


# The Journal News

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**Gay marriage**  
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*The Journal News*

Albany officials should have the courage to stand up for fairness

The New York attorney general's legal opinion on **gay marriage**, a breezy, 28-page read too light to prop open a door let alone halt the runaway train of same-sex marriage, points up an untenable conflict in state law that the Legislature and Gov. George Pataki should fix, in short order, and on the side of fairness for all New Yorkers. Doing nothing in Albany, the normal course, ignores history in the making, prolongs inequality and fosters uncertainty in a realm that can hardly afford to be more muddled.

The history in the making is the battle for civil rights being waged by gay people, and people of good will, in town halls, city halls and municipal clerks' offices, in locales across the country, from San Francisco to Massachusetts, from Portland, Ore., to New York's New Paltz.

The untenable conflict speaks to a reality that should hardly surprise regular observers of the Legislature: It is unprepared for, but we hope not outmatched by, the **gay-marriage** debate. Lawmakers have been loath to take up the issue, for the usual reasons that spell inaction. For a time, this was a proper course, to the extent that "doing something" no doubt would have meant shortchanging notions of fairness and equality. But the hour has arrived when events will speed quickly past New York if Albany lawmakers settle for the do-nothing approach.

Inaction is no option

Because of events in Massachusetts, **gay marriage** will arrive in New York come spring. That state's highest court has ordered that marriage rights be extended to same-sex couples by May. According to last week's legal opinion from the office of Attorney General Eliot Spitzer, even if same-sex marriages cannot legally be performed in New York, same-sex marriages and civil unions lawfully entered into in other jurisdictions should be recognized here.

According to the attorney general's reading of precedents, "The only exceptions to this rule (regarding recognition of out-of-state marriages) occur where recognition has been expressly prohibited by statute, or the union is abhorrent to New York's public policy," the Spitzer opinion said.

In New York, there is no expressed prohibition, and the "abhorrent" exception has been construed narrowly, limited to marriages involving "polygamy or incest."

Importantly, one New York court has already ruled that a party to a Vermont "civil union" of same-sex partners must be treated as a "spouse" in the context of a wrongful death action in New York.

To deny recognition of such a union, the court reasoned, "would run afoul of the federal and state equal protection clauses" of our constitutions. While that decision is under appeal, it could easily portend the future treatment of **gay marriages** in New York.

Shortly, the only substantive impediment to **gay marriage** here, at least one performed out of state, could be an Amtrak ticket.

#### Swept up by events

Ready or not, New Yorkers were pulled headfirst into the **gay-marriage** fray a week ago, when the young mayor of New Paltz read the state's domestic relations law and the state and U.S. constitutions as permitting same-sex marriages. He promptly began marrying men to men and women to women, more than two dozen couples in all.

Mayor Jason West's nuptials, and similar acts and announced intentions to engage in matrimonial disobedience by municipal officials and gay couples in Nyack, Ithaca and New York City, forced New York's top law-enforcement official to weigh in. Stating that he was personally in favor of extending marriage rights to same-sex couples, Spitzer nonetheless concluded that New York law was not so inclined. The Spitzer opinion held that the state's domestic relations law, replete with references to "bride and groom" and "husband and wife," doesn't authorize the issuance of licenses to same-sex couples.

He recommended that local officials not marry or issue licenses to same-sex couples. Nyack Mayor John Shields, who had intended to conduct same-sex marriages, decided to join others in launching lawsuits instead.

But the attorney general did not end the analysis there. The Spitzer opinion quotes from last year's Massachusetts decision addressing the same questions over **gay marriage**. Massachusetts' Supreme Judicial Court held that "[l]imiting the protections, benefits, and obligations of civil marriage to opposite-sex couples violates the liberty to choose whether and whom to marry that is protected by the Massachusetts Constitution."

Could New York's constitution offer less liberty to gay people? The Spitzer opinion makes clear that denying marriage rights to same-sex couples likely implicates the equal protection clauses of both the New York and U.S. constitutions, as well as the fundamental right to marry, protected under the due process clause of the federal Constitution. Both the New York and U.S. constitutions are aimed at ensuring equal treatment and fairness. Both aim to protect minorities from the vagaries of majorities. And both trump New York's domestic relations law - or at least any reading that would exclude gay couples from marrying.

Therein lies opportunity for Albany.

## Taking a stand

The Spitzer opinion properly noted that any constitutional uncertainties arising from New York's statutory ban on **gay marriage** "must and will be decided by the courts." Given the parade of **gay couples** to government offices this past week in fruitless attempts to secure marriage licenses, legal challenges are a certainty. Where Spitzer's office may recommend and Mayor West's may surmise, the courts have the singular duty to say what the law is.

Our legislators and governor, however, need not stand by while the important questions of the day are debated in court by advocates not of the citizenry's choosing, and on schedules of the courts' convenience. Nor should they stand by as other states' laws - in this case, Massachusetts' extension of marriage rights to **gay people** - are effectively imported to New York, either by **gay couples** coming here or New Yorkers marrying in Massachusetts and seeking recognition of their "foreign" unions in their home state.

That's following, not leading. The rights and protections of New Yorkers should never be left to the whims of other states - not where there is opportunity to act.

New York's Legislature, urged on by the governor, should take a stand on the side of fairness and equality. The lawmakers should assuage any doubts that New York champions liberty over bigotry by voting to remove any statutory bars to **gay marriage** in New York.

Such restrictions are an unwarranted and unjustifiable intrusion upon individual liberties. Just as there are no justifications for enshrining such bias and prejudice in our constitutions, there is no justification for continuing such bias and prejudice in our statutes. Looking the other way only endorses such unequal treatment.

New York and its laws must move beyond dividing people in ways that bear no relevance. Our elected officials should have the courage to say so, and they should have the courage to say so without delay.

## Share your views

We welcome readers' opinions on this topic. Send your letters, following the instructions in the Letters box on this page.

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