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NEWS

Split Decision from Elected Officials

New York politicians suddenly face demand for same-sex marriage licenses

By DUNCAN OSBORNE

The 200 people who gathered at the Lesbian, Gay, Bisexual and Transgender (LGBT) Community Center on February 24 to respond to the announcement by President George W. Bush that he would back an amendment to the U.S. Constitution to ban gay marriage cheered, applauded and stomped their feet for two minutes when Rabbi Sharon Kleinbaum said, “We call on the City Council, we call on the speaker of the City Council, we call on the mayor—issue marriage licenses today.”



No other speaker or statement drew that sort of sustained support during the hour-long press conference. But if a segment of the community has made it clear that they want marriage licenses from their local government, it is not at all clear how their elected officials are going to respond.

“It’s the mayor who has the power,” said City Councilmember Christine Quinn, a Chelsea Democrat and one of three openly gay or lesbian Councilmembers. “I think the mayor should instruct the City Clerk to follow the city human rights law... I don’t think [the City Council] has the power to just do it.”

The clerk is appointed by the Council to a six-year term. That office issues marriage licenses as well as being the city’s and the Council’s recordkeeper.

In an interview with Gay City News last week, Michael McSweeney, the first deputy city clerk, said that office may only give licenses to couples made up of one man and one woman, but if it were instructed by the mayor or the Council to issue licenses to same-sex couples “we’d have to consider it. We have to follow direction from the mayor or the Council. So far, there hasn’t been any direction either way.”

McSweeney cited city rules and a 1996 state court decision upholding the denial of a marriage license to a same sex couple as the legal authority. Even with an instruction from the mayor, the Council, or both, the city clerk still might not issue licenses to same sex couples.

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“The city clerk basically has to follow the law,” McSweeney said.

Mayor Michael R. Bloomberg does not believe he can order the city clerk to give licenses to same sex couples.

“That would be illegal and it would be subverting the law to make a political point,” said Ed Skyler, spokesperson for the Republican mayor. “If the state legislature changes the law, and the governor signs it, recognizing gay marriages, the mayor and the city clerk will enforce that law... We’re not going to decide on our own what the law should be. That’s up to the state.”

But to make things clear as mud, Lawrence Moss, an attorney and a member of the New York State Democratic Committee, said that state law already allows gay and lesbian couples to wed.

“There is a basis to proceed in New York City, indeed, a much stronger basis than there is in San Francisco,” Moss said.

San Francisco Mayor Gavin Newsom cited the equal protection and non-discrimination clauses of California’s state constitution to support his decision to allow same sex marriages in that city.

Moss published an editorial in the February 16 Daily News arguing that New York state marriage law “does not restrict marriage licenses to persons of the opposite sex.” Two reports from the city bar association have reached the same conclusion, according to Moss.

“Since I published my article, no one has come back and said ‘This cannot be done,’” Moss said.

So should gay and lesbian couples march down to the city clerk’s office and demand marriage licenses?

“Absolutely,” said Thomas K. Duane, the openly gay state senator. “It’s happening in San Francisco, the mayor of Chicago says he supports marriage for same sex couples, the same should be happening in New York. We’re home to probably the largest LGBT community in America and civil marriage has arrived.”

There is, of course, the specter of a backlash should the queer community press ahead on too many fronts. Massachusetts Rep. Barney Frank has called the events in San Francisco a “diversion” and the openly gay Democrat has warned that those weddings add support to the effort to amend the U.S. Constitution.

For Duane, civil marriage will be a reality in Massachusetts come May. The battle is no longer about winning marriage, but keeping it and the opponents are in the fight to the end, he said.

“The opposition is going to do what the opposition is going to do,” he said. “We cannot hold back because of fear over what the anti-civil marriage forces are going to do anyway.”

Margarita Lopez, an out lesbian who represents parts of lower Manhattan in the City Council, agreed that queer couples should go for licenses.

“To me this issue comes down simply and only to gay people pay their taxes and therefore the constitution protects our right to get married,” she said. “I believe that we are entitled to all the civil rights that are granted to a person in a relationship with any other person... I believe that nobody has the right to deny that to us.”

Other openly gay or lesbian elected officials urged caution. Given the 1996 case, Assemblymember Deborah Glick said that marching into the city clerk’s office and asking for licenses might not be useful.

“I believe there are folks who tested that some years ago to no avail,” the Manhattan Democrat said. “I would say it’s not accurate that people can actually obtain marriage licenses... Those who have tested it previously were not successful.”

This is the time for the community to be thinking about the best next step, she argued.

“I would just like the community to be looking and thinking strategically,” Glick said.

Ultimately, that next step might be testing the clerk’s resolve.

“I don’t subscribe to the Barney Frank view that this is a terrible thing,” Glick said. “I do think you have to find creative ways of pushing the envelope.”

Similarly, Assemblymember Daniel O’Donnell said that the community should be talking with gay legal and political groups about how to obtain marriage rights.

“This is the age old issue how to get from here to there,” the Upper West Side Democrat said. “I’m not saying follow their instructions. I think the community should enter into constructive dialogue with them to determine what is the best path.”

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