

May 29, 2008

## New York to Back Same-Sex Unions From Elsewhere

By JEREMY W. PETERS

ALBANY — Gov. David A. Paterson has directed all state agencies to begin to revise their policies and regulations to recognize same-sex marriages performed in other jurisdictions, like Massachusetts, California and Canada.

In a directive issued on May 14, the governor's legal counsel, David Nocenti, instructed the agencies that gay couples married elsewhere "should be afforded the same recognition as any other legally performed union."

The revisions are most likely to involve as many as 1,300 statutes and regulations in New York governing everything from joint filing of income tax returns to transferring fishing licenses between spouses.

In a videotaped message given to gay community leaders at a dinner on May 17, Mr. Paterson described the move as "a strong step toward marriage equality." And people on both sides of the issue said it moved the state closer to fully legalizing same-sex unions in this state.

"Very shortly, there will be hundreds and hundreds and hundreds, and probably thousands and thousands and thousands of gay people who have their marriages recognized by the state," said Assemblyman Daniel O'Donnell, a Democrat who represents the Upper West Side and has pushed for legalization of gay unions.

Massachusetts and California are the only states that have legalized gay marriage, while others, including New Jersey and Vermont, allow civil unions. Forty-one states have laws limiting marriage as a union between a man and a woman.

Legal experts said Mr. Paterson's decision would make New York the only state that did not itself allow gay marriage but fully recognized same-sex unions entered into elsewhere.

The directive is the strongest signal yet that Mr. Paterson, who developed strong ties to the gay community as a legislator, plans to push aggressively to legalize same-sex unions as governor. His predecessor, Eliot Spitzer, introduced a bill last year that would have legalized gay marriage, but even as he submitted it, doubted that it would pass. The Democratic-dominated Assembly passed the measure, but the Republican-led Senate has refused to call a vote on it.

Short of an act by the Legislature, the directive ordered by Mr. Paterson is the one of the strongest statements a state can make in favor of gay unions.

"Basically we've done everything we can do on marriage legislatively at this point," said Sean Patrick Maloney, a senior adviser to Mr. Paterson. "But there are tools in our tool kit on the executive side, and this is one."

The directive cited a Feb. 1 ruling by a State Appellate Court in Rochester that Patricia Martinez, who works at Monroe Community College and who married her partner in Canada, could not be denied health benefits by the college because of New York's longstanding policy of recognizing marriages performed elsewhere, even if

they are not explicitly allowed under New York law. The appeals court said that New York must recognize marriages performed in other states that allow the practice and in countries that permit it, like Canada and Spain.

Monroe County filed an appeal with the state's highest court, the Court of Appeals, but it was rejected on technical grounds. The county has not decided whether to file another appeal, a county spokesman said on Wednesday. The Court of Appeals has previously ruled that the state's Constitution did not compel the recognition of same-sex marriages and that it was up to the Legislature to decide whether to do so.

Groups that oppose gay marriage said the governor was essentially trying to circumvent the Legislature.

"It's a perfect example of a governor overstepping his authority and sidestepping the democratic process," said Brian Raum, senior legal counsel for the Alliance Defense Fund, a national organization opposed to same-sex marriage. "It's an issue of public policy that should be decided by the voters."

Gay rights advocates, however, applauded Mr. Paterson, saying the broad directive would make it clear that gay couples wed in other states were entitled to all of the benefits of marriage in New York and relieve them of the burden of challenging or suing individual agencies.

"He saw no reason to stand in the way of making sure these couples benefit from the rights and protections that come with marriage," said Susan Sommer, senior counsel for Lambda Legal, a group that advocates for gay rights. "It shouldn't be the burden of each lesbian or gay couple to have to advocate before an agency every time a new issue comes up."

In the directive, Mr. Nocenti wrote that state agencies should review all rules and regulations to determine whether they conflict with recognition of same-sex marriages and report back to him by June 30. Mr. Nocenti said that state agencies that did not provide "full faith and credit to same-sex marriages" could be subject to liability.

He said that many changes could be made through internal memos or policy statements, but that regulatory changes might be needed in some cases.

Mr. Nocenti directed agency heads to a list of state regulations and statutes that were likely to need overhaul, including measures affecting a spouse's ability to collect a deceased spouse's pension and to continue to use public housing.

In addition to conferring more rights on gay couples, the changes might also require more responsibilities. For example, the order that required certain employees of the executive branch to file financial disclosure documents for their spouses would also apply to gay spouses.

It is less clear what the directive means for state policies that are not enforced by state agencies but by the courts, like those that govern child custody or protect a husband and wife from having to testify against one another about statements they made to each other while married.

Coincidentally, Mr. Nocenti's directive was dated one day before the California Supreme Court ruled that same-sex couples have a constitutional right to marry. Gay marriage proponents said they expected that ruling, which will take effect in mid-June unless the court grants a stay, will lead some gay couples in New York to marry in California so they can take advantage of the protections under New York law.

Of course, many gay New Yorkers might find Canada to be a more convenient option, some gay rights supporters pointed out. Mr. Nocenti also said that marriages performed in Massachusetts should be recognized in New York, though Massachusetts, unlike California, does not permit gay residents from other states to be married there if their home state prohibits same-sex unions.

While gay rights advocates widely praised the spirit of Mr. Paterson's policy, some saw more than a little irony in the fact that New York has yet to allow gays to marry.

"If you're going to treat us as equals, why don't you just give us the marriage license?" said Alan Van Capelle, executive director of Empire State Pride Agenda. "So this is a temporary but necessary fix for a longer-term problem, which is marriage equality in New York State."

*Danny Hakim contributed reporting.*