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State Court Recognizes Gay Marriages From Elsewhere

By **ROBERT D. McFADDEN**

A New York appellate court ruled Friday that valid out-of-state marriages of same-sex couples must be legally recognized in New York, just as the law recognizes those of heterosexual couples solemnized elsewhere. Lawyers for both sides said the ruling applied to all public and private employers in the state.

Even though gay couples may not legally marry in New York, the appellate court in Rochester held that a gay couple's 2004 marriage in Canada must be respected under the state's longstanding "marriage recognition rule," and that an employer's denial of health benefits had discriminated against the couple on the basis of their sexual orientation.

"The Legislature may decide to prohibit the recognition of same-sex marriages solemnized abroad," a five-judge panel of the Appellate Division of State Supreme Court ruled unanimously in rejecting a 2006 lower court decision. "Until it does so, however, such marriages are entitled to recognition in New York."

For more than a century, the court noted, [New York State](#) has recognized valid out-of-state marriages. Moreover, it said that the Court of Appeals, the state's highest judicial body, has said the Legislature may enact laws recognizing same-sex marriages. "In our view, the Court of Appeals thereby indicated that the recognition of plaintiff's marriage is not against the public policy of New York," the court held.

As a practical matter, the marriages of thousands of gay couples entered into outside the state have been recognized in recent years by many state and local agencies and by private employers for purposes of allowing health and life insurance coverage, child care and other benefits. But others have resisted doing so voluntarily, pending the outcome of numerous cases in the courts.

Friday's ruling, legal experts said, was the first by an appellate division court, and would make the recognition of valid out-of-state gay marriages mandatory across New York. It was not clear whether Monroe County and Monroe Community College in Rochester, the employer in the case, would appeal.

Daniel DeLaus Jr., the county attorney for Rochester, said his office was reviewing the decision and would decide whether to seek an appeal.

Jeffrey Wicks, a lawyer who represents the plaintiff, Patricia Martinez, said that New York had recognized

common-law marriages, even marriages of closely related people that might not be allowed in the state. “There’s a long tradition in New York of recognizing marriages that couldn’t be performed in New York,” he said.

The [New York Civil Liberties Union](#), which represented Ms. Martinez, a word-processing supervisor at the college, hailed the ruling. The union called it “the first known decision in the country to hold that a valid same-sex marriage must be recognized.”

“This is a victory for families, it’s a victory for fairness and it’s a victory for human rights,” said [Donna Lieberman](#), executive director of the N.Y.C.L.U. “Congratulations to all same-sex couples validly married outside of New York State: You are now husband and husband, wife and wife. Now we need to work toward a New York where you don’t have to cross state or country lines to get married.”

The New York City Council speaker, [Christine C. Quinn](#), the first openly gay leader of the Council, also applauded the ruling. “If this is saying companies have to do it, it’s a tremendous step forward in recognizing the diversity of families in New York City.”

New York City already extends marriage benefits to workers in domestic partnerships, and under a law passed in 2002, it provides all city benefits and services to same-sex couples whose unions are recognized by other jurisdictions. But the city has no power to impose such rules on private companies.

In 2004, the Council adopted legislation sponsored by Ms. Quinn that would have required large companies doing business with the city to provide equal job benefits to domestic partners. Mayor [Michael R. Bloomberg](#) vetoed the bill, and while the Council overrode the veto, the mayor said it violated state and federal laws and would prove costly to taxpayers. He sued successfully to block it in a case decided in 2006 by the Court of Appeals.

Mayor Bloomberg’s office declined to comment on Friday’s ruling, saying it had not seen the decision.

Attorney General [Andrew M. Cuomo](#) also declined to comment, noting that his office may be involved in an appeal as the traditional defender of state agencies. Monroe Community College is a branch of the [State University of New York](#).

In the past, Mr. Cuomo has said that state law requires that marriages performed in other states, and in Canada, be recognized in New York.

In the case before the appellate division in Rochester, Ms. Martinez and her partner, Lisa Ann Golden, formalized their longstanding relationship in a civil union ceremony in Vermont in 2001, and were married in Ontario on July 5, 2004.

A few days later, Ms. Martinez applied to Monroe Community College for health care benefits for her spouse. In November 2004, the college's director of human resources, Sherry Ralston, denied the application, contending that the state did not recognize the marriage as a matter of law and public policy.

Ms. Martinez sued in 2006, arguing that her constitutional and civil rights had been violated. A State Supreme Court justice, Harold Galloway, dismissed the lawsuit in August 2006, saying the state did not recognize same-sex marriages. The state, he wrote "currently defines marriage as limited to the union of one man and one woman."

But the appellate court disagreed, citing the century-old "marriage recognition rule" applying to heterosexual couples and noting that the Court of Appeals had implied that the Legislature could adopt a law legalizing same-sex marriage.

In early 2006, the court said, Monroe Community College had begun extending health-care benefits to Ms. Golden under a new contract provision. However, the judges held, the plaintiff was entitled to unspecified monetary damages for the period during which the benefits were wrongly denied.

Danny Hakim and Ray Rivera contributed reporting.

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