

# Dave's shotgun weddings

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Gov. Paterson moved too far, too fast in ordering state agencies to recognize gay marriages performed in other jurisdictions as legally valid in New York.

Paterson's directive, if carried out, would all but legalize gay marriage in the state. Built on a badly reasoned midlevel court decision, it's an end-run around the Legislature, the proper forum for deciding a legal and cultural change of this magnitude.

Not that there's anything wrong with gay unions. Same-sex couples - many thousands of whom are, in fact, living as families and raising children - should be allowed to enter civil unions with rights and privileges equivalent to marriage.

But that's not Paterson's call to make unilaterally. Nor should it be left up to activist judges. For better or worse, this is a job for the Assembly and Senate.

A supporter of gay marriage, Paterson seized on a decision rendered in February by an upstate Appellate Division panel. The judges found that Monroe County must provide health benefits to the spouse of a lesbian employee who was married in Canada.

The rationale was that, under long-standing practice, New York recognizes marriages from other states and countries unless the Legislature has banned specific types of unions. For example, weddings between minors.

But to apply that principle to gay marriage flies in the face of common sense. First, the Legislature had no reason to ban out-of-state same-sex marriages because they didn't exist anywhere until a few years ago. Second, the Court of Appeals, the state's highest, ruled in 2006 that the Legislature had, in fact, limited marriage to a bond between a man and a woman.

Even worse, the Appellate Division declared that Monroe County, which *is* providing benefits now, could be sued for damages for the years in which those benefits were denied. This potentially exposes taxpayers to huge liability for the good-faith decisions of government officials.

Taken as a whole, the decision was a brazen repudiation of the wisdom shown by the Court of Appeals in the 2006 ruling that placed responsibility with the Legislature for saying yes or no to gay marriage.

And Paterson was wrong in saying the Court of Appeals had dismissed the Monroe case. In fact, the high court turned it away only because the matter wasn't ripe yet for a hearing. But it soon will be.

It is a shaky legal foundation on which Paterson has directed officials to reinterpret an estimated 1,300 laws and regulations involving marriage rights - ranging from who is allowed to adopt children to who is allowed to share a fishing license.

He is jumping the gun. Our bet is that the high court will overturn the Appellate Division by applying the same reasoning it did before: The job belongs not to the courts and not to Paterson, but to the Legislature.

The right thing to do is to pass a civil-unions law. And only lawmakers can make that happen.

## Now hear this

Heavens to Betsy, how Capitol Hill Democrats keep promising legislation so the U.S. can monitor phone conversations of terror suspects in foreign countries.

They said they'd get the job done by Memorial Day, but the deadline came and went without action on the most crucial issue before Congress.

But, hey, who cares about that?

The Democrats have to start because very soon U.S. national security operatives, whose mission it is to sniff out suspicious communications among suspicious individuals abroad, will run out of authority to keep on doing that.

An overhauled Foreign Intelligence Surveillance Act must go into the books this summer. It's hardly fear-mongering to posit that American lives may very well depend on this.

U.S. Attorney General Michael Mukasey, who visited the Daily News Editorial Board the other day, appraises the threat soberly.

"The only weapon we've got is intelligence," he says.

The Senate, by a wide bipartisan majority, has passed a measure that has the blessings of intelligence professionals and provides for reasonable court oversight of how the government intercepts communications.

But, absurdly, House Dems are wrangling over the government's power to listen to chatter abroad - not the power to eavesdrop on calls between Americans on U.S. soil. That type of wiretap has always needed a specific warrant and would continue to need one.

The Dems also refuse to give telecom companies immunity from suits filed against them for cooperating with U.S. intel in the days after 9/11, when the government was frantically trying to prevent another attack.

The Senate recognized that the companies should not be punished for complying with U.S. surveillance requests. Nor should the country risk having spy methods exposed in court to every Tom, Dick and Osama.

For the moment, those who grieve that terrorists can't plot to blow up cities without getting eavesdropped on by jackbooted agents of rogue Amerika are carrying the day.

House Republicans have made all the compromises they're going to make - offering, at this point, to turn the immunity issue over to the FISA courts to decide. But that still isn't good enough for the Democratic leadership.

Meanwhile, the clock ticks. And the bad guys plot.

Isn't anybody listening?