

State Recognizes Same-Sex Marriages But Not Weddings

by {ga=ahumm}

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Photo by [Andy and Mike](#) New Yorkers demonstrated for marriage equality in 2009.

Same sex marriage is recognized in New York.

That is not a typo or wishful thinking by gay advocacy groups. While we all hear about the "fight" for what advocates call a "marriage equality" bill in the New York State Senate, the fact is that there are thousands of legally married same-sex couples in New York. They all got married elsewhere and have been recognized as such in New York under the legal principle of [comity](#) whereby one state gives effect to contracts agreed to in other states.

Here is a brief update on same-sex marriage in New York:

Same-sex couples indeed cannot get married here until the state passes legislation opening marriage to them.

- New York same-sex couples that legally wed elsewhere are recognized as married in New York for all purposes public and private except taxation.
- No legally married couple in the United States, however, has any federal rights under the

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1996 Defense of Marriage Act, which is being challenged in the courts and by some member of Congress, who hope to repeal it.

- The New York State Assembly has three times [passed a bill](#) allowing same-sex marriage, led by chief sponsor

[Daniel O'Donnell](#)

, an out gay man waiting to marry his partner John Banta until they can wed in New York.

- The State Senate had a [vote on same-sex marriage](#) last year, when the Democrats were in control, but it went down 38-24 despite pledges given by a majority of members to its chief sponsor

[Tom Duane](#) of Manhattan that they would vote for it. All Republican senators voted against the bill, and they are back in the majority. The effort is personal for Duane, too, who is waiting for the bill to pass before marrying his partner, Louis Weber.

- Gov. Andrew Cuomo has [said](#) that he wants a marriage equality bill passed this year and has spoken out about it several times.

- The [latest Quinnipiac poll](#) put support for same-sex marriage statewide at 56 percent with 37 percent opposed, the highest level of support ever.

How New York Recognizes Same-Sex Marriage

Under comity, New York recognizes marriages it does not perform as long as the marriage is not "affirmatively prohibited or proscribed by natural law." For example, New York does not have common law marriage as Georgia does, but if a common law married couple from there moves to New York or visits here they are still married. If, however, you are able to marry more than one person in another country, New York will not recognize that second marriage.

New York is one of a handful of states that never passed a state law or constitutional amendment banning same-sex marriage. Bills to do so went nowhere in Albany, and future efforts seem unlikely. The chief Assembly sponsor, Tony Seminerio of Queens [died in prison](#) in January where he was serving time for fraud, and the chief Senate sponsor, Serphin Maltese,

[lost his seat](#)

in 2008 to Democrat

[Joe Addabbo](#)

In 2004, then State Attorney General Eliot Spitzer issued a [legal opinion](#) saying that same-sex marriages should be recognized in New York. Later that year, then State Comptroller Alan Hevesi [recognized](#) legally married couples in the state pension system.

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In 2006, New York's Court of Appeals [ruled](#) that it was constitutional for the state to continue to deny marriage licenses to gay couples, but that did not stop the state from continuing to recognize gay couples legally married elsewhere. Since then, state appellate courts have repeatedly affirmed that legally married same-sex couples must be recognized as such in New York, notably in the [Martinez case](#) in Monroe County.

Just recently, the courts here [rejected a challenge](#) to a will from the brother of a gay man who named his male spouse as his primary heir.

Even though the courts in New York have been unanimous in affirming the right of legally married same-sex couples to have their marriages honored in the state, couples may still encounter resistance. A gay New Yorker I know who married years ago in Canada and never had any trouble getting his marriage honored here recently changed jobs. His new employer told him it would only recognize federally sanctioned marriages.

The Taxation Exception

One time that New York does not recognize legally married gay couples is tax day. The state's tax law says people "must" file their state tax forms using the same marital status they use on their federal form. Since the federal government does not recognize same-sex marriages for federal purposes, such as taxes, immigration, Social Security and so on, New York State's Department of Taxation and Finance insists that married same sex couples must file as single.

In other states that recognize same-sex marriages, legally married gay couples file as married on their state forms, but as single on their federal returns. Since state taxes are based on federal ones, they have to do two federal returns: a real one, in which they file as single, to determine their federal taxes, and a dummy one, in which they file as married, to determine their state tax. It is indeed complicated and a boon for accountants.

O'Donnell [introduced a bill](#) last year to fix New York state tax law to allow this. It is now being pushed by Assemblymember [Harry Bronson](#) of Rochester, the sixth member of the legislature to join the LGBT caucus in Albany along with O'Donnell, Duane, and Assemblymembers [Deborah Glick](#)

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and

[Micah Kellner](#)

of Manhattan and

[Matthew Titone](#)

of Staten Island -- all Democrats.

Michael Sabatino and Robert Voorhies are a New York couple married for seven years. Besides not being able to file their taxes jointly, Sabatino can't get Voorhies on his health insurance policy. "My company is willing to insure him," Sabatino wrote in an e-mail, "but the insurance company will not recognize us as married. They consider us domestic partners and they require our company to have 50 employees to qualify and we don't.

Despite such problems, Sabatino wrote, "I always tell everybody go get married where it's legal and come back to NY [and] at least you will have recognition. Some people -- don't ask me why -- say, 'I want to wait until its legal in NY, my home state.' God only know why they want to wait for that reason."

The Federal Ban

When the issue of same-sex marriage heated up in the mid-1990s over a lower court [ruling in Hawaii](#)

that gay couples were entitled to marry, Congress responded with the

[Defense of Marriage Act](#)

, which passed by a 5-1 margin and was

[signed](#)

by President Bill Clinton. While it does not prevent individual states from letting gay couples marry, it prohibits federal recognition of those marriages and gives the states the right not to recognize legal same-sex marriages from other states -- a right most states have exercised.

Hawaii, by the way, never allowed same-sex marriage but recently [enacted](#) a civil unions bill.

Times change. Sen. Charles Schumer voted for the Defense of Marriage Act as a House member but [came out for marriage equality](#) a few years ago. Bill Clinton now [supports](#) same-sex marriage, though Hillary Clinton, like President Barack Obama,

[says](#)

she still does not despite championing equal partner rights short of marriage.

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The main challenges to the bar on the federal government recognizing same-sex marriages have come in the courts. A federal judge in Massachusetts, where same-sex marriage has been legal since 2004, [ruled](#) that the provision is unconstitutional.

In a New York case brought by the [American Civil Liberties Union](#), Edie Windsor is [challenging](#) the Defense of Marriage Act because when her wife, Thea Spyer, died in 2009 she was responsible for more than \$360,000 in estate taxes that she would not have been had they been a male-female married couple.

On March 22, a binational married lesbian couple will go to a New York immigration court to seek termination of removal proceedings for the foreign spouse. Cristina Ojeda, a U.S. citizen, is seeking a marriage-based green card for her wife, Monica Alcota, an Argentine citizen. It is the first such immigration case brought since Obama and the U.S. Justice Department [announced](#) in February that they will not defend the Defense of Marriage Act any more, calling it unconstitutional. They will still enforce the law, but the defense of the law in court has been left to the Congress, Republican House Speaker John Boehner has [said](#) that House leaders will hire counsel to do that.

It is hard to predict how the U.S. Supreme Court will ultimately rule on the act's constitutionality. The high court refused to even hear a 1971 challenge by a Minnesota gay couple who sought to marry. But the court [struck down](#) anti-sodomy laws in 2003. And back in 1995, it [overtuned](#) a Colorado constitutional amendment that barred civil rights protections on the basis of sexual orientation.

Even if the court rules that the federal government must recognize same-sex marriages, that would not mean every state would have to. States already have varying standards for heterosexual marriages with, for example, some states allowing marriages between first cousins and others barring it. We could end up with a situation where a gay couple from Alabama could marry in Iowa and be married for federal purposes when they go back home but not be recognized by their state.

The Politics in New York

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The main political groups campaigning for a New York marriage equality bill do not advertise that marriage rights are available to gay couples already. They offer no guides on their websites on how same-sex couples in New York can get married, just appeals to get involved in the fight for the bill opening the marriage bureaus here to gay couples.

"As significant as it is that New York recognizes out-of-state same-sex marriages, it is just not the same as having them solemnized in New York state," said Donna Lieberman of the [New York Civil Liberties Union](#)

. "We won't have marriage equality in New York until we have marriage equality." She believes Cuomo's "commitment to make this a top priority" can make the difference in the legislative battle.

Advertising the chance to marry elsewhere "would be like saying, 'Don't fight for it in New York. We don't need it here,'" said Ron Zacchi, executive director of [Marriage Equality New York](#) . He thinks most gay people are aware of how they can marry, and the group answers many e-mails seeking information on how to go about it.

Zacchi feels "very good" about the prospects for passage of the bill this year. "Some Democrats who voted no are now open to it," he said.

With Republicans in a majority in the Senate, though, no GOP member has declared his or her support yet.

And there is opposition. The New York State [Catholic Conference](#) representing the state's Roman Catholic bishops, recently had a two-day lobbying effort in Albany that included

[defeat of the marriage bill](#)

as a priority. The leading opponent in the Senate is Democrat

[Ruben Diaz Sr.](#)

, a Pentecostal minister from the Bronx.

Ross Levi, executive director of the [Empire State Pride Agenda](#) , the state's gay and lesbian lobby, said Cuomo's enthusiastic support could be key. "It makes a difference to have a very popular governor who is very sophisticated in dealing with Albany acting as a leader on our issues," Levi said. He attended a

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[high profile meeting](#)

with the governor on the issue this month and said there will be more.

Levi has told legislators that many gay couples from New York marry out of state. He has urged the officials to "take the next step" by passing the bill to let them marry here so New York could get the economic benefits of the weddings. He said he has not gotten very far with that argument, but hopes business leaders who support the bill will help drive the point home.

O'Donnell said a lot of things need to happen for his bill to pass the Senate. "It won't come up until the budget passes," he said. "The polls are with us. No Republican senator on Long Island voted for it last time, but 70 percent of their constituents support it in some districts. We have to make the votes match the districts."

The Legal States

Marriage is open to same-sex couples in the District of Columbia and five states: New Hampshire, Vermont, Iowa, Connecticut and Massachusetts. Two other states recognize those marriages but will not perform them: New York and Maryland. While Rhode Island and New Mexico debate such recognition, the remaining states have either laws or constitutional amendments prohibiting recognition of same-sex marriages, so when a legally married couple travels to them, their marriage rights can be denied. Some other states provide limited domestic partnerships or civil unions. California, Illinois, Hawaii, New Jersey, Washington state and Oregon provide unions with all the benefits of marriage save the word and the portability.

California has the most complicated <

http://en.wikipedia.org/wiki/Same-sex_marriage_in_California> situation. On June 16, 2008, following a state [high court ruling](#), gay couples -- including many from New York -- started marrying there. Some [18,000 got married](#) before the voters [passed Prop 8](#)

, a state constitutional amendment banning recognition of same-sex marriages, on Nov. 5, 2008. The couples that married during those five months still are recognized as married in California. And any gay couple anywhere that got married prior to Nov. 5, 2008 also is recognized as married in California. Gay married couples who wed after Nov. 5, 2008 and who move to California are recognized as full domestic partners there.

In August, federal judge Vaughn Walker [ruled](#) that the ban on same-sex marriages was unconstitutional. California did not appeal the ruling. The case is at the Ninth Circuit, which is

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taking a long time deciding whether anyone other than the government of the state has any standing to appeal Walker's ruling. The group that got Prop 8 on the ballot is arguing that it does.

In the meantime, gay couples can still get domestic partnerships in California that carry all the rights of marriage save the name and portability. New York has never had a statewide civil or domestic partners bill, though the city does and some state employees are entitled to domestic partner benefits.

Ten countries recognize same-sex marriage: Argentina, Belgium, Canada, Iceland, the Netherlands (which was first), Norway, Portugal, South Africa, Spain and Sweden. Mexico City also does. As in New York, same-sex marriages are recognized but not performed in Dutch Aruba and Curacao, Israel, the rest of Mexico, Dutch Sint Maarten, and Japan under certain conditions. Civil partnerships are also recognized in most of the rest of Western Europe and parts of the rest of the world.

Check your local listings before traveling.

Andy Humm, a former member of the City Commission on Human Rights, has been in charge of the civil rights topic page since its inception in 2001. 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.