

NATIONAL news

N.Y. JUDGE ORDERS
GAY MARRIAGE

Ruling covers New York City only but could have wider impact

by Bob Roehr

A trial judge in Manhattan has ruled that New York's marriage statutes discriminate against same-sex couples in violation of the state's constitution. Doris Ling-Cohan declared that the words husband, wife, groom and bride as they appear in the relevant sections "shall be construed to mean spouse...[and] apply equally to either men or women."

The case was brought in March 2004 by Lambda Legal on behalf of five New York City couples who had sought and been denied marriage licenses. The judge's Feb. 4 ruling is stayed for 30 days to allow for appeal.

Judge Ling-Cohan's 62-page decision was at times lyrical, replete with legal citation, and laid out in lucid, readable and personal terms why there could be no other outcome. Her decision began: "From the literary references of Shakespeare's *Romeo and Juliet*, to the anti-miscegenation laws of this country's recent past barring interracial marriage, the freedom to choose whom to marry has consistently been the subject of public outcry and controversy. In fact, ironically, the parents of one of the plaintiffs were, themselves, barred from marrying each other by an anti-miscegenation law that made it illegal for interracial couples to marry."

Plaintiff Curtis Woolbright's parents were from Texas, where state law prohibited them from marrying because one was black and the other white. So they moved to California to tie the knot and raise a family, as Karen Woolbright attested in her statement and Ling-Cohan cited in her opinion.

The decision went on to say, "The challenges to laws banning whites and nonwhites from marriage demonstrates that the fundamental right to marry the person of one's choice may not be denied based on long-standing and deeply held traditional beliefs about appropriate marital partners."

Backing her opinion up with case law citations, she wrote, "It is clear that moral disapproval of same-sex couples or of individual homosexuals is not a legitimate state purpose or a rational reason for depriving plaintiffs of their right to choose their spouse."

The state's second argument in denying marriage to gays was the need for uniformity with other states. The judge said, "It would be a grave disservice to residents of New York [to deny its citizens rights] simply because those rights may not be acknowledged elsewhere."

She wrote, "Recognition that the right to choice in marriage applies to all people, includ-

ing gays and lesbians, is consistent not only with the changing definition and purpose of marriage, but also with New York's evolving history of respect for, and protection of, same-sex relationships," as demonstrated by actions taken by the state's courts, Legislature, executive branch and local governments.

The decision applies only to New York City. Ordinarily one would assume that it would be appealed to the state's highest court, but the situation is a bit muddy at this point. New York Attorney General Elliott Spitzer declined to defend the state marriage law at the trial level, leaving it up to the city clerk to do so. The city bar association has issued position papers strongly supporting gay marriage.

Mayor Michael Bloomberg has decided to appeal the decision to a higher court.

REACTIONS

This "historic ruling delivers the state constitution's promise of equality to all New Yorkers," said Susan Sommer, the lead Lambda Legal attorney on the case. "The court recognized that unless gay people can marry, they are not being treated equally under the law. Same-sex couples need the protections and security marriage provides."

Jo-Ann Shain, one of the plaintiffs in the case, added: "Last week Mary Jo and I celebrated our 23rd anniversary together, but we've never had all the protections and rights that come with marriage. We need these protections to take responsibility for each other and for our daughter, and we are enormously grateful that the court saw that and said our family should be treated equally."

Woolbright said exuberantly: "We're getting hitched. We're so excited about this we can't express it."

Seth Kilbourn, who heads up the Human Rights Campaign's marriage project, said, "The

court simply recognized that every New Yorker deserves the same promise of equality under law."

Social conservatives issued their standard rant about defending traditional marriage. The Family Research Council's Tony Perkins said, "Unless Congress takes action to defend the institution of marriage, we can expect these judicial fire drills prompted by aberrant judges."

He had to drop the bit about "unelected judges" because Ling-Cohan is elected. And, as Lambda Legal pointed out in its press release, "She was the only candidate in a field of 12 who was nominated by four parties, including the Republican and Democratic parties. She received more votes than most of the other candidates." ■



Doris Ling-Cohan, who is well-known in the judicial community for championing the rights of the marginalized

"It is clear that moral disapproval of same-sex couples or of individual homosexuals is not a legitimate state purpose or a rational reason for depriving plaintiffs of their right to choose their spouse"

—Doris Ling-Cohan

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