviving "spouses . . . are viewed as natural objects of a decedent's bounty" and thus presumed to inherit the decedent's estate. Susan N. Gary, *Mediation and the Elderly: Using Mediation to Resolve Probate Disputes Over Guardianship and Inheritance*, 32 Wake Forest L. Rev. 397, 418 n.127 (1997).

A mere legatee – like Mr. Ranftle's brother, Appellant – has no statutory right to service of a citation, unless he or she is adversely affected because of a previously filed will, which is not the case here. *See* SCPA § 1403.1(c). *See also In re Bray's Estate*, 146 Misc. 415, 416 (N.Y. County Sur. Ct. 1932) (denying request of alleged legatee from prior will to vacate admission of will to probate where prior will was not filed and could not be proved); *In re Cassidy's Will*, 243 A.D. 489, 491 (3d Dep't 1935) (noting that only those who would stand to inherit under intestacy laws are entitled to receive citation of probate).

Appellant – Mr. Ranftle's brother – would qualify as a distributee only if Mr. Leiby were not Mr. Ranftle's surviving spouse or if Mr. Leiby were disqualified as the sole distributee under Mr. Ranftle's will by the provisions of

EPTL 5-1.2.[2] But where, as here, there is a surviving spouse, siblings do not stand to inherit under intestacy and therefore may not challenge a will. EPTL 4-1.1(a); *see also In re Bernadi's Estate*, 199 Misc. 919, 921 (Kings County Sur. Ct. 1951) (surviving brother and sisters of deceased entitled to unbequeathed assets under predecessor to EPTL 4-1.1(a), Decedent Estate Law, § 83, because there was *no* surviving spouse, descendants or parents); *In re Kohn's Estate*, 124 N.Y.S.2d 861, 865 (N.Y. County Sur. Ct. 1953) (where decedent's spouse, children, and brother all pre-deceased him, his sister was his sole heir). In light of the clear statutory framework, and in view of the applicability of the marriage recognition rule, Appellant was not entitled to be served with process, nor is he now entitled to throw into disorder the disposition of Mr. Ranftle's estate. Allowing Appellant to challenge the instant will would directly contravene New York estate law.

B. Like The Marriage Recognition Rule, The Centuries-Old Laws Governing the Disposition of Estates Are Meant to Guarantee Certainty For Families Through The Orderly Disposition Of Estates.

For centuries, married couples have relied on the law of estates as a means of protecting surviving spouses with a degree of certainty – a policy

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[2] EPTL 5-1.2 provides for disqualification as a surviving spouse in situations of divorce or annulment, if the marriage was polygamous or incestuous, or if the surviving spouse abandoned or failed to support the deceased. No such disqualifications are relevant here.

goal that applies equally to same-sex and different-sex surviving spouses. Refusing to recognize the marriage of Messrs. Ranftle and Leiby would radically disrupt that policy goal, by upending the legal arrangements they put in place and upsetting their expectation – enjoyed as a result of their marriage – of having their estates disposed in an orderly and predictable fashion.

The Court of Appeals, citing the standard set forth by the United States Supreme Court in *Trimble v. Gordon*, 430 U.S. 762, 771 (1977), has made clear that the policy underlying the law of intestacy is to make "provision for the orderly settlement of estates and the dependability of titles to property passing under intestacy laws." *Matter of Lalli*, 43 N.Y.2d 65, 70 (1977) (internal citation omitted). Indeed, the promotion of order, certainty, and dependability constitutes "the legislative purpose of Article 4 of EPTL in its entirety." *Smith's Estate*, 114 Misc. 2d 346, 348 (Queens County Sur. Ct. 1982) (citing *Matter of Lalli*); *see also Matter of Fay's Estate*, 44 N.Y.2d 137, 145 (1978) (noting that one purpose of intestacy laws is to promote orderly settlement of estates and dependability of titles to property).

Respecting validly entered out-of-state marriages like the marriage of Mr. Ranftle and Mr. Leiby is entirely in keeping with New York probate law's goals of preserving titles to property and ensuring the orderly disposition of estates. To refuse recognition of their marriage would embroil the court in

second-guessing marriage licenses and upend the rationale of certainty motivating New York estate law.

C. Upholding Messrs. Ranftle and Leiby's Marriage Is Consistent With The Important Estate Law Policy Of Carrying Out The Likely Wishes Of The Decedent Had He Or She Died Intestate.

In addition to promoting certainty and orderliness in the disposition of estates, the law of intestacy aims to approximate the likely wishes of the deceased were he or she to leave a will. The Legislature amended the intestacy statute in 1963 with the intention to "concentrate succession among the near and dependent relatives of the intestate whom he *most likely would have favored if he had made a will.*" Second Report of the Bennett Commission, N.Y. Legis. Doc., 1963, No. 19, p. 24 (emphasis added); *see also Will of Niner*, 126 Misc. 2d 1097, 1098 (N.Y. County Sur. Ct. 1984) (citing Second Report of Bennett Commission).[3] This is consistent with one of the "principle purposes of intestacy statutes," which is "to carry out the decedent's probable intent in the distribution of his estate." Megan Pendleton, *Intestate Inheritance Claims: Determining a Child's Right to Inherit When Biological and Presumptive Paternity Overlap*, 29 Cardozo L. Rev. 2823, 2859 n.131 (2008).

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[3] In 1992, the legislature once again amended the intestacy statute to increase the surviving spouse's share of the intestate estate and to eliminate the decedent's parents from the intestate scheme if a spouse survives. EPTL 4-1.1.

Accordingly, the law presumes that those who leave behind a spouse and no children would most likely wish to provide for their surviving spouse and to maintain the household the couple built together. *See* Ralph C. Brashier, *Disinheritance and the Modern Family*, 45 Case Western Reserve L. Rev. 83, 143 n.197 (1994) (noting that "the surviving spouse is a natural object of the testator's bounty"). And indeed, in this case, the intent could not be clearer since Mr. Ranftle died testate and bequeathed the bulk of his estate to his spouse. Honoring their marriage under EPTL 4-1.1 is therefore completely consistent with the policy of hewing close to the probable wishes of one who dies intestate.

D. Honoring The Marriage Of Mr. Ranftle And Mr. Leiby Upholds The Strong Public Policy Goal Of The Estate Laws To Protect Surviving Spouses From Disinheritance.

Protecting Mr. Leiby and other surviving spouses from disinheritance is an additional rationale governing the disposition of estates in New York. *See* Third Report of the Temporary State Commission on the Modernization, Revision & Simplification of the Law of Estates, Legis. Doc. No. 19, at 202 (1964) (stating that before modernization of estate law, dower and curtesy – protections for surviving wives and husbands respectively – were *only* ways in which New York law limited free testation). New York law protects spouses under the intestacy statute, EPTL 4-1.1, by affording a spouse

an elective share of the deceased's estate, EPTL 5-1.1-A(a), and sets aside certain monies and assets, such as household items and the family car, for the surviving spouse regardless of the operation of a will or intestacy, EPTL 5-3.1. *See also* Jessica Baquet, *Aiding Avarice: The Inequitable Results of Limited Grounds For Spousal Disqualification Under EPTL § 5-1.2*, 23 St. John's J. Legal Comment. 842, 843-56 (2008) (summarizing history and progression of ways that surviving spouses were increasingly protected from disinheritance in New York over time).

Current protections for surviving spouses in New York against disinheritance are indeed more robust than their historical counterparts. *Compare* EPTL 5-1.1 (allowing decedent to satisfy spousal elective share by creating trust for surviving spouse and limiting access only to income of that trust) *with* EPTL 5-1.1A (dramatically increasing preference for surviving spouse by requiring decedent to give spouse his or her share outright rather than in trust); *see also* EPTL 5-3.1 (setting aside $15,000 of cash and essential items for benefit of surviving spouse as immune from creditors' claims). The protections under the laws of intestacy have also grown more robust. Under former DEL § 83 and EPTL 4-1.1, before the 1992 amendments, if a decedent was survived by a spouse, as well as one or both parents, but by no issue, his or

her parents would share the estate with the surviving spouse. Today, only the surviving spouse is afforded such protection.

Acknowledging the validity of Mr. Ranftle and Mr. Leiby's marriage furthers the strong policy in probate law of protecting surviving spouses in the settlement of estates. Married couples depend upon the law of estates to keep their financial and legal lives intact when one spouse dies. This applies as much to Mr. Ranftle and Mr. Leiby as to any other married couple. By following the well-settled marriage recognition rule and respecting their marriage, the Surrogate's Court advanced the strong policy of protecting surviving spouses from disinheritance, a policy lying at the heart of New York's law governing the disposition of estates.

CONCLUSION

Mr. Ranftle and Mr. Leiby entered into a valid marriage to gain necessary certainty in arranging their lives together. Under the long-standing marriage recognition rule and the policies underlying New York estate law, those arrangements should be respected. For the above reasons, the Order of the Surrogate's Court of the County of New York, dated December 15, 2008, which granted probate of the decedent's last will and testament, should be affirmed.

Respectfully submitted,

KRAMER LEVIN NAFTALIS
& FRANKEL LLP

Dated: New York, NY
October 1, 2010

By: _____
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APPELLATE DIVISION—FIRST DEPARTMENT
PRINTING SPECIFICATION STATEMENT

I hereby certify pursuant to Rule 600.10(d)(1)(v) that the foregoing brief was prepared on a computer using Microsoft Word.

A proportionally spaced typeface was used, as follows:

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Respectfully submitted,

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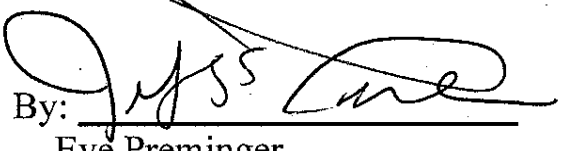
Dated: New York, NY
October 1, 2010

By: 

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