

While New York State has yet to allow marriage licenses to be issued to same-sex couples, there has been a sudden explosion of activity toward that goal within the past month.

Married Elsewhere, Married Here

The state's highest legal officer now has said that some New York gay couples who married legally elsewhere can be considered married here.

Attorney General Eliot Spitzer issued [an opinion](#) (PDF Format) that while New York did not expressly forbid gay couples to marry, the gender neutral domestic relations law nevertheless was not written with them in mind. A supporter of the right of same-sex couples to marry, Spitzer nevertheless said that town and city clerks should not issue licenses to same-sex couples until the courts rule on the constitutionality of the state marriage law's exclusion of gay couples. But he also held that same-sex couples validly married elsewhere (as they have been in Holland, Belgium, and Canada) "must be treated as spouses for purposes of New York law."

New York gay and lesbian couples have been getting married in Ontario and British Columbia since this past summer. They didn't become un-married when they returned to New York.

After May 17, New York gay couples will only have to go as far as Massachusetts to get married. That's when the Bay State's high court has ordered the state to start issuing marriage licenses to same-sex couples, even though the state legislature, meeting in Constitutional Convention in March, have voted to amend the state constitution to limit marriage to man-woman couples, while providing gay couples "civil unions" that would carry the same legal rights and responsibilities associated with marriage. The amendment could not go into effect until late 2006, so gay people will be marrying in Massachusetts next month. There is a wrinkle in the Massachusetts marriage law that may have an effect on New Yorkers seeking to marry there. It forbids clerks from issuing licenses to out-of-state couples whose marriage would not be valid in their home state. Thirty-eight states, but not New York, have laws prohibiting recognition of same-sex marriage. And again, while New York does not license same-sex marriages, the attorney general of New York is of the opinion that the state must recognize valid same-sex marriages licenses elsewhere.

Twenty New York couples were among the more than 4,000 who tied the knot in San Francisco after Mayor Gavin Newsom started issuing licenses to gay couples on February 12. That

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by {ga=ahumm}

Friday, April 02, 2004 12:00 AM - Last Updated Tuesday, August 26, 2014 01:15 PM

process was stopped by California's high court on March 12 and the validity of the licenses will be resolved in court cases.

New York City has a law, signed by Mayor Bloomberg in 2003, that requires the city to recognize domestic partnerships, civil unions, and same-sex marriages performed in other jurisdictions. Bloomberg has said that while this means the city will recognize those same-sex unions contracted in Vermont, Canada, Holland, and Belgium, he will not recognize same-sex marriages performed in San Francisco.

Lawsuits To Win The Right To Marry

New York City's Corporation Counsel, Michael Cardozo, wrote to City Clerk Victor Robles, "Both New York State statutory law, and its interpretation by New York courts, support the City Clerk's ongoing practice not to issue licenses to, or perform marriage ceremonies for, same-sex couples." But when Cardozo was president of the New York City Bar Association in 1997, he approved a report calling marriage a "fundamental right" that be open to "all couples, regardless of sex," the Daily News [reported](#). He told the paper that his approval of the report "did not mean I personally agreed with every legal point or the conclusion," but that he thought "the legal issues were thoughtfully researched."

Gay couples are now [suing](#) in New York, Rockland, and Ulster counties to win the right to marry in New York State. Lambda Legal Defense is representing Nevin Cohen and David Hernandez from Manhattan. Norman Siegel, once director of the New York Civil Liberties Union and now in private practice, has brought a case on behalf of ten gay couples from Nyack and is seeking a judgment that the state marriage law is unconstitutional because it bars licenses for same-sex couples. And in Ulster County, the [New York Civil](#)

[Liberties Union](#) and the firm of Paul, Weiss, Rifkind, Wharton & Garrison are [defending](#)

New Paltz Mayor Jason West who has been charged with marrying 25 same-sex couples without licenses.

Religious Defiance

While the domestic relations law of the state may be open to interpretation as to whether or not gay couples are entitled to marry, the law explicitly prohibits agents of the state (mayors, clerks, ministers, etc.) from marrying couples without licenses. The same Ulster County district attorney who charged Mayor West with breaking that law also went after two Unitarian ministers who performed multiple same-sex nuptials in New Paltz in March. All their cases are before the

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courts and they face fines of \$500 and up to a year in jail on each count.

More than 30 ministers, priests, and rabbis in New York gathered on the New York City Hall steps on March 18 and defiantly pledged to break the law that forbids them to perform marriages for unlicensed couples, as I reported in [Gay City News](#). Rev. Pat Bumgardner, pastor of the gay [Metropolitan Community Church of New York](#) performed two same-sex weddings--one for two men, another for two women--clearly stating that she was acting in her capacity as an agent of the state. Rabbi Ellen Lippman of Congregation Kolot Chayeinu in Park Slope, Brooklyn married another lesbian couple. Manhattan District Attorney Robert Morgenthau announced that he did not intend to prosecute either Rev. Bumgardner or Rabbi Lippman, saying in a statement, "The criminal courts are not the appropriate forum for the resolution of these issues. Ultimately, they will be resolved in civil lawsuits, at least two of which are now pending."

While it is illegal for the minister to perform a marriage for unlicensed couples, the law also says that couples so married are legally married if their intent was to obtain a license afterwards. It is possible, then, that the same-sex couples wed by Mayor West and these ministers and rabbis will have to be recognized as married by New York.

Bloomberg's Back And Forth

Mayor Bloomberg, who maintains that he has no official position on same-sex marriage, told a gathering of lesbian and gay journalists that he did favor changing the marriage law to include gay couples. But the next day his press office would not confirm that he had said it. Bloomberg, a former Democrat who is now the biggest individual contributor to the Republican Party in the nation, will be playing host to Republican National Convention in late August and early September that will nominate for re-election President George Bush, a supporter of a [constitutional amendment](#) to ban same-sex marriage. While Bloomberg and Governor George Pataki do not support that amendment, the mayor seems reticent to emphasize the issues with which he disagrees with his new party.

Opposition, Neutrality, Support

There are pockets of vocal opposition to same-sex marriage in New York. The state's Catholic bishops went to Albany to lobby against it in March, with Brooklyn's new Bishop Nicholas DiMarzio worrying that sanctioning same-sex marriage could open the door to people marrying their "pets." On March 14, thousands of [Pentecostal Latinos](#) rallied outside the Bronx

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courthouse in favor of Bush's constitutional amendment.

While the state legislature has been disinclined to take up bills either banning or approving of same-sex marriage, by the end of the March, Republican Senate Majority Leader Joseph Bruno was looking at the possibility of taking up a state Defense of Marriage Act (limiting marriage to man-woman couples), something Democratic Speaker Sheldon Silver has told colleagues that his house will not consider. The State Democratic Party is on record in favor of same-sex marriage, the Conservative Party is vehemently opposed, and Governor Pataki, leader of the state's Republicans, has said that the marriage laws should remain as they are--though he has granted some incremental rights for gay domestic partners in recent years.

"The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men," wrote the United States Supreme Court in overturning laws in sixteen states banning interracial marriage in 1967. Despite the reference to men—and not men and women—the court surely did not foresee that men would want to marry men and women women in the early 21st century. But it is already a legal reality in New York, at least for a few couples, and it looks as if it will be left to our courts to decide if it will be open to all same-sex couples soon.

Andy Humm is a former member of the City Commission on Human Rights. He is co-host of the weekly "Gay USA" on Manhattan Neighborhood Network (34 on Time-Warner; 107 on RCN) on Thursdays at 11 PM.