



February 23, 2008

## Brooks to appeal same-sex marriage decision

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Though same-sex weddings cannot be performed legally in New York, the state must — at least until a Monroe County appeal is heard — recognize the marriage of Chili residents Patricia Martinez and Lisa Ann Golden.

Their union, legally consecrated in Canada in 2004, was not immediately accepted by Martinez's employer, Monroe Community College. In 2005, she sued to get health care benefits for Golden. On Feb. 1, a court ruled in her favor.

On Friday, Monroe County Executive Maggie Brooks announced that the county would appeal the appellate court ruling to protect taxpayers.

"We certainly cannot ignore the definition of marriage that currently exists under New York state law," she said in a statement.

As long as the Martinez case ruling stands, same-sex marriages legally performed elsewhere will be entitled to the same treatment under state law as marriages between a man and a woman. This gives such couples access to inheritance rights, for example, and the right to make medical decisions for each other.

Though many local employers already offer benefits to same-sex couples, others must consider how the ruling will change their policies. The implications have left same-sex marriage supporters celebrating and gay marriage opponents hoping the Court of Appeals reverses the decision.

Meanwhile, many are lobbying the state Legislature to pass a law regarding same-sex marriage that will take jurisdiction over the matter out of the courts.

The state Court of Appeals said in 2006 that same-sex couples are not allowed to marry in New York, unless the legislature passes a law legalizing same-sex marriage. In the Martinez case ruling, the Appellate Division, Fourth Judicial Department, said that same-sex marriages legally consecrated elsewhere must be recognized in New York, unless the Legislature passes a law to deny their legitimacy.

Martinez, 52, and Golden, 40, stress that their fight is not just about access to health care benefits. They can sleep easier knowing that they have the legal rights and protections married couples have.

In Alan Hevesi's 2004 statement in favor of legalizing same-sex marriage, the former state comptroller said there are 1,049 federal benefits and responsibilities afforded by marriage, in addition to hundreds more offered by New York.

Before, same-sex couples had to draw up legal documents to simulate marriage. "The only thing we as lawyers had to work with was contract law," said Martinez's attorney, Jeffrey Wicks. Christopher Hinesley, the director of the Gay Alliance of Genesee Valley, said that Hevesi's statements pushed

many same-sex couples in New York to start going to Canada to get married.

### **Evolving laws**

The Martinez decision pushes New York into evolving legal territory. "Thousands of employers are going to be wondering what to do," said Martinez. The Rochester area's three biggest employers — University of Rochester, Wegmans Food Markets Inc. and Eastman Kodak Co. — already provide benefits to same-sex married couples. UR and Kodak provide domestic partner benefits. Wegmans provides health and dental benefits if the couple is united by a ceremony that happened someplace where same-sex marriage is legal.

Since Martinez filed her suit, Monroe Community College's contract with the Civil Service Employees Union has started providing benefits for domestic partnerships. MCC conducts its contract negotiations separately from Monroe County, and county spokesman Noah Lebowitz says the county does not offer any benefits to same-sex couples. The towns of Greece and Henrietta and Paychex Inc. also do not offer such benefits.

Due to the 1996 federal Defense of Marriage Act, same-sex marriages recognized in New York still will not have access to benefits bestowed by the federal government. This act defines "marriage" as a bond between a man and a woman and "spouse" as a married partner of the opposite sex for federal matters, and federal law supersedes state law on many marriage issues.

This means, for example, that same-sex couples who can now file state income taxes as a married couple still must file their federal taxes as single. Neither federal pension and private-sector pension benefits nor certain health care plans regulated by the federal Employee Retirement Income Security Act are legally due to same-sex couples.

Xerox Corp. and Bausch & Lomb Inc., which provide benefits for same-sex couples, along with Kodak, are members of the Business Coalition for Benefits Tax Equity, a group that wants the IRS to adjust tax code to help companies that extend benefits to employees in same-sex relationships.

Under current IRS regulations, the value of nonspouse, nondependent benefits is included in employee wages and increases the amount of tax paid by the employee and employer. Benefits provided to spouses or children are not included in wages, resulting in lower taxes for heterosexual married couples.

About 1.2 million people said they were part of same-sex partnerships in the 2000 census, about 0.6 percent of the total adult population.

### **'Opposed to this'**

Rabbi James Appel of the Congregation Shema Yisrael in Irondequoit says the Martinez decision absolutely should be appealed.

"I think the majority of people in the county and the whole country are opposed to this," he said. "Judges are moving us in this direction against the moral attitudes and standards of the rest of the country."

The Rev. Sammy L King of Trinity Missionary Baptist Church in Rochester is also opposed to same-sex marriage.

"It's not that we don't love gays and lesbians, and reach out to them," he said. "Legalization can come in the state of New York, but in the eyesight of God, (same-sex marriage) can never be legalized."

Appel has supported an explicit state ban on same-sex marriage and the recognition of same-sex marriage, similar to those found in more than half of the states.

Last year, Gov. Eliot Spitzer introduced a bill to legalize same-sex marriage. The Assembly passed a similar bill. No action was taken in the state Senate. The four state senators who represent this region all oppose same-sex marriage legislation.

Sen. Joe Robach, R-Greece, says he supports civil unions but not gay marriage. Sen. James Alesi, R-Perinton, says he supports civil rights and anti-discrimination legislation but draws a line at same-sex marriage.

"The majority of my constituents are opposed," said Alesi, who does not expect the Senate to take up the issue this session.

Wicks believes that his client is on solid legal footing because New York recognizes marriages that are not legal in New York, such as common law marriages. The appellate court ruling states: "For well over a century, New York has recognized marriages solemnized outside of New York unless they fall into two categories of exception: marriage, the recognition of which is prohibited by the 'positive law' of New York and marriages involving incest or polygamy, both of which fall within the prohibitions of 'natural law.'"

Brooks disagrees. A county statement issued Friday states: "According to the New York state law, marriage is an institution that exists strictly between a man and a woman. Foreign marriages are recognized so long as they are not contrary to New York state policy. Monroe County currently holds the position that same-sex marriage is in fact contrary to New York state policy."

### **A sense of validation**

Martinez has said that she is prepared to fight her case all the way up to the U.S. Supreme Court.

In the meantime, Jo and Christine Meleca-Voigt, two Henrietta women who were married in Canada in 2005, are trying to pursue joint medical insurance in light of the recent decision.

Jo Meleca-Voigt said the court ruling has made her marriage feel more real. "Before when we would drive into Canada, as soon as we crossed the border it felt like we were legitimate," she said. "(After the court decision) I feel more legitimate and validated here."

Doreen Peever, a lay chaplain of the Unitarian Congregation of Niagara in Ontario, Canada, performed Martinez and Golden's 2004 wedding ceremony.

She says she's conducted 208 same-sex marriage ceremonies since they became legal in Canada in 2003. The vast majority of couples have been from the United States.

Peever says the Unitarian Church has been performing gay marriages since the 1970s. "I don't understand what the big deal is," she said. "It doesn't threaten family values; it reinforces family values. These are new families."

Brooks called the Martinez victory "a clear misinterpretation of the law." Her statement concludes: "To expand (health care) benefits to same-sex couples is to ignore the will of the people of Monroe County and New York state. Therefore, the county is seeking an appeal of the recent ruling in this case."

Martinez anticipates that the success of her case in appellate court means more people will be heading north to get married.

"If I weren't married already, I'd be leaving skid marks on that Peace Bridge going to Canada," she said.

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