Court of Appeals

STATE OF NEW YORK

DANIEL HERNANDEZ AND NEVIN COHEN, LAUREN ABRAMS AND DONNA FREEMAN-TWEED, MICHAEL ELSASSER AND DOUGLAS ROBINSON, MARY JO KENNEDY AND JO-ANN SHAIN, AND DANIEL REYES AND CURTIS WOOLBRIGHT,

Plaintiffs-Appellants,

—against—

VICTOR L. ROBLES, IN HIS OFFICIAL CAPACITY AS CITY CLERK OF THE CITY OF NEW YORK,

Defendant-Respondent.

SYLVIA SAMUELS AND DIANE GALLAGHER, HEATHER MCDONNELL AND CAROL SNYDER, AMY TRIPI AND JEANNE VITALE, WADE NICHOLS AND HARING SHEN, MICHAEL HAHN AND PAUL MUHONEN, DANIEL J. O'DONNELL AND JOHN BANTA, CYNTHIA BINK AND ANN PACHNER, KATHLEEN TUGGLE AND TONJA ALVIS, REGINA CICCHETTI AND SUSAN ZIMMER, ALICE J. MUNIZ AND ONEIDA GARCIA, ELLEN DREHER AND LAURA COLLINS, JOHN WESSEL AND WILLIAM O'CONNOR, AND MICHELLE CHERRY-SLACK AND MONTEL CHERRY-SLACK,

Plaintiffs-Appellants,

—against—

THE NEW YORK STATE DEPARTMENT OF HEALTH AND THE STATE OF NEW YORK

Defendants-Respondents.

BRIEF OF THE EMPIRE STATE PRIDE AGENDA, ET AL. AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS ADDRESSING NEW YORK PUBLIC POLICY RECOGNIZING AND PROTECTING THE RELATIONSHIPS OF SAME-SEX COUPLES

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STATEMENT OF INTEREST OF AMICI CURIAE

The Empire State Pride Agenda (hereinafter "the Pride Agenda") respectfully submits this brief as amicus curiae in support of plaintiffs-appellants.

Founded in 1990, the Pride Agenda is New York's statewide civil rights organization committed to winning equality and justice for lesbian, gay, bisexual and transgender ("LGBT") New Yorkers and their families. The Pride Agenda has offices in Albany and New York City and is the largest statewide LGBT organization in the country.

The Pride Agenda is dedicated to ensuring that all New Yorkers are protected from discrimination and bias-motivated harassment and violence, and that all New York families are supported by their government in their roles as parents and caregivers. The organization is a leader in working to achieve equity for LGBT families in such areas as medical decision making, access to family court, child custody, bereavement and family leave, insurance, taxation and inheritance. The Pride Agenda has thus continuously tracked the development of the legal protections afforded to New York's same-sex couples and their families by all three branches of New York State government. The Pride Agenda submits this brief to share

with the Court its expertise concerning the evolution of New York State law and policy regarding the treatment of committed same-sex couples.

Amici Bronx Lesbian and Gay Resource Consortium (Bronx), Las Buenas Amigas (New York), Capital District Gay and Lesbian Community Council (Albany), Colombian Lesbian and Gay Association (Jackson Heights), Gay & Lesbian Dominican Empowerment Organization (New York), Gay and Lesbian Youth Services of Western New York, Inc. (Buffalo), Gay Alliance of the Genesee Valley (Rochester), Gay Men of African Descent (New York), Gay Men's Health Crisis, Inc. (New York), In Our Own Voices (Albany), The Institute for Human Identity, Inc. (New York), Latino Gay Men of New York (Brooklyn), Lesbian and Gay Family Building Project (Binghamton), Lesbian, Gay, Bisexual & Transgender Community Center (New York), The LOFT: the Lesbian and Gay Community Services Center, Inc. (White Plains), Long Island Crisis Center (Bellmore), Long Island Gay and Lesbian Youth, Inc. (Bay Shore), Long Island Lesbian Cancer Initiative (Jericho), Mano a Mano (New York), Marriage Equality New York (New York), Men of Color Health Awareness Project (Buffalo/Rochester), Pride Center of Western New York, Inc. (Buffalo), Primer Movimiento Peruano LGBT (New York), Rainbow Heights Club (Brooklyn) and SAGE / Upstate (Syracuse) are local

community organizations that provide a wide variety of services and resources to same-sex couples and their families around the State. Their work and the communities they serve would be substantially benefited by the availability of marriage to same-sex couples.

In addition, the proposed amici have members and employees whose personal lives will be directly affected by the Court's decision.

PRELIMINARY STATEMENT

New York State already recognizes, in a variety of important ways, that couples of the same sex can and do form committed and loving relationships. New York State has also determined, again and again, that such relationships are worthy of protection. In a wide variety of contexts, all three branches of New York State government have found that treating such devoted and loving couples and their families as "strangers" in the eyes of the law—solely because they are of the same sex—is fundamentally unfair. Thus, on issue after issue, from adoption to housing to health care, New York has respected the relationships of, and the families headed by, same-sex couples. Rather than mechanically looking only at whether two people are of the same sex, the State has examined the true nature of a couple's relationship to determine whether there has been sufficient emotional,

financial and other types of interdependence to warrant attaching tangible legal consequences to the relationship.

Nevertheless, in these two cases, the Appellate Division concluded that marriage—the classic and most comprehensive legal avenue for ensuring the basic protections for a relationship—does and may remain closed for New York's many same-sex couples.[1] Plaintiffs-appellants and other amici have demonstrated why the Appellate Division's decisions were incorrect as a matter of law. We write to bring to the Court's attention the many ways in which this State has already found—in a variety of legislative, administrative and judicial actions—that same-sex relationships deserve legal protection and recognition. Reversing the Appellate Division's rulings in these two cases is consistent with and necessary to further this New York State practice and to provide full protections to same-sex couples and their families.

Marriage, like the rest of domestic relations law, is a core area of state, rather than federal, responsibility. As such, subject to minimum federal guarantees, it is New York State law and policy that should control

[1] The 2000 U.S. Census reported that households consisting of committed same-sex couples resided in every county in the State and that one in four of them were raising children together. See www.census.gov/prod/cen2000/doc/sf1.pdf; Gary J. Gates & Jason Ost, Gay & Lesbian Atlas (2004).

here. This is a New York issue and it should be decided on the basis of New York practices and precedents. (See Part I below.)

As shown below, New York has already made key choices to honor same-sex relationships. Over the past decades, New York State's governmental bodies have often been presented with the question of whether certain legal and practical consequences of marriage should attach to the relationship between particular same-sex couples (e.g., may this woman visit her loved one in a hospital emergency room?; may this couple jointly adopt the child they are raising?; should this man receive survivor benefits in connection with the tragedy of September 11, 2001?). And New York has said yes. The courts, the legislature and the executive branch have all found that same-sex couples are capable of entering into relationships meriting many of the consequences the law attaches to marriage. Denying the legal status of marriage is contrary to that reality—a relic of the day when committed same-sex couples were deemed to be no more than "strangers". (See Part II.A below.)

Indeed, withholding the "bright-line" status of marriage from same-sex couples would require New York's courts and administrative agencies to continue to delve into the private emotional and financial details of same-sex couples' lives, in a way that would be unnecessary if marriage

were available. For example, a woman seeking to avoid eviction from the apartment she shared with her deceased husband does not ordinarily need affidavits from family members attesting to the fact that she and her husband "demonstrated a high level of emotional commitment to one another and took care of each other's day-to-day needs". Why should she be required to produce such affidavits merely because her deceased partner was a woman? See, e.g., East 10th Street Assocs. v. Estate of Goldstein, 154 A.D.2d 142, 143, 552 N.Y.S.2d 257 (1st Dep't 1990). Indeed, most opposite-sex couples tuck their marriage licenses away after they get married and rarely, if ever, see them again. By contrast, same-sex couples are called on again and again to come up with legal documentation to "prove" their relationship—often at stressful times, such as when one of them or their children is ill or in an emergency situation. Recognizing the ability of same-sex couples to marry not only furthers New York's practice of according equality to New York's same-sex couples and their families, but also has the practical effect of bringing needed rationality and predictability to the legal treatment of same-sex relationships. (See Part II.B below.)

ARGUMENT

I. WHETHER NEW YORK STATE'S SAME-SEX COUPLES MAY MARRY IS IN THE FIRST INSTANCE A QUESTION OF NEW YORK STATE LAW.

The U.S. Supreme Court has repeatedly recognized that domestic relations law is a core area of state, rather than federal, competency. Mansell v. Mansell, 490 U.S. 581, 587 (1989) ("domestic relations are preeminently matters of state law"); Moore v. Sims, 442 U.S. 415, 435 (1979) ("Family relations are a traditional area of state concern."); In re Burrus, 136 U.S. 586, 593-94 (1890) ("The whole subject of the domestic relations . . . belongs to the laws of the states and not to the laws of the United States."). "[F]ederal courts consistently have shown special solicitude for state interests 'in the field of family and family-property arrangements'". Lehman v. Lycoming Cty. Children's Servs. Agency, 458 U.S. 502, 511 (1982) (citing United States v. Yazell, 382 U.S. 341, 352 (1966)).

As such, although federal law provides a floor of protections, it is initially and primarily New York State law—as evidenced by the New York State Constitution and the decisions of New York's legislative, administrative and judicial bodies—to which this Court should turn. The meaning of New York's Domestic Relations Law is a question for the New

York courts. Similarly, the meaning of the New York State Constitution is a question for the New York courts alone, independent of federal court interpretations of the U.S. Constitution. See Minnesota v. National Tea Co., 309 U.S. 551, 557 (1940) ("It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions."); People v. Harris, 77 N.Y.2d 434, 437-38, 568 N.Y.S.2d 702, 570 N.E.2d 1051 (1991) ("Our federalist system of government necessarily provides a double source of protection and State courts, when asked to do so, are bound to apply their own Constitutions notwithstanding the holdings of the United States Supreme Court . . . . Sufficient reasons appearing, a State court may adopt a different construction of a similar State provision unconstrained by a contrary Supreme Court interpretation of the Federal counterpart"); People v. Kern, 75 N.Y.2d 638, 555 N.Y.S.2d 647, 554 N.E.2d 1235 (1990); People v. Barber, 289 N.Y. 378, 384, 46 N.E.2d 329 (1943) (state courts, "in determining the scope and effect of the guarantees of fundamental rights of the individual in the Constitution of the State of New York . . . [are] bound to exercise [their] independent judgment and [are] not bound by a decision of the Supreme Court of the United States limiting the scope of similar guarantees in the Constitution of the United States" (emphasis added)).

For example, in criminal matters, New York courts have often accorded greater rights to the accused than granted by the U.S. Constitution. See, e.g., People v. Scott, 79 N.Y.2d 474, 583 N.Y.S.2d 920, 593 N.E.2d 1328 (1992) (expressly disagreeing with the U.S. Supreme Court's "open fields doctrine", as expressed in Oliver v. United States, 466 U.S. 170 (1984), and granting greater protection against law enforcement searches than the U.S. Constitution's Fourth Amendment). In Scott, the Court of Appeals "decline[d] to adopt any rigid method of analysis which would, except in unusual circumstances, require us to interpret provisions of the State Constitution in 'Lockstep' with the Supreme Court's interpretations of similarly worded provisions of the Federal Constitution". Scott, 79 N.Y.2d at 490.

Similarly, New York has been a leader in recognizing protections for same-sex couples. In 1980, this Court invalidated the Penal Law's criminalization of consensual sodomy between unmarried persons as inconsistent with constitutional guarantees of privacy and equal protection. People v. Onofre, 51 N.Y.2d 476, 434 N.Y.S.2d 947, 415 N.E.2d 936 (1980). In so ruling, New York was decades ahead of the U.S. Supreme Court, which in 1986 affirmatively upheld a similar statute from Georgia. See Bowers v. Hardwick, 478 U.S. 186 (1986). It was not until 2003 that

the U.S. Supreme Court overruled Bowers and joined New York, finding that a prohibition on private adult consensual sexual relations between people of the same sex violates the U.S. Constitution's guarantee of liberty under the Due Process Clause. See Lawrence v. Texas, 539 U.S. 558 (2003).

To borrow Justice Brandeis's famous dictum about "one of the happy incidents of the federal system", New York has "serve[d] as a laboratory". New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J. dissenting). On the issue of equality and justice for same-sex couples and their families—as on many other issues—New York has "tr[ied] novel social and economic experiments without risk to the rest of the country". Id. As set forth in more detail below, New York continues (and should continue) to do so today.

II. NEW YORK STATE HAS IN MANY CONTEXTS RESPECTED RELATIONSHIPS OF COMMITTED SAME-SEX COUPLES.

The narrow legal issue here is whether a marriage license should be denied to the plaintiff-appellant couples. For New York's many same-sex couples, however, the resolution of that legal issue will have an immediate practical impact on countless aspects of their day-to-day lives. The Court's decision will profoundly affect the ability of same-sex couples to strengthen and protect their relationships and their families. For example,

the decision will affect couples' ability to adopt a child together; their ability to provide for children when the family breadwinner dies; their ability to make critical health care decisions for each other and have access to family court; their ability to inherit from each other—and the list goes on and on.

When the New York judicial, legislative and executive branches have confronted such issues in the past, they have repeatedly recognized that two people of the same sex can and do form committed relationships that deserve the protection of the State. Denying same-sex couples the legal status of marriage would be contrary to the real facts of these couples' lives and relationships as well as the State's prior decisions finding that their relationships warrant protection and respect. (See Part II.A below.)

Indeed, closing off marriage to same-sex couples would consign them to a legal limbo, where their relationships may—or may not—be protected, depending on such vagaries as the particular benefit or obligation at stake, the quality of their counsel or a decisionmaker's evidentiary assessment of the nature of the relationship. Marriage provides much-needed certainty to opposite-sex couples in arranging their lives and ordering their affairs. Opposite-sex couples who marry know that they take the good with the bad and commit themselves to the legal (and other)

benefits and obligations of life together. Same-sex couples who tie their fates and fortunes together to form a family should have the same clarity and predictability. New York has in many cases already decided the "difficult" issue—it has repeatedly found same-sex relationships to be worthy of legal protection and recognition. But the State has reached this conclusion on a case-by-case, issue-by-issue basis, leaving same-sex couples to wonder whether, if it becomes necessary, their relationship will be deemed worthy of protection or recognition; or whether they will instead be deemed no more than "strangers". According the legal status of marriage to same-sex relationships would put an end to the inefficiencies and inequalities of this ad hoc incremental approach. (See Part II.B below.)

A. New York has repeatedly recognized that two people of the same sex can and do form committed relationships that deserve the protection of the State.

New York's judicial, legislative and executive branches have in many contexts found that many of the legal consequences of marriage should attach to committed relationships between same-sex couples. Set forth below are examples of such determinations by the State and its governmental bodies.

1. New York has recognized that same-sex couples can be committed, nurturing and responsible parents, entitled to be treated the same

as opposite-sex couples for purposes of adoption. Twenty five years ago, in 1981, New York's Department of Social Services issued a regulation stating that "[a]pplicants [for adoption] shall not be rejected solely on the basis of homosexuality". 18 NYCRR § 421.16(h)(2).[2] Subsequently, this Court ruled that the unmarried partner of a child's biological parent may become the child's second parent by means of adoption. In re Jacob, 86 N.Y.2d 651, 636 N.Y.S.2d 716, 660 N.E.2d 397 (1995).[3] In so ruling, the Court found such adoptions to be in the child's best interests. Allowing such adoptions not only gave the child the emotional security of having both of the people actually raising him or her legally recognized as parents, but also provided: (1) the ability to collect Social Security and life insurance benefits in the event of either parent's death or disability; (2) the right to sue for the wrongful death of either parent; (3) the right to inherit under rules of intestacy; (4) eligibility for coverage under both parents' health insurance policies; (5) the right of either parent to make medical decisions for the child in case of emergency; and (6) the right to require each parent to provide for

[2] The basic premise that an individual's sexual orientation does not render him or her an unfit parent was recognized by New York courts even earlier. See, e.g., Di Stefano v. Di Stefano, 60 A.D.2d 976, 401 N.Y.S.2d 636 (4th Dep't 1978).

[3] Some lower courts have also held that two unmarried adults of the same sex may jointly adopt regardless of whether one of them is biologically related to the child. See, e.g., In re Adoption of Carolyn B, 6 A.D.3d 67, 774 N.Y.S.2d 227 (4th Dep't 2004).

the child's economic support. In re Jacob, 86 N.Y.2d at 658-59. In other words, giving legal recognition to the existing family structure provided the children being raised in such a family with important practical benefits.

These cases and regulations show that the primary governmental interest asserted by the Appellate Division—having children be raised by married biological parents, see Hernandez v. Robles, 805 N.Y.S.2d 354, 360 (1st Dep't 2005); Samuels v. New York State Dep't of Health, 811 N.Y.S.2d 136, 2006 WL 346465, at *6-*7 (3d Dep't, Feb. 16, 2006)—does not support denying the legal status of marriage to same-sex couples. (Indeed, New York's policy has long affirmed the suitability of same-sex couples to be parents.) There is no reason to believe that denying marriage to same-sex couples would increase the likelihood that a child's biological parents would get or stay married. Nor is there any reason to believe that denying marriage to same-sex couples would increase the likelihood that a child's biological parents would choose to raise him or her. To the contrary, it is clear that denying marriage to same-sex couples will deprive each child actually being raised by such couples of essential benefits.

2. New York has recognized that committed same-sex couples are entitled to the same protection of the housing laws as opposite-

sex couples. Under New York's Rent and Eviction Regulations, 9 NYCRR § 2204.6(d), upon the death of a rent-controlled tenant, the landlord may not dispossess a "member of the deceased tenant's family" who has been living with the tenant. In Braschi v. Stahl Assocs., 74 N.Y.2d 201, 544 N.Y.S.2d 784, 543 N.E.2d 49 (1989), this Court found the surviving member of a committed same-sex relationship to be a "member of the deceased tenant's family". The court did not focus on whether, at the time of drafting, the drafters intended to include same-sex couples in the definition of family. Rather, the Court noted that:

> [T]he term family, as used in 9 NYCRR § 2204.6(d), should not be rigidly restricted to those people who have formalized their relationship by obtaining, for instance, a marriage certificate or an adoption order. The intended protection against sudden eviction should not rest on fictitious legal distinctions or genetic history, but instead should find its foundation in the reality of family life. In 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. This view comports both with our society's traditional concept of 'family' and with the expectations of individuals who live in such nuclear units.

Braschi, 74 N.Y.2d at 211 (emphasis added). Since that time, the holding of Braschi has been extended to protect same-sex partners in rent-stabilized apartments. See East 10th Street Assocs., 154 A.D.2d at 145. Moreover, in Levin v. Yeshiva University, 96 N.Y.2d 484, 730 N.Y.S.2d 15, 754 N.E.2d 1099 (2001), this Court upheld a same-sex couple's right to challenge a

university housing policy that excluded them from certain apartments reserved for married opposite-sex couples.

3. New York also has recognized committed same-sex relationships in the contexts of health and financial benefits, allowing couples to pool their energies and resources to support each other and their children. All three branches of New York State government provide health benefits and other employment benefits to the same-sex domestic partners of their employees. See, e.g., Perez-Pena, Richard, Bruno Agrees on Domestic-Partner Benefits, N.Y. Times, Jan. 20, 2001, at B1. In addition, numerous localities across the State offer such benefits to the same-sex partners of their employees.[4] Moreover, the cities of Albany, Ithaca, New York and Rochester, the towns of East Hampton and South Hampton and the County of Westchester and Suffolk have all established domestic partnership registries. See, e.g., New York City's Domestic Partnership Law, NYC Admin. Code § 3-240 et seq. In rejecting a challenge to New York City's registry, the court in Slattery v. City of New York, 266 A.D.2d 24, 697 N.Y.S.2d 603 (1st Dep't 1999), found the assertion that the registry was

[4] As of 2000, the localities offering such benefits included the Counties of Albany, Nassau, Rockland, Suffolk and Tompkins, and the cities, towns and villages of Albany, Brighton, Eastchester, Greenburgh, Ithaca, New York, Port Jefferson, Rochester and Summit. See Policy Institute of the Gay and Lesbian Task Force, Legislating Equality, 65-68 (2000). Many more localities offer such benefits today.

against State law and/or public policy to be "untenable". 266 A.D.2d at 25. Moreover, New York State has enacted legislation enabling domestic partners of credit union members to become members and thereby have full access to banking services. 2003 N.Y. Laws ch. 679, S5590. Similarly, in 2004, the New York State Department of Labor instituted a policy providing unemployment benefits to same-sex partners in committed relationships who voluntarily leave a job to follow a partner to another locality—thereby treating same-sex partners the same as married spouses in similar circumstances. See New York State Department of Labor, Unemployment Insurance Division, Adjudication Services Office, Interpretation Service - Benefit Claims, Voluntary Quit, A-750-2119 (March 2004).[5]

4. New York has protected and recognized committed same-sex relationships when it comes to issues involving the illness and death of one member of the couple. For example, New York's insurance laws were amended in 2002 to enable individuals to take out life insurance on their domestic partners, see 2002 N.Y. Laws ch. 542, A8567-A, and New York has enacted legislation guaranteeing domestic partners the same visitation rights as spouses and next-of-kin when taking care of loved ones

[5] Indeed, the legislature has even added same-sex domestic partners to the list of family members of horse owners, trainers and jockeys who are entitled to receive free racetrack passes, cards and badges. See New York Rac. Pari-Mut. Wag. & Breed. § 236.

in hospitals, nursing homes and health-care facilities, see N.Y. Pub. Health § 2805-q. Moreover, the court in Stewart v. Schwartz Brothers-Jeffer Memorial Chapel, Inc., 159 Misc.2d 884, 606 N.Y.S.2d 965 (Sup. Ct., Queens Cty. 1993), held that a same-sex partner was entitled to determine the disposition of his partner's remains. Acknowledging the general rule that only the surviving spouse or next of kin may determine disposition of remains absent testamentary directives to the contrary, the court nevertheless looked to the nature of the relationship between the plaintiff and the decedent. Id. at 888. The court characterized the couple as having had a "close, spousal-like relationship" and held that to deny the partner standing as a 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". Id. Indeed, the Governor recently signed into law a bill providing New Yorkers the right at issue in Stewart—to make decisions about the disposition of their (same-sex or opposite-sex) domestic partner's remains. See 2006 N.Y. Laws ch. 768, S1924-A.

5. Moreover, in the aftermath of the September 11 tragedy, New York issued multiple measures treating victims' surviving same-sex partners as spouses. For example, after September 11, the Governor

promulgated an Executive Order stating that surviving same-sex partners are entitled to the same benefits as spouses from the State's Crime Victims Board, see Executive Order No. 113.30, 9 NYCRR § 5.113.30 (Oct. 10, 2001), and in 2004, equal eligibility to Crime Victims Board benefits was extended to domestic partners of all crime victims, not just September 11 victims, see 9 NYCRR §§ 525.1, 525.2 (2004). Similarly, the legislature passed the September 11th Victims and Families Relief Act, which was expressly intended to make domestic partners eligible for September 11 Federal Fund awards. See 2002 N.Y. Laws, ch. 73, S7356. The legislature also amended New York's workers' compensation laws to provide same-sex partners of September 11 victims with the same death benefits provided to spouses, see 2002 N.Y. Laws, ch. 467, S7685, and passed legislation making same-sex partners (and their children) eligible for the State's World Trade Center memorial scholarship. Additionally, New York State's World Trade Center Relief Fund treated same-sex domestic partners as surviving spouses.[6] Indeed, every piece of September 11-specific relief created by the State specifically included same-sex partners as eligible beneficiaries.

[6] See New York State World Trade Center Relief Fund Surviving Spouse Application, available at www.nysegov.com/news/WTC_Relief_Dist.htm (visited May 30, 2002) ("A surviving spouse includes a domestic partner.").

6. State government entities and many New York localities have also stated that they will respect the marriages and other unions lawfully entered into by same-sex couples in other jurisdictions. For example, the Attorney General has rendered an opinion stating that, with respect to marriages of same-sex couples performed in other jurisdictions, "New York law presumptively requires that parties to such unions must be treated as spouses for purposes of New York law". See Opinion of the Attorney General, dated Mar. 3, 2004, at 28. Similarly, in October of 2004, the New York State Comptroller announced that the New York State and Local Retirement System "will treat Canadian marriages of same-sex couples the same as any other marriage for purposes of retirement benefits and obligations". See Letter from Comptroller Alan G. Hevesi to Mark E. Daigneault, dated Oct. 8, 2004.

Further, cities, towns and villages across the State, including Albany, Brighton, Buffalo, Ithaca, Nyack, New York and Rochester have proactively recognized the marriages of same-sex couples lawfully entered into elsewhere and accorded married same-sex couples the same rights as all other married couples within their local jurisdictions. See, e.g., Statement of Gerald D. Jennings, Mayor of Albany, dated October 1, 2005 ("As the Capital of New York State, I will ensure that Albany sets an example by

having the strongest of commitments to the law, equality, social justice and fighting all forms of discrimination. At its heart, this issue is about families and as long as I am Mayor, members of the LGBT community will be an equal part of the family of Albany."); Letter from Anthony W. Crowell, Special Counsel to the Mayor of the City of New York to Alan Van Capelle, Executive Director, Empire State Pride Agenda, dated Apr. 6, 2005 ("On behalf of the Mayor, I am pleased to confirm that it is the policy of the City of New York to recognize equally all marriages, whether between same- or opposite-sex couples, and civil unions entered into in jurisdictions other than New York State, for the purposes of extending and administering all rights and benefits to these couples, to the maximum extent allowed by law."); Statement of John Shields, Mayor of Nyack, dated Feb. 27, 2004 ("[I]n the Village of Nyack, we accord full legal rights and responsibilities to the marriages of committed same sex couples and their families."); Statement of Carolyn K. Peterson, Mayor of Ithaca, dated Mar. 1, 2004 ("The City of Ithaca will, in accordance with New York law and the U.S. Constitution, fully recognize all same sex marriages that were validly performed elsewhere.").[7]

[7] Indeed, many quasi-governmental and even non-governmental institutions in New York have also determined that marriages between same-sex couples should be

Thus, time and time again, and on a case-by-case basis, New York's judicial, legislative and executive branches have often found that committed relationships between same-sex couples are no different than opposite-sex marriages. The State has recognized that committed same-sex couples live their lives the same way that committed opposite-sex couples do—with the same interdependence and the same need for State protection and recognition. This Court should adhere to this tradition, which acknowledges and respects the practical realities of the lives of same-sex couples and their children.

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treated the same as other types of marriages. For example, The City University of New York has announced that it would treat marriages of same-sex employees identically to marriages of other employees in administering employment benefits, see Letter from Frederick P. Schaffer, The City University of New York to Anthony W. Crowell, Special Counsel to the Mayor of the City of New York, dated June 17, 2005. Similarly, Teamsters representing workers at JFK airport have represented that they will treat marriages of same-sex couples the same as all other marriages in terms of retirement benefits and coverage, see Letter from Linda Kellner, Director of Administration for Local 285/Local 851-IBT to Thomas Kirdahy, Esq., Nassau Suffolk Law Services Committee, Inc., dated July 8, 2005. In fact, several unions representing hundreds of thousands of New York workers, including the Service Employees International Union, the American Federation of State, County and Municipal Employees, AFL-CIO, the American Federation of Teachers, and the Communication Workers of America, have all passed resolutions in favor of marriage equality. Moreover, the Allstate, Geico, State Farm and Electric insurance companies, which collectively insure almost one-third of all New York State drivers, treat marriages between same-sex couples the same as other marriages for insurance purposes.

B. Recognizing the ability of same-sex couples to marry would bring needed rationality and predictability to the legal treatment of same-sex relationships.

In areas such as parenting, housing, personal finance and survivorship, New York has determined that same-sex couples are entitled, under the law and under basic notions of fairness, to the same protections and privileges that opposite-sex couples receive. However, as demonstrated above, New York's approach in this area has been piecemeal—a case-by-case or law-by-law analysis, depending solely on the particular issue put before the court, legislature or administrative body. That piecemeal approach has resulted in both inequality and inefficiencies.

As a matter of practice, a member of a same-sex couple who has to turn to the State to protect a benefit (or enforce an obligation) arising from the couple's committed relationship faces a daunting task: (1) determining whether the particular benefit (or obligation) has been explicitly addressed by the State in the context of same-sex relationships; (2) if not, determining whether it has been implicitly addressed and arguing to a court or administrative body that it has or should be; and (3) in either case, proving that his or her particular relationship is sufficiently committed and interdependent to warrant protection and recognition. Tragically, many same-sex couples are forced to face this uncertainty when they are least

equipped to deal with it, such as when death or illness strikes. By contrast, opposite-sex couples wishing to receive the benefits (and shoulder the obligations) arising from their relationship have been able to get married, after which their rights (and obligations) have been clear and unquestioned. Same-sex couples are forced to live without that predictability or certainty.

For example, although New York courts have regularly accorded same-sex relationships legal recognition of one sort or another, they have first had to scrutinize the details of the litigants' lives to determine whether their mutual commitment rose to the level that should be recognized by the State. See, e.g., Braschi, 74 N.Y.2d at 213 (noting that appellant and deceased partner lived together, visited each other's families, shared financial obligations and were beneficiaries of each other's life insurance policies such that the Court "could reasonably conclude that these men were much more than mere roommates"); East 10th Street Assocs., 154 A.D.2d at 143 (citing affidavits of family members that the surviving partner of the tenant in a rent-stabilized apartment was considered a "spouse" and therefore entitled to protections afforded to family members). Same-sex couples are in a legal limbo, unable to know in advance, and at the mercy of a court or agency to decide, whether their relationship will be deemed

sufficiently committed or whether they will instead be deemed no more than "roommates" or "strangers".

This uncertainty has also imposed unnecessary burdens on courts and administrative agencies. In deciding matters involving married opposite-sex couples, the legal status of their relationship is ordinarily clear, with no need for any inquiry into the extent of their interdependence or the strength of their commitment to one another. Because same-sex couples have not received the same automatic presumptions, courts and administrative agencies have had to conduct unnecessarily detailed and complicated inquiries into the personal lives of the same-sex couples appearing before them. Further, in the absence of marriage, the legislature, courts and administrative agencies have had to craft particularized and fact-specific theories or remedies to provide same-sex couples with the protection and respect that the State deems them to deserve.

Marriage, which is a legal way of classifying a relationship based solely on the stated commitment of the participants, provides legal certainty to couples as they plan and live their lives together. The Appellate Division's rulings that only opposite-sex couples are entitled to that classification were both legally wrong and inconsistent with the progression of New York State practice. New York has recognized the legal significance

of committed same-sex relationships and accorded same-sex couples many of the incidents of marriage. The three branches of New York government have done so on the understanding that same-sex couples can and do form loving, committed and interdependent relationships. New York has also recognized that individuals in such relationships are in no different a position than, and have the same needs as, committed opposite-sex couples. Affording the legal status of marriage would eliminate an anachronistic inequality that serves no legitimate New York State interest and would bring needed predictability to the lives of New York's same-sex couples.

CONCLUSION

For the foregoing reasons, amici the Pride Agenda, et al. respectfully submit that issuing marriage licenses to same-sex couples is consistent with New York's jurisprudence, legislation and practice, and request that the Court reverse the Appellate Division's rulings.

April 11, 2006

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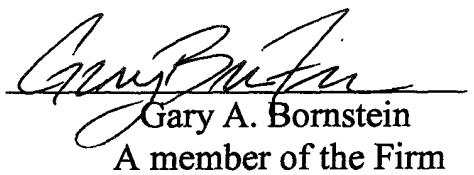
by 

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