

Petitioner,

- against -

**Decision & Judgment
Index No.: 04-0642**

JASON WEST, in his official capacity
as Mayor of the Village of New Paltz,

Respondent.

Supreme Court, Ulster County
RJI# 55-04-00322
Motion Term

Present: E. Michael Kavanagh, JSC

Appearances:

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Kavanagh, J

Petitioner, a resident of the Village of New Paltz and a member of its Board of Trustees, has commenced this CPLR article 78 proceeding by order to show cause to enjoin respondent, the Mayor of New Paltz, from performing marriage ceremonies for couples who have not been issued a valid marriage license by the State of New York.¹

¹A temporary restraining order is presently in effect which bans the Mayor from performing any such ceremony without a license until a decision on this matter has been rendered by the Court.

On February 27, 2004, the Mayor conducted numerous marriage ceremonies of same sex couples after the couples had requested and had been denied a license to marry by the Town Clerk. The Mayor prepared his own forms for the couples to complete and later issued his own “marriage certificate” that purported to provide legal recognition of the marital status of the couples involved.²

It should also be noted that a couple who planned to be married by Mayor West moved to intervene in this proceeding because they claim they would be permanently injured if the relief requested in the petition was granted. For reasons that follow it is the finding of this Court that the interveners are not proper respondents and the application to intervene is denied.

The parties to this proceeding have very different views as to what issues have been raised by the petition. Petitioner argues that all he seeks is an order directing the Mayor to comply with all of the relevant provisions of the Domestic Relations Law when he performs a marriage. Petitioner has not asked that the marriages already solemnized by the Mayor without a license be declared invalid nor does he seek a ruling by this Court as to the propriety of any decision made by the Town Clerk in refusing to issue a marriage license to couples because of their sex.

Respondent has a broader view of what is involved and argues that to address what is requested by the petition, this Court must of necessity pass on the question as to whether it is constitutional in New York to prohibit persons of the same sex from entering into a valid marital relationship.

²The Mayor has since been arrested and charged with violation of Domestic Relations Law § 17 which makes it a crime for an authorized person to perform a marriage without a license.

Without a doubt the decision to refuse to issue a marriage license to individuals because of their sexual preference may well have constitutional implications and as the Mayor insists, may violate those constitutional provisions that guarantee to all equal protection of the laws.³ However, the decision to issue a marriage license in this State is not one for the Mayor to make; that duty by State law belongs to the Town Clerk. It is for the clerk to decide, not the Mayor, whether an applicant has satisfied the licensing provisions of the Domestic Relations Law. If so, a license should be issued; if not the application must be denied. Here the Town Clerk decided that same-sex couples cannot be issued a marriage license in New York, an opinion shared by the Attorney-General (NYS Attorney General, Informal Opinion Number 2004-1, dated March 3, 2004, by Caitlin Halligan, Solicitor General) and refused to issue a license. That decision is not before this Court and is not the issue raised by the petition.

Instead the issue to be decided in this matter is not who the Mayor sought to marry; it is whether the Mayor in clear violation of the Domestic Relations Law may legally marry a couple without a license duly issued by the Town Clerk. Or put another way, may the Mayor substitute his judgment for that of the State Legislature in deciding what should be required for two adults to enter into a binding marital relationship in this State.

The Mayor contends that he has not only the right but the obligation to disobey a law which he believes is unconstitutional and characterizes his decision to perform these ceremonies without a license as an act of civil disobedience. The impact of such a

³ In fact there are various other pending cases in this State which directly challenge the determination of Town/Village Clerks to deny marriage licenses. Those cases, unlike the one herein, speak specifically to the constitutionality of any law which discriminates in the issuances of marriage licenses.

position, that an elected official may willfully violate a law anytime he or she believes it is unconstitutional, has profound and unsettling implications. This view, if accepted, would mean that the Mayor is a law unto himself and would in certain circumstances have power that is simply incompatible with a democratic form of government based on the rule of law.

The decision regarding who may marry in New York must in the first instance be made by our elected representatives in the State Legislature. Obviously, the wisdom of that decision is to be tested and may well result in a change either through legislative enactment or interpretation by a court of competent jurisdiction. Until that time, the Mayor by his office is obligated to comply with the law and abide by it.⁴ A public officer may not question the constitutionality of a statute and refuse to comply with its provisions (20 NY Jur 2d § 53). Indeed, the Mayor, as a town official, cannot challenge the constitutionality of a statute relating to his governmental powers and duties (City of

⁴Indeed, it is without doubt that this question, and the question of whether the laws of New York State can constitutionally prevent same-sex couples from solemnizing their relationships through the sanctity of marriage will be decided by the Legislature and ultimately the Courts. It is not unworthy of mention that on Monday, May 17th, 2004, the same day this Court heard argument on this petition, Clerks in Massachusetts began issuing licenses to same-sex couples as a result of court challenges. Certainly, the ultimate decision of this Court does not in any way discredit the reasonableness of respondent's constitutional arguments. In fact, it is this Court's opinion that the constitutional concerns that arise from the issues regarding same-sex marriages are significant. Nevertheless, such a question will be resolved when the appropriate challenge is brought.

New York v State of New York, 86 NY2d 286).⁵

As a result of the limited nature of the issues presented in this proceeding,⁶ the proposed interveners are not proper respondents and therefore their application to intervene is hereby denied.

For the reasons set forth above, it is hereby

ORDERED AND ADJUDGED that the petition is granted, and a permanent injunction is hereby issued stopping Mayor West from solemnizing marriages without a duly issued marriage license by a city or town clerk.

This constitutes the Decision and Judgment of this Court. All papers are being returned to petitioner's counsel. The signing of this Decision and Judgment shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the provisions of that rule regarding entry, filing and notice of entry.

SO ORDERED & ADJUDGED!

E. Michael Kavanagh, JSC

⁵ Nor does the Court agree that the Mayor's challenge falls within any of the four exceptions that allows for officials to raise constitutional challenges, which are 1) an express statutory authorization to bring such a suit; 2) where the State legislation adversely affects a municipality's proprietary interest in a specific fund of moneys; 3) where the State statute impinges upon 'Home Rule' powers of a municipality constitutionally guaranteed under article IX of the State Constitution; and 4) where the municipal challengers assert that if they are obliged to comply with the State statute they will by that very compliance be forced to violate a constitutional proscription" (City of New York v State of New York, 86 NY2d 286, 290).

⁶As a result of the Court not reaching the issue of constitutionality of the affected state laws, the Court has not required, nor has respondent provided, notice to the Attorney General under Executive Law § 71.

Dated: June , 2004
Kingston, New York

Papers Considered:

Order to show cause; Verified Petition

Affidavit in opposition to motion for temporary restraining order

Verified answer; Memorandum of Law in support of verified answer

Notice of contingent motion to intervene

Memorandum of Law in opposition to motion to intervene

Reply memorandum of law in support of motion for permission to intervene

Memorandum of law in further support of petition