



# NEW YORK CITY BAR

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## *Marriage Equality Act*

A.7732  
S.4401

M. of A. O'Donnell  
Senator Duane

### **THIS BILL IS APPROVED**

In over a decade's worth of reports and amicus briefs,<sup>1</sup> the New York City Bar has demonstrated that the right to marry – regardless of a spouse's sex – is essential for full equality for all New Yorkers. Many others have shared in this effort. We applaud the Assembly's overwhelming passage of a marriage equality bill in 2007 and Governor David Paterson's support for this year's Marriage Equality Act.

Recent New York actions have vitally advanced same-sex couples' marriage rights. In *Martinez v. County of Monroe*<sup>2</sup> (2008) the Fourth Department recognized valid out-of-state same-sex marriages. Governor Paterson's subsequent directive<sup>3</sup> applied *Martinez* to state executive agencies. However, as the New York Court of Appeals concluded in *Hernandez v. Robles*<sup>4</sup> (2006), full marriage equality requires the Legislature to act.

The Legislature, in enacting this law, will benefit all New Yorkers:

- New York's domestic laws deny more than 50,000 same-sex couples<sup>5</sup> at least 1,324 legal rights and duties<sup>6</sup> conferred on married couples in New York. Without the Marriage Equality Act, even same-sex couples married out-of-state may find themselves without full coverage under these laws. Opposite-sex couples, whether married in New York or elsewhere, have the full range of rights and duties.
- Same-sex couples face the same issues as their opposite-sex counterparts. 20% of same-sex couples are raising children under age 18, and more than 25% have one disabled partner.<sup>7</sup> Yet they face a confusing array of out-of-state civil unions, domestic partnerships and marriages, and selective in-state recognition. The Marriage Equality Act would clearly determine who is married under New York law and their rights and duties. Without it, there will be decades of litigation and legislative patches – at enormous expense for the State and individual litigants – to establish same-sex couples' inheritance, divorce, child custody, pension and tort rights and duties.
- 53% of New Yorkers support same-sex marriage,<sup>8</sup> yet instead of its usual national leadership, New York lags on marriage equality. Four states,<sup>9</sup> Canada and six other countries<sup>10</sup> have full marriage equality. Many more states are proceeding rapidly toward it. New York cannot risk the exodus of talented workers who perceive our state as discriminatory and unwelcoming.
- Full marriage equality for same-sex couples would be fiscally positive or neutral for New York, based on projections for other states.<sup>11</sup>
- The Marriage Equality Act will *not* affect opposite-sex couples and their personal marriage choices, and will *not* affect beliefs or worship in religious institutions. No church, synagogue, mosque or temple will be required to marry same-sex couples.

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<sup>1</sup> See New York City Bar Committee Reports, <http://www.nycbar.org/Publications/reports/index.php?type=subject&alpha=S> (last visited Apr. 27, 2009).

<sup>2</sup> *Martinez v. County of Monroe*, 850 N.Y.S.2d 740 (N.Y. App. Div. 2008).

<sup>3</sup> See Memorandum from David Nocenti, Counsel to the Governor, New York State, to All Agency Counsel, New York State (May 14, 2008), *available at* [http://data.lambdalegal.org/in-court/downloads/exec\\_ny\\_o\\_20080514\\_governor-directive-same-sex-marriage.pdf](http://data.lambdalegal.org/in-court/downloads/exec_ny_o_20080514_governor-directive-same-sex-marriage.pdf).

<sup>4</sup> *Hernandez v. Robles*, 855 N.E.2d 1 (N.Y. 2006).

<sup>5</sup> See The Williams Institute, “Census Snapshot New York” (Apr. 2004), *available at* <http://www.law.ucla.edu/williamsinstitute/publications/NewYorkCensusSnapshot.pdf>.

<sup>6</sup> See The Empire State Pride Agenda Found. & The New York City Bar Assoc., “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>7</sup> *Supra*, n.5.

<sup>8</sup> Press Release, Siena Research Inst., Siena New York Poll: Voters Continue To Be Down on Gov & the Job He Is Doing (Apr. 20, 2008), *available at* [http://www.siena.edu/uploadedFiles/Home/Parents\\_and\\_Community/Community\\_Page/SRI/SNY\\_Poll/09%20April%20SNY%20Poll%20Release%20--%20FINAL.pdf](http://www.siena.edu/uploadedFiles/Home/Parents_and_Community/Community_Page/SRI/SNY_Poll/09%20April%20SNY%20Poll%20Release%20--%20FINAL.pdf).

<sup>9</sup> The Nat’l Gay & Lesbian Task Force, “Relationship Recognition for Same-Sex Couples in the U.S.” (Apr. 9, 2009), *available at* [http://thetaskforce.org/downloads/reports/issue\\_maps/relationship\\_recognition\\_04\\_09\\_color.pdf](http://thetaskforce.org/downloads/reports/issue_maps/relationship_recognition_04_09_color.pdf).

<sup>10</sup> Wikipedia, [http://en.wikipedia.org/wiki/Same-sex\\_marriage](http://en.wikipedia.org/wiki/Same-sex_marriage) (last visited Apr. 27, 2009).

<sup>11</sup> See, e.g., The Williams Institute, “The Effect of Marriage Equality and Domestic Partnership on Business and the Economy” (Oct. 2006) (citing increased benefits to businesses, including a \$2 billion gain in wedding and tourism-related revenues, and to federal and state budgets as a result of allowing same-sex marriage), *available at* <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1035&context=uclalaw/williams>;

See also Holtz-Eakin, Douglas, Director, Congressional Budget Office, “The Potential Budgetary Impact of Recognizing Same-Sex Marriages. Letter to Chairman of the House Subcommittee on the Constitution” (June 2004) (estimating \$1 billion net gain to the federal budget in each of the first ten years following adoption of same-sex marriage in all 50 states) *available at* <http://www.cbo.gov/ftpdocs/55xx/doc5559/06-21-SameSexMarriage.pdf>.