

State of New York
Supreme Court, Appellate Division
Third Judicial Department

REC'D FEB 23 2006

Decided and Entered: February 16, 2006

98151

In the Matter of ELISSA
KANE et al.,

Appellants,

v

MEMORANDUM AND ORDER

JOHN MARSOLAIS, as Albany City
Clerk, et al.,

Respondents.

Calendar Date: October 17, 2005

Before: Cardona, P.J., Mercure, Carpinello, Mugglin and
Lahtinen, JJ.

Kindlon & Shanks, P.C., Albany (Terence L. Kindlon of
counsel), for appellants.

Kevin M. Grossman, Corporation Counsel, Albany, for John
Marsolais, respondent.

Eliot Spitzer, Attorney General, Albany (Peter H. Schiff of
counsel), for New York State Department of Health, respondent.

Lahtinen, J.

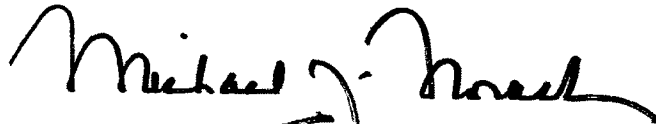
Appeal from a judgment of the Supreme Court (Kavanagh, J.),
entered February 3, 2005 in Albany County, which dismissed
petitioners' application, in a combined proceeding pursuant to
CPLR article 78 and action for declaratory judgment, to review a
determination of respondent Albany City Clerk denying their
requests for marriage licenses.

Petitioners, same-sex couples, commenced this combined CPLR article 78 proceeding and action for declaratory judgment seeking, among other things, a declaration that the refusal of respondent Albany City Clerk to issue them marriage licenses violated their due process and equal protection rights under the NY Constitution. Supreme Court dismissed the proceeding/action, finding the challenged section of the Domestic Relations Law constitutional. We affirm for the reasons stated in Samuels v New York State Dept. of Health (___ AD3d ___ [decided herewith]).

Cardona, P.J., Mercure, Carpinello and Mugglin, JJ.,
concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive, flowing style.

Michael J. Novack
Clerk of the Court