

For Immediate Release

“LEGAL PRIMER” ON THE SAME-SEX MARRIAGE CASE

COURT OF APPEALS – NEW YORK STATE’S HIGHEST COURT – FINDS THAT RECOGNITION OF SAME-SEX MARRIAGE IS NOT REQUIRED UNDER THE NEW YORK STATE CONSTITUTION; DECISION LEAVES ISSUE TO NEW YORK STATE LEGISLATURE

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New York, July 6, 2006 – The Court of Appeals, New York State’s highest court, ruled 4 to 2 today that the New York State Constitution does NOT require that same-sex marriage be recognized under state law – in effect, leaving this issue up to the New York State Legislature.

The Court’s decision breaks down as follows:

- The Court’s “plurality” opinion (the one with which most of the judges agreed) was written by Associate Judge Robert S. Smith and “concurred in” by Associate Judges George Bundy Smith and Susan Phillips Read. Associate Judge Victoria A. Graffeo concurred with the majority, but wrote a separate opinion, joined by Associate Judge George Bundy Smith.
- Chief Judge Judith S. Kaye dissented in an opinion in which Associate Judge Carmen Beauchamp Ciparick concurred.
- Associate Judge Albert M. Rosenblatt did not participate in the case, as he had previously recused himself.

In its plurality opinion, the Court wrote: “We hold that the New York Constitution does not compel recognition of marriages between members of the same sex. Whether such marriages should be recognized is a question to be addressed by the Legislature.” The court also wrote: “We emphasize once again that we are deciding only this constitutional question. It is not for us to say whether same-sex marriage is right or wrong. We have presented some (though not all) of the arguments against same-sex marriage because our duty to defer to the Legislature requires us to do so.”

Further, the Court said: “We, therefore, express our hope that the participants in this controversy over same-sex marriage will address their arguments to the Legislature; that the Legislature will listen and decide as wisely as it can; and that those unhappy with the result – as many undoubtedly will be – will respect it as people in a democratic state should respect choices democratically made.”

In the dissent, Judge Kaye (joined by Judge Ciparick) said that she felt there was a fundamental right to marriage and that same-sex couples should be permitted to exercise that fundamental right under the New York State Constitution.

**** IMPORTANT PRESS NOTE:** Reporters interested in getting quotes or interviews for stories should call the City Hall Press Office directly at (212) 788-2958. Our office will be deferring to City Hall on such matters.

LEGAL PRIMER – FOR BACKGROUND REPORTER USE

What Happened Today?

The Court decided that the issue of same-sex marriage is one for the New York State Legislature to decide.

How Can I View the Court's Decision?

The ruling is available on the Court of Appeals' web site. You can paste the following link to your web browser to go right to the ruling:

<http://www.courts.state.ny.us/ctapps/decisions/jul06/86-89opn06.pdf>

What Is New York City Mayor Michael R. Bloomberg's Position on Same-Sex Marriage and Gay Rights Issues in General?

Mayor Bloomberg supports marriage equality for same-sex couples in New York State. As the Mayor noted in a radio speech on May 28th of this year (as reporters can feel free to quote in stories):

- "I've stated my feelings about this matter many times, and I'll repeat them now: I believe all New Yorkers should have the right to marry whomever they choose, regardless of sexual orientation."

Can You Explain How The Court System Worked in This Case?

The court system is structured as follows:

- The lowest court is the State Supreme Court. This is where the same-sex cases were first decided, including the City's case. The same-sex cases moved to the various Appellate Divisions next.
- The midlevel or intermediate court is the Appellate Division. State Supreme Court cases are appealed to one of four judicial "Departments" based on location. For example, New York County Supreme Court cases go to the Appellate Division, First Department, which is located in Manhattan.
- The highest court in New York State is the Court of Appeals. Cases from the Appellate Division are appealed to this court. Similar cases brought in the lower state court that involve questions of state or federal constitutional law, but whose outcome may have differed in the various lower courts, will converge here if they are appealed this far. All of the same-sex marriage cases were consolidated and heard at this final judicial level. The final ruling came down today.

Can You Give Me a "Quick Legal History" on the Same-Sex Marriage Issue?

On Feb. 4, 2005, New York County Supreme Court Justice Doris Ling-Cohan (in a case brought in New York City) ruled it was unconstitutional under the New York State constitution to deny a marriage license to same-sex couples. This case was called *Hernandez v. Robles*.

However, four other New York State Supreme Court justices – based upstate – separately ruled that issuing marriage licenses to same-sex couples was not required under the State's Constitution. (Names and further details on these cases appear later in this legal primer.) Attorney General Eliot Spitzer defended the rulings in those remaining same-sex marriage cases outside of New York City and advocated a position similar to New York City – that this was an issue for the State Legislature to decide.

What Did the City's Initial Same-Sex Legal Ruling Involve?

In the City's case, Justice Ling-Cohan in February 2005 found unconstitutional a New York State statute that limits eligibility for marriage licenses to opposite-sex couples. The case was brought by five same-sex couples who sued the City Clerk of New York, Victor Robles, after his office denied them marriage licenses. The plaintiff couples acknowledged in their legal papers that the State Domestic Relations Law required that the City Clerk's Office deny them marriage licenses. However, they argued that the State statute that New York City was required to follow was unconstitutional, because it violated both the equal protection and due process provisions of the New York State Constitution. Manhattan State Supreme Court Judge Doris Ling-Cohan ruled for the plaintiffs, saying that same-sex marriage was permissible.

How Was Justice Ling-Cohan's Decision Different from Other Rulings on This Issue by Other State Courts? Did This Lead to Inconsistent Law?

Justice Ling-Cohan's legal decision was in conflict with conclusions reached in four other decisions by upstate Supreme Court justices who decided similar cases. Attorney General Eliot Spitzer represented the State in these cases.

Here are the four rulings:

- *Shields v. Madigan* was originally decided by Justice Alfred J. Weiner of Supreme Court, Rockland County, in October 2004.
- *Samuels v. New York State Department of Health* was originally decided by Justice Joseph C. Teresi of Supreme Court, Albany County, in December 2004.
- *Kane v. Marsolais* was originally decided by Judge E. Michael Kavanagh of Supreme Court, Albany County, in January 2005.
- *Seymour v. Holcomb* was originally decided by Judge Robert C. Mulvey of Supreme Court, Tompkins County, in February 2005.

In all of these cases, the same-sex couples who brought the lawsuits also claimed – similar to the City's case – that the limitation of marriage licenses to opposite-sex couples in the State Domestic Relations Law violated the New York State Constitution. However, Attorney General Eliot Spitzer, who defended the constitutionality of the State statute, asserted – like New York City in the *Hernandez* case – that same-sex marriage issue was one to be decided by the State Legislature.

Prior to those cases being brought, the Attorney General, in a legal opinion letter dated March 3, 2004, concluded that the Domestic Relations Law, as written, did not allow the issuance of marriage licenses to same-sex couples. A similar opinion by New York City Corporation Counsel Michael A. Cardozo, also issued on March 3, 2004, reached the same conclusion.

What Happened in All Four of the Attorney General's Cases?

At the initial court level, judges in all four cases rejected the plaintiffs' claims and found that the exclusion of same-sex couples from marriage was constitutional. Therefore, Judge Ling-Cohan's ruling in the City's case conflicted with these four rulings.

Were the Attorney General's Cases Upheld By Midlevel Appellate Courts?

Three of the four were:

- The Appellate Division, Third Department, ruled on Feb. 16, 2006, in three of the cases – *Samuels*, *Kane* and *Seymour*. The court ruled 5-0 that the lower courts had appropriately decided, and that same-sex marriage was not permissible. Today's Court of Appeals decision now affirms these decisions.
- In the fourth case, *Shields*, the Appellate Division, Second Department, has heard oral argument but did not rule before the Court of Appeals decided. Therefore, the case will have to be resolved in a manner consistent with the Court of Appeals' decision today.
- The Court of Appeals decision today is now the law of New York State.

Did the City's Case Also Come Up Before a Midlevel Appellate Court?

Yes. In September 2005, the City argued its case, *Hernandez*, before the midlevel appeals court (which, in the City's case, is the Appellate Division, First Department). It argued that the decision whether to permit same-sex marriage is one for the Legislature, not the courts, to make, and that the lower court's decision ordering the City to issue marriage licenses to same-sex couples is not required by the State Constitution. However, the City's arguments also make it clear that Mayor Michael Bloomberg both supports same-sex marriage and a change in State law by the Legislature to permit it.

On Dec. 8, 2005, the Appellate Division, First Department, overturned the lower court and ruled that the State's Domestic Relations Law that limits marriage to a male and a female is constitutional. The panel

hearing the appeal included: Justices James M. Catterson, George D. Marlow, David B. Saxe, John W. Sweeney, Jr., and Milton L. Williams. The 4-1 decision was written by Justice Williams. He was joined in the majority opinion by Justices Marlow and Sweeney, with Justice Catterson issuing a concurring opinion. Justice Saxe dissented.

Again, does the Court of Appeals Consolidate All of the Lower Court Rulings in New York State?

Yes. It consolidated the three cases that had been decided by the Appellate Division, Third Department, as well as New York City's case from the Appellate Division, First Department. However, since the decision today is from the State's highest court, it is the final ruling on all of the cases, including the one that has not yet been decided by the Second Department.

What Have Other Appellate Courts in the Rest of the Country Said on the Same-Sex Marriage Issue? What About Canada?

A number of appellate courts in other states have ruled on the issue of same-sex marriage:

- The highest court of Massachusetts is the only appellate court in the United States to have ruled that same-sex marriage is required by a state constitution.
- The highest court in Vermont found that under the Vermont constitution, the benefits of marriage must be provided to same-sex couples; the court referred the matter to the Legislature, which enacted a civil union statute.
- Appellate courts of New Jersey, Arizona, Indiana, Kentucky, Minnesota, Washington State and Washington, D.C., have found that the exclusion of same-sex couples from marriage was not unconstitutional. Appeals are pending in the highest courts in New Jersey and Washington State.
- Canada permits same-sex marriages.

How Does this Case Affect Same-Sex Spouses Who Live in New York City but Who Were Lawfully Married or Entered into Civil Partnerships in Other Jurisdictions like Massachusetts, Vermont, Canada?

The Mayor has already made it City policy to recognize equally all marriages, whether between same- or opposite-sex couples and civil unions lawfully entered into in jurisdictions other than New York State, for the purposes of extending and administering all rights and benefits belonging to these couples, to the maximum extent allowed by law.

Would the U.S. Supreme Court Get Involved In This Particular Case?

No, the case will not go to the U.S. Supreme Court. The plaintiffs in the case only raised State constitutional issues, not Federal ones. However, other cases that raise federal issues could potentially reach the Supreme Court one day.

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