

The logo for the New York City Bar, featuring the words "NEW YORK" and "CITY BAR" in a serif font, stacked vertically and centered between two horizontal blue bars.

## NEW YORK CITY BAR

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### **TESTIMONY OF JEANNETTE A. VARGAS, MEMBER OF THE COMMITTEE ON LESBIAN, GAY, BISEXUAL & TRANSGENDER RIGHTS IN SUPPORT OF THE ADOPTION OF SECTION 3-207.1 OF THE NEW YORK CITY ADMINISTRATIVE CODE**

My name is Jeannette Vargas, and I am a member of the Lesbian, Gay, Bisexual and Transgender Rights Committee (the "Committee") of the Association of the Bar of the City of New York (the "City Bar"). On behalf of the City Bar, the Committee voices its support for the City Council's proposed enactment of section 3-207.1 of the administrative code of the City of New York, requiring the City Clerk to provide the public with information regarding New York State's recognition of marriages between same-sex couples performed in other domestic or international jurisdictions.

While the State of New York has traditionally been a leader in the areas of equality and civil rights, we trail behind other jurisdictions in the important area of marriage equality. There are, however, five states, the District of Columbia, Canada and seven other countries that have full marriage equality. More jurisdictions are proceeding rapidly toward it. Until such time as the New York State legislature enacts marriage equality legislation, it is vitally important that same-sex couples residing within New York City be informed as to the other options that are available to them --- specifically, the fact that they can potentially be married in another jurisdiction, and that pursuant to the common law, executive order, and judicial decisions, marriages between same-sex couples performed in accordance with the laws of such other jurisdictions will be accorded full recognition in both the City and State of New York.

In the area of recognition of validly executed marriages between same-sex couples, in particular, the state of the law is constantly in flux and misinformation among the public is rampant. Yet New York State's domestic laws deny unmarried same-sex couples at least 1,324 legal rights and duties<sup>1</sup> that married different-sex couples currently receive. Accordingly, it is essential that same-sex couples in New York City be provided with accurate information regarding their right to have their validly performed marriages accorded the full panoply of rights under state and local law.

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. Thirty-two percent of individuals in these couples are nonwhite.<sup>2</sup> The inability of these long-term couples to marry in the State of New

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<sup>1</sup> See Empire State Pride Agenda Found. & New York City Bar, *1,324 Reasons for Marriage Equality in New York State* (June 12, 2007), available at [http://www.nycbar.org/pdf/report/marriage\\_v7d21.pdf](http://www.nycbar.org/pdf/report/marriage_v7d21.pdf).

<sup>2</sup> See Williams Institute, "Census Snapshot New York" (Apr. 2004), available at <http://www.law.ucla.edu/williamsinstitute/publications/NewYorkCensusSnapshot.pdf>.

York has real and devastating consequences. For example, in death, without inheritance rights, the surviving partner can be thrown out of the family home. Further, 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. 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 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.

Despite entering into valid marriages in other jurisdictions, same-sex married couples in New York, unlike opposite-sex married couples in the State, face selective recognition within New York, as well as a confusing array of relationship recognition rules outside New York. The unfortunate reality is that same-sex couples are not adequately or consistently protected by New York's piecemeal recognition of same-sex relationships over the last two decades by statutes, executive orders and regulations, and court decisions. Despite the efforts of governors, state officials, local executives and legislators of both parties, the lack of clear legislative action has and will continue to 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.<sup>3</sup>

For these reasons, the Committee supports the City Council's proposed amendment to the administrative code of New York City requiring the City Clerk to provide the public with information regarding the legal rights that will be accorded to marriages between same-sex couples performed in other domestic or international jurisdictions. While this provision is no substitute for the enactment of state legislation according same-sex couples residing in New York with full marriage equality, the proposed amendment represents an important step forward towards protecting the rights of LGBT residents of New York City.

Respectfully submitted,

Jeannette A. Vargas  
Member  
Lesbian, Gay, Bisexual and Transgender Rights Committee  
The Association of the Bar of the City of New York

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<sup>3</sup> Compare *Matter of the Estate of H. Kenneth Ranftle*, 4585-2008 (Surr. Ct. N.Y. Co. 2009) (recognizing same-sex marriage for notice purposes in probate proceeding) with *Will of Alan Zwerling* (NYLJ, Sept. 9, 2008) (Surr. Ct. Queens Co.) (notice to parents required because validity of same-sex marriages not determined).