



Legislation Text

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Res. No. 836

Resolution urging Mayor Michael Bloomberg to instruct the City Law Department to withdraw the appeal of Judge Doris Ling-Cohan's decision in the case of *Hernandez v. Robles*, and instruct the Clerk of the City of New York to comply with the sum and substance of that decision by issuing a civil marriage license to any and every same-sex couple that is otherwise qualified to receive such license.

By Council Members Perkins, The Speaker (Council Member Miller), Lopez, Quinn, Reed, Jackson, Brewer, Comrie, Gerson, James, Koppell, Moskowitz and Seabrook

Whereas, The institution of marriage is recognized as one of the foundations of society and civilization;
and

Whereas, The status of civil marriage confers upon couples a legal structure unlike any other that honors and protects the relationship, supports the family and its children, and provides a couple the advantage of treatment as a single legal, social, and financial unit; and

Whereas, Marriage is the most intimate, private, and personal relationship, and one of the most important elective relationships in life; and

Whereas, The choice of whom to marry must be recognized as a fundamental right, a liberty right, a civil right, and a privacy right; and

Whereas, The choice of whom to marry must, in a free and just society, rest in the hands of every individual; and

Whereas, The same-sex plaintiffs in *Hernandez v. Robles* seek only to strengthen their bonds, participate in the historic institution of marriage, and exercise their fundamental rights as individuals to choose their own spouses; and

Whereas, The provisions of the Domestic Relations Law (the "DRL") at issue in this case are

unconstitutional in that they deprive the plaintiffs of the right to marry the spouse of their choice in violation of the Due Process and Equal Protection Clauses of our state constitution; and

Whereas, These DRL provisions violate Due Process because the state lacks a compelling interest in denying same-sex couples the right to civil marriage; and

Whereas, The DRL provisions also violate Equal Protection because denial of civil marriage to same-sex couples results in discrimination based on gender, as well as discrimination based on sexual orientation; and

Whereas, It is irrelevant that other jurisdictions may fail to recognize same-sex civil marriage since the body of comity laws nationwide is designed to deal with the many inconsistencies among state laws with regard to marriage; and

Whereas, The goal of uniformity of laws across jurisdictions is eclipsed by the overriding need for vigorous protection of individual rights here in New York; and

Whereas, The premise that only the Legislature can recognize the right to civil marriage for same-sex couples is false because it ignores our system of checks and balances; and

Whereas, The same defective argument in favor of “legislature deference” was made by those who argued that the United States Supreme Court lacked the competence of a state legislature to evaluate the “wisdom” of anti-miscegenation laws that criminalized interracial marriage; and

Whereas, Similarly, the argument that “tradition” suggests that civil marriage should be preserved exclusively for opposite-sex couples must also fail, since it is no more compelling than the claim that was made by segregationists that “tradition” demanded the preservation of anti-miscegenation laws; and

Whereas, Marriage is recognized as an ancient institution, but not a static one; and

Whereas, Civil marriage has evolved to include, for example, the equality of the races and equality of the sexes; and

Whereas, Over many years, the City of New York and the Court of Appeals have evinced their commitment to the protection of same-sex relationships through legislation, executive orders, and court

decisions; and

Whereas, Examples of that commitment include measures such as the Human Rights Ordinance of 1986, and decisions by the Court of Appeals upholding the rights of same-sex partners to adopt as second-parents, and the right of same-sex partners to be qualified as ‘family’ for the purpose of rent control laws; and

Whereas, The Domestic Partnership Registry, while marking a step forward in the movement toward equality for same-sex couples, does not provide the same extensive protection as civil marriage; and

Whereas, Examples of the rights and obligations often denied to same-sex couples include the ability to own property by the entirety; to file joint state income tax returns; to obtain health insurance through a partner’s coverage; to obtain joint liability or homeowner’s insurance; to collect from a partner’s pension benefits; to invoke the spousal evidentiary privilege; to recover damages for an injury to, or wrongful death of a partner; to have the right to make important medical decisions for a partner in emergencies; to inherit from a deceased partner’s intestate estate; and to determine a partner’s funeral and burial arrangements; and

Whereas, The remedy for this injustice, as ordered by Judge Ling-Cohan, does not overreach and does not subvert the relevant sections of the Domestic Relations Law in that it simply declares that the words ‘husband’, ‘wife’, ‘bride’ and ‘groom’ will be construed to mean ‘spouse’, and further construed to apply equally to men and/or women; and

Whereas, The Court’s Order would simply enjoin the Clerk of the City of New York from denying a marriage license to any couple solely on the ground that the two individuals in that couple are of the same sex; and

Whereas, The Order applies only to civil marriage, is purely secular, and has no bearing on the requirements or tenets of religious marriage or religious faith; and

Whereas, It is the position of the Council of the City of New York that the decision by Judge Ling-Cohan is well-reasoned, clear, fair, founded on sound principles of law, and unlikely to result in any confusion, disturbance of the peace, or disruption of government business or service; and

Whereas, The appeal filed by the City Law Department at the Mayor's behest is not merely technical or legal, but aggressive in its opposition to same-sex civil marriage, and depends on discredited arguments recycled from the defense of anti-miscegenation laws; now therefore, be it

Resolved, That the Council of the City of New York urges Mayor Michael Bloomberg to instruct the City Law Department to withdraw the appeal of Judge Ling-Cohan's decision in the case of *Hernandez v. Robles*; and be it further

Resolved, That the Mayor instruct the Clerk of the City of New York to comply with the sum and substance of Judge Ling-Cohan's decision by issuing a civil marriage license to any and every same-sex couple that is otherwise qualified to receive such license.

DS
LS#2428