NEW YORK LAW SCHOOL

NYLS Law Review
Vols. 22-63 (1976-2019)

Volume 48 | Issue 4 Article 11

January 2004

Langan v. St. Vincent's Hospital

Emily Stein
New York Law School

LANGAN V. ST. VINCENT'S HOSPITAL

(decided April 10, 2003)

EMILY STEIN*

In 2000, the Vermont Legislature enacted a statute—the first of its kind—that established same sex civil unions and afforded the unions the same benefits as marriage.[1] Thereafter, many gay and lesbian couples traveled to Vermont to obtain the greatest form of legal protection available for their love and commitment. However, it remains unclear to what extent, if any, their states of domicile will recognize their union.[2] New York recently confronted this issue in the context of a wrongful death action, specifically, whether a

---

* J.D. candidate New York Law School, 2005.

1. VT. STAT. ANN. Tit. 15, § 1204 (2003). Section 1204 states, in relevant part:
Benefits, protections and responsibilities of parties to a civil union
(a) Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, policy, common law or any other source of civil law, as are granted to spouses in a marriage.

2. Relatively few states have addressed this question. The Georgia Court of Appeals refused to equate a Vermont civil union with marriage and upheld the trial court's finding that appellant/wife had violated a consent order that prohibited child visitation while she was living with an unrelated adult to whom she was not married—appellant and her partner were living together after obtaining a Vermont civil union. Burns v. Burns, 560 S.E.2d 47 (Ga. Ct. App. 2002). In Texas, partners to a civil union sought dissolution of their union. A Texas district judge granted their petition, but subsequently vacated the order at the behest of the Attorney General. *Civil Litigation Notes: Texas,* LESBIAN/GAY LAW NOTES, May, 2003, available at http://www.qrd.org/qrd/usa/legal/lgln/05.03. Connecticut was also called upon to dissolve a civil union. The trial court dismissed the petition on the grounds that it lacked subject matter jurisdiction and the appellate court affirmed. Rosengarten v. Downes, 802 A.2d 170, (Conn. App. Ct. 2002), *cert. granted* 806 A.2d 1066 (2002) (limiting the issue on appeal to whether "[t]he Appellate Court properly conclude[d] that the trial court had no subject matter jurisdiction to dissolve a civil union entered into pursuant to the laws of Vermont"). The *Rosengarten* court, as in *Burns,* refused to equate a civil union with marriage and found that a civil union is not included within the meaning of "family relations matter" as defined under Connecticut General Statutes § 46b-1. *Id.* West Virginia, however, ordered dissolution of a civil union in *In re* The Marriage of Misty Gorman, which "[m]ay be the first instance in which a court outside Vermont has recognized a same-sex union created in Vermont." Fred A. Bernstein, *The First Lesbian Divorce?,* LESBIAN/GAY LAW NOTES, May, 2003, at http://www.qrd.org/qrd/usa/legal/lgln/05.03.

"spouse" in a Vermont civil union can be considered a "spouse" under New York law.[3] Based on the established common law doctrine of comity, the court concluded that not only did the plaintiff, Langan, have standing to bring suit, but that to find otherwise would violate equal protection.[4] Significantly, the court utilized aspects of functionalism, an approach to statutory interpretation that can be effective in achieving legal recognition of same sex relationships, but that is criticized by strict constructionists as judicial policy making.[5] Here, however, principles of comity enabled the court to

---

3. Langan v. St. Vincent's Hospital, 765 N.Y.S.2d 411 (Sup. Ct. 2003).

4. *Id.* at 420.

5. Functionalism focuses upon the "[f]unctions served by the relationship at issue . . ." as opposed to formalism which adheres to traditionally accepted meanings or "formal legal definition[s]." Note, *Looking for a Family Resemblance: The Limits of the Functional Approach to the Legal Definition of Family,* 104 HARV. L. REV. 1640, 1644 (1991). The dichotomy between formalism and functionalism reflects one aspect of a larger debate among legal scholars regarding the appropriate role of the judiciary in interpreting statutes. Specifically, the principles of separation of powers and legislative supremacy raise serious questions as to the extent to which courts should be limited when interpreting statutes. Carlos E. Gonzalez, *Reinterpreting Statutory Interpretation,* 74 N.C.L. Rev. 585, 590 (1996) (examining "[b]oth the institutional premises underlying different approaches to statutory interpretation and the institutional role of the federal courts"). Originalists strive to remain faithful to the legislative intent at the time the statute was enacted and employ a formalistic approach to interpretation whereby the "plain meaning" of the text is paramount. *See, e.g.,* Lamie v. United States Tr., 2004 LEXIS 824, 16 (2004) ("It is well established that "when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.""); Martin H. Redish and Theodore T. Chung, *Democratic Theory and Legislative Process: Mourning the Death of Originalism in Statutory Interpretation,* 68 TUL. L. REV. 803, 812 (1994) ("[t]he fundamental objective of originalist statutory interpretation is to give effect to the wishes of the enacting legislature."). Where the text is ambiguous, the examination of legislative history is resorted to in order to discern the intent or purpose behind the statute. Difficulties arise where legislative intent fails to definitively resolve the issue. Burt Neuborne, *Formalism, Functionalism, and the Separation of Powers,* 22 HARV. J.L. & PUB. POL'Y 45, 46 (1998) ("At some point, formalism and functionalism become metaphors for the traditional problem that we have in distinguishing between easy cases and hard ones."). The precise nature of legislative intent is often difficult to define and the extent to which legislative intent should be relied upon is debatable. *See, e.g.,* M.B.W. Sinclair, *Legislative Intent: Fact or Fabrication? Dynamic Statutory Interpretation by Willaim N. Eskridge,* 41 N.Y.L. SCH. L. REV. 1329, 1386 (1997) (asserting that although legislative history may be difficult to discern in some cases, it, nevertheless, remains an important interpretive tool); William N. Eskridge, Jr., *The New Textualism,* 37 UCLA L. REV. 621 (1990) (describing approach advocated by Justice Scalia in which plain meaning of statutory text renders an examination of legislative history irrelevant). In difficult cases, courts often resort to functionalism which is considered to be an aspect of "dynamic statutory interpretation." Heidi A.

effectively incorporate valuable aspects of functionalism in its analysis while, at the same time, adhere to precedent and established methods of statutory interpretation.

In May, 2000, John Langan and Neil Conrad Spicehandler, residents of New York, traveled to Vermont to be joined in a civil union. Langan and Spicehandler were involved in a committed relationship for over fifteen years, during which time they lived together and were "as inseparable as any married couple could possibly be."[6] Both were the sole beneficiaries and legatees of each others' life insurance policies and wills, respectively.[7] They planned on adopting children and had recently bought a house when Spicehandler was struck by an automobile in Manhattan.[8] He was taken to St. Vincent's Hospital with a broken leg where he died from an "embolus of 'unknown origin.'"[9]

Langan subsequently brought a wrongful death action against the hospital as Spicehandler's surviving spouse.[10] St. Vincent's moved to dismiss the complaint on the grounds that Langan could not be considered a spouse under the New York Estates, Powers and Trusts Law ("EPTL") and thus lacked standing to bring suit.[11] Langan opposed defendant's motion to dismiss and moved for partial

---

Sorenson, Note, *A New Gay Rights Agenda? Dynamic Statutory Interpretation and Sexual Orientation Discrimination,* 81 GEO. L. J. 2105, 2120 (1993) (characterizing *Braschi v. Stahl Assoc. Co.,* 543 N.E.2d 49 (N.Y. 1989), in which the New York Court of Appeals employed a functional definition of the term "family," as "[a] classic case of dynamic statutory interpretation"). Supporters of dynamic statutory interpretation propose that courts assume an activist role in order to respond to social change. *See, e.g., id.* at 2105 (arguing that dynamic statutory interpretation is an effective and necessary means of achieving legal equality for gays and lesbians); *see, e.g.,* Daniel A. Farber, *Statutory Interpretation and Legislative Supremacy,* 78 GEO. L. J. 281, 317 (1989) (suggesting that the principle of legislative supremacy "[d]oes not prevent courts from going beyond (as opposed to going 'against') even clear statutory language and legislative intent," and in cases of ambiguity, "[a]llows a court to consider any additional factors it deems appropriate, including its own view of public policy."); *see, e.g.,* Guido Calabresi, A COMMON LAW FOR THE AGE OF STATUTES (1982) (arguing judges should be able to "update" anachronistic statutes in the same manner as they update the common law).

6. *Langan,* 765 N.Y.S.2d at 413.

7. *Id.* at 412.

8. *Id.*

9. *Id.*

10. *Id.* at 411.

11. *Langan,* 765 N.Y.S.2d at 411. Under section 5-4.1 of the New York Estates, Powers and Trusts Law (N.Y. EPTL), "distributees" of the decedent qualify to bring a wrongful death action. N.Y. EST. POWERS & TRUSTS LAW §5-4.1 (McKinney 2003). Sec-

summary judgment on the grounds that principles of comity required New York State to recognize his status as a surviving spouse under the Vermont civil union.[12] The Supreme Court, Nassau County, denied defendant's motion to dismiss and held that Langan has standing to bring a wrongful death action as the spouse of Spicehandler.[13]

The court first looked to the current state of the law in New York regarding legal recognition of same sex partners and acknowledged that same sex partners are precluded from bringing a wrongful death action under the holding of *Raum v. Restaurant Assoc.*[14] In *Raum*, the First Department refused to find that plaintiff, the life partner of the deceased, maintained standing as a spouse to bring a wrongful death action.[15] The Second Department addressed a similar issue in *In re Estate of Cooper*[16] and declined to allow the surviving partner of a homosexual relationship the right of election against the decedent's will under § 5-1.1 of the EPTL.[17] At the time *Raum* and *Cooper* were decided Vermont had not yet enacted the civil union statute. Thus, the court distinguished *Raum* and *Cooper* on grounds that when these cases were decided there was "[n]o state sanctioned union equivalent to marriage."[18] Hence, the Ver-

---

tion 4-1.1(a) governing descent and distribution of decedent's estate includes "spouse" within the meaning of distributees.

12. *Id.*

13. *Id.*

14. 675 N.Y.S.2d 343 (N.Y. App. Div. 1998), *appeal dismissed,* 704 N.E.2d 229 (N.Y. 1998).

15. *Id.*

16. 592 N.Y.S.2d 797.

17. *Id.* Section 5-1.1 governing the right of election does not define the term "surviving spouse." However, section 5-1.2 applies to both sections 5-1.1 and 4-1.1 and thus, became the focus of both the *Langan* and *Cooper* courts' analysis.

18. *Langan*, 765 N.Y.S.2d at 413. Langan argued that *Raum* and *Cooper* are factually dissimilar in other regards as well. Memorandum of Law of Plaintiff John Langan in Opposition to Defendant St. Vincent's Motion for Partial Dismissal and in Support of Plaintiff's Cross-Motion for Partial Summary Judgment [hereinafter Plaintiff's Memo.], Langon v. St. Vincent's Hospital, 765 N.Y.S.2d 422 (Sup. Ct. 2003), p. 28 ("There is no indication that the couples in either case [*Raum* and *Cooper*] had entered into any kind of formal legal union, whether by registering as domestic partners or otherwise."). Moreover, in *Cooper,* plaintiff was attempting "[t]o *defeat* the specific written instructions of an otherwise uncontested will." Reply Memorandum of Law of Plaintiff John Langan in Support of his Cross-Motion for Partial Summary Judgment [hereinafter Plaintiff's Reply], Langon v. St. Vincent's Hospital, 765 N.Y.S.2d 422 (Sup. Ct. 2003); *Raum,* 675 N.Y.S.2d at 346 ("It makes sense to construe the intestacy statute's definition of "surviv-

mont civil union statute and principles of comity provided the court an opportunity to re-evaluate Langan's legal standing where the issue arose once again in the New York courts.

Under the common law doctrine of comity, a state's courts will recognize judgments and laws of other states, including marriages validly celebrated elsewhere.[19] It is irrelevant whether a foreign marriage is permitted under New York law. New York extends principles of comity to common law marriages created in other states[20] even though they may not be established in New York.[21] Moreover, a partner in a common law marriage from a sister state is deemed to be a "spouse" under the EPTL for purposes of a wrongful death action.[22] However, a state may refuse to extend recognition if the union violates the state's public policy.[23] Thus, to establish whether

---

ing spouse" narrowly when the opposing parties are innocent heirs, and broadly when they are tortfeasors.") (Rosenberger, J., dissenting). However, the court's opinion in *Langan* focused solely upon the Vermont civil union to distinguish *Raum* and *Cooper*.

19. Crair v. Brookdale Hosp. Med. Ctr., 728 N.E.2d 974 (N.Y. 2000). The Court of Appeals described comity as:

> one State's entirely voluntary decision to defer to the policy of another . . . [and] may be perceived as promoting uniformity of decision, as encouraging harmony among participants in a system of co-operative federalism, or as merely an expression of hope for reciprocal advantage in some future case in which the interests of the forum are more critical. . .

Id. at 977, *citing* Ehrlich-Bober & Co. v. Univ. of Houston, 404 N.E.2d 726, 730 (N.Y. 1980).

20. Black v. Moody, 714 N.Y.S.2d 30, 31 (App. Div. 2000) ("While a common-law marriage may not arise in New York, New York does accord recognition to common-law marriages validly contracted in other sister States."). Mott v. Duncan, 414 N.E.2d 657, 658 (N.Y. 1980) ("A common-law marriage contracted in a sister state will be recognized here if it is valid where contracted. The law to be applied in determining the validity of such an out-of-State marriage is the law of the State in which the marriage occurred."); *Langan*, 765 N.Y.S.2d at 414, *citing* Shea v. Shea, 52 N.Y.S.2d 756, 763 (App. Div. 1945) ("[m]arriage contracts, valid where made, are valid everywhere") (Johnson, J., dissenting), *rev'd*, 63 N.E.2d 113 (N.Y. 1945).

21. N.Y. DOM. REL. LAW § 11 (McKinney 2003) ("No marriage shall be valid unless solemnized by either").

22. *Black*, 714 N.Y.S.2d at 30 (upholding trial court's denial of defendant's motion for summary judgment on grounds that issue of fact existed as to whether plaintiff was common law partner of deceased and thus maintained standing as distributee to bring wrongful death action).

23. *Langan*, 765 N.Y.S.2d at 414 *citing Shea*, 52 N.Y.S.2d 756; *Crair*, 728 N.E.2d at 977 ("[T]he determination of whether effect is to be given foreign legislation is made by comparing it to our own public policy; and our policy prevails in case of conflict."). To determine whether the public policy exception was applicable, the Court of Appeals in *Crair* looked to statutes, 728 N.E.2d at 978, and judicial determinations, 728 N.E.2d

a Vermont civil union should be recognized in New York under the doctrine of comity, the court engaged in a two fold analysis to determine whether a civil union is analogous to marriage or common-law marriage and whether recognition of a same sex union would violate New York's public policy.

To determine whether New York's public policy precludes recognition of a same sex union, the court surveyed New York law. The court noted that New York permits second parent adoption for same sex couples.[24] Moreover, New York State has not enacted a "mini DOMA" or a state equivalent of the federal Defense of Marriage Act ("DOMA") which defines marriage as between a man and a woman and permits states to refuse to recognize same sex marriages.[25] Noting that the foregoing is not "[e]xhaustive as to the rights of gays and lesbians under New York law . . .," the court found that these statutes lend support for its conclusion that recognition of a same sex civil union would not violate New York's public policy.[26]

The court looked to the legislative history and text of the Vermont civil union statute to determine whether it warranted the same legal recognition that accompanies marriage and common law marriage established in other states. The court found that the Vermont legislature was compelled by the Vermont Supreme Court

---

at 978. The public policy exception in New York applies to incestuous and polygamous marriages. *Langan*, 765 N.Y.S.2d at 414 *citing Shea*, 63 N.E.2d 756.

24. *Langan*, 765 N.Y.S.2d at 416 *citing In Re* Jacob, 660 N.E.2d. 397 (N.Y. 1995) (The *Jacob* Court "reject[ed] a literal reading of the statute [Domestic Relations Law § 110] that would have forced the biological parent to relinquish parental rights.")

25. *Id.* at 11-12; *see* 1 U.S.C. § 7 (restricting the meaning of the terms "marriage" and "spouse" to apply only to opposite sex couples). In addition to 1 U.S.C. § 7, the federal DOMA also includes 28 U.S.C. § 1738C which provides that "No state . . . shall be required to give effect to any public act, record, or judicial proceeding of any other State . . . respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State . . . ." In fact, the court questioned the constitutionality of the federal DOMA, remarking, "It is unclear by what authority the Congress may suspend or limit the full faith and credit clause of the Constitution . . . ." *Langan*, 765 N.Y.S.2d at 415.

26. *Langan*, 765 N.Y.S.2d at 416. The court also referred to the fact that the State and the City of New York provide employment benefits to same-sex domestic partners, *id.* at 415 (citing Slattery v. City of New York, 697 N.Y.S.2d 603, *appeal dismissed*, 727 N.E.2d 1253 (N.Y. 2000)), and New York City Administrative Code § 3-244, and that New York State prohibits discrimination on the basis of sexual orientation, *id.* at 416 (citing Civil Rights Law § 40-c and Executive Law § 291).

to enact the civil union statute in order to conform to Vermont's constitution.[27] In *Baker v. State*, the Vermont Supreme Court found that to deny homosexual couples the right to marry precluded them from receiving the same benefits as heterosexual married couples, thereby violating the common benefits clause of the state constitution.[28] To highlight the humanitarian and egalitarian impetus behind the statute, the court quoted a lengthy passage from *Baker*, which states, in part: "The extension of the Common Benefits Clause to acknowledge plaintiffs as Vermonters who seek nothing more, nor less, than legal protection and security for their avowed commitment to an intimate and lasting human relationship is simply, when all is said and done, a recognition of our common humanity."[29]

Having clarified the purpose behind the Vermont civil union statute, the court examined the statute itself and found that it "[i]s subject to legislative control, [and] conforms in all respects to the requirements for a marriage."[30] Although the legislature withheld the label "marriage," partners in a civil union "may receive the benefits and protections and be subject to the responsibilities of spouses."[31] The Vermont Legislature deemed that "[a] party to a

27. *Langan*, 765 N.Y.S.2d at 416 *citing* Baker v. State, 744 A.2d. 864 (Vt. 1999).

28. 744 A.2d. at 874 *citing* VT. CONST. ch. I, art. VI. n.6 (1777).

29. *Langan*, 765 N.Y.S.2d at 416, *quoting Baker*, 744 A.2d. at 889.

30. *Id.* at 417.

31. Vt. Stat. Ann. § 1211(2) (2003). In withholding the label "marriage," the Vermont legislature was responding to public divisiveness as to whether homosexuality can exist within the religious institution of marriage. Legislative Findings 1999, No. 91 (Adj. Sess.), § 1, eff. April 26, 2000, provides, in relevant part:

> The General Assembly finds that:
>
> . . .
>
> (10) . . . Changes in the way significant legal relationships are established under the constitution should be approached carefully, combining respect for the community and cultural institutions most affected with a commitment to the constitutional rights involved. Granting benefits and protections to same-sex couples through a system of civil unions will provide due respect for tradition and long-standing social institutions . . .
>
> (11) The constitutional principle of equality embodied in the Common Benefits Clause is compatible with the freedom of religious belief and worship guaranteed in Chapter I, Article 3rd of the state constitution. Extending the benefits and protections of marriage to same-sex couples through a system of civil unions preserves the fundamental constitutional right of each of the multitude of religious faiths in Vermont to choose freely and without state interference to whom to grant the religious status,

civil union shall be included in any definition or use of the terms 'spouse,' 'family,' . . . and other terms that denote the spousal relationship, as those terms are used throughout the law."[32] Furthermore, partners to a civil union maintain standing to bring a wrongful death action in Vermont.[33] Hence, the ultimate question became one of statutory interpretation, specifically, whether Langan, a spouse under Vermont law, could also be considered a spouse under the New York EPTL.

Prior to the enactment of the Vermont civil union statute, the First Department confronted the same issue in *Raum*.[34] There the court concluded that it is "clear and preclusive" that section 5-1.2 of the EPTL defines a "surviving spouse" as "a husband or wife."[35] In declining to expand the definition to include a lifelong same sex partnership, the *Raum* court rejected the functional approach to

---

sacrament or blessing of marriage under the rules, practices or traditions of such faith.

See also, Domestic Relations - Same-Sex Couples - Vermont Creates System of Civil Unions, 114 HARV. L. REV. 1421, 1424-25 (2001) ("By keeping the marriage questions independent of the issue of material benefits and taking opposite positions on the tangible and symbolic aspects of civil unions, the legislature was able both to satisfy many gay rights supporters and to win over some undecided citizens.").

32. Vt. Stat. Ann. § 1204(b).

33. Vt. Stat. Ann. § 1204 (e)(2).

34. *Raum*, 675 N.Y.S.2d at 343.

35. *Id.* at 370. With regard to a wrongful death action, section 5-1.2 of the EPTL is the only section that purports to define the term "spouse." This section is applicable to section 4-1.1 defining distributees. Distributees qualify to bring a wrongful death action under section 5-4.1. Section 5-1.2 states, in relevant part:

> A husband or wife is a surviving spouse within the meaning, and for purposes of 4-1.1, 5-1.1, 5-1.1-A, 5-1.3, 5-3.1 and 5-4.4, unless it is established satisfactorily to the court having jurisdiction of the action or proceeding that:
>
> (1) A final decree or judgment of divorce, of annulment . . . was in effect when the deceased spouse died.
>
> (2) The marriage was void as incestuous . . . bigamous . . . or a prohibited marriage . . .
>
> (3) The spouse had procured outside of this state a final decree or judgment of divorce form the deceased spouse . . .
>
> (4) A final decree or judgment of separation . . . was in effect when the deceased spouse died.
>
> (5) The spouse abandoned the deceased spouse, and such abandonment continued until the time of death.
>
> (6) A spouse who, having the duty to support the other spouse, failed or refused to provide for such spouse . . .

N.Y. EST. POWERS & TRUSTS LAW § 5-1.2.

statutory interpretation urged by the dissent in that case.[36] The dissent advocated the functional approach espoused by the New York Court of Appeals in *Braschi v. Stahl Assoc. Co.*,[37] in which the Court broadly construed the term "family" under the rent control laws to include the deceased's life partner who lived in the same apartment for over ten years.[38] The Court looked to "[t]he totality of the relationship as evidenced by the dedication, caring and self-sacrifice of the parties . . ." and refused to find the absence of a state sanctioned marriage, unavailable to same sex couples, determinative.[39] Instead, the Court maintained that "the intended protection against sudden eviction should not rest on fictitious legal distinctions or genetic history, but instead should find its foundation in the reality of family life."[40]

However, as *Raum* illustrates, adherents to formalism reject functionalism as "[c]ontrary to standard canons of statutory construction."[41] The *Raum* court found that to grant an unmarried homosexual partner standing as a "spouse" effectively redefines the statutory provision, resulting in judicial infringement upon the legislative domain.[42] The *Langan* court acknowledged the counter-

36. *Raum*, 675 N.Y.S.2d at 345.

37. 543 N.E.2d 49 (N.Y. 1989).

38. *Id.* at 53-55.

39. *Id.* at 55.

40. *Id.* at 53.

41. *Raum*, 675 N.Y.S.2d at 344. The *Cooper* court likewise looked to a literal definition and found that plaintiff could not be considered a "spouse" based upon the "[n]atural and most obvious sense . . ." of the terms "husband" and "wife" as found in section 5-1.2 of the EPTL. *Cooper*, 592 N.Y.S.2d at 797.

42. *Raum*, 675 N.Y.S.2d at 344. The argument that the use of a functional definition in the context of applying family law to same sex partners effectively infringes on the role of the legislature in policy making is common. *See, e.g., Jacob*, 660 N.E.2d at 408-09 (Bellacosa, J. dissenting) ("The failure of the Legislature to provide for the circumstances of these two cases . . . is yet another cogent refutation of the uniquely judicial authorization of adoption, unfurled today under the twin banners of statutory interpretation and ambiguity."); Storrs v. Holcomb, 645 N.Y.S.2d 286 (Sup. Ct. 1996); Onofrio Ferlisi, Comment: *Recognizing a Fundamental Change: A Comment on Walsh, the Charter, and the Definition of Spouse*, 18 CAN J. FAM. L. 159, 166 (2001) (employing a functional definition of "family" may "[f]rustrate statutory objectives through over-inclusiveness and the over-expansion of statutory entitlements"). *But see, Braschi*, 543 N.E.2d. at 54 n.1 (noting that to accept appellee's argument that the term "family" should be restricted to those in "legally recognized relationships based on blood, marriage or adoption—may cast an even wider net, since the number of blood relations an individual has will usually exceed the number of people who would qualify by our stan-

vailing argument "[t]hat at the time the wrongful death statutes were written, the use of the term spouse did not envision inclusion of a same-sex marital partner," but accorded greater weight to the fact that perceptions of homosexuality have changed considerably over time.[43]

To underscore the shift in public attitudes and New York's amenability to same sex unions, the court cited to *Braschi,* "the first appellate decision in the United States to accord legal recognition to a same-sex couple."[44] The *Langan* court provided an example of how departure from restrictive tradition is appropriate by comparing the current status of homosexuals under the law to the plight of married women who, not long ago, were considered "[t]he property of [their] husband[s]."[45] This powerful analogy reinforces the premise that the law must conform to meet the demands of a

---

dard."); Ferlisi, *supra*, at 166 (asserting that the term "spouse" is better suited to a functional interpretation than "family" because "[a] key function of a spousal relationship is the romantic affection between spouses, the dangers of a functional approach [namely, overextending] may be somewhat less acute"). The Second Department has been wary of such judicial over-reaching and declined to extend the term "parent" to a same-sex partner who participated in planning her partner's artificial insemination and raising the child where petitioner sought visitation rights. *In re* Janis C. v. Christine T., 742 N.Y.S.2d 381, 383 (App. Div. 2002) ("Any extension of visitation rights to a same sex domestic partner . . . must come from the New York State Legislature or the Court of Appeals."); *In re* Alison D. v. Virginia M., 552 N.Y.S.2d 321, 324 (App. Div. 1990) ("Any change in this area of the law must come from the Legislature, and not the courts.").

43. *Langan*, 765 N.Y.S.2d at 421. The argument that the legislature "did not envision inclusion of a same sex marital partner" in the term "spouse," actually supports the court's interpretive methodology as opposed to detracting from it. Chief Judge Kaye of the New York Court of Appeals stated:

> Given the enormous volume of state court litigation, the unending array of novel fact patterns pushing the law to progress, and the inability of legislatures to react immediately to the many changes in society, I think it clear that common-law courts interpreting statutes and filling the gaps have no choice but to "make law" in circumstances where neither the statutory text nor the "legislative will" provides a single clear answer.

Judith S. Kaye, *State Courts at the Dawn of a New Century: Common Law Courts Reading Statutes and Constitutions,* 70 N.Y.U. L. REV. 1, 33-34 (1995) (discussing the importance of courts as "interstitial lawmakers" in the ongoing dialogue between the judiciary and the legislature in crafting state policy). Indeed, *Langan* presents exactly the type of "[n]ovel theory of a statute's applicability to a category of cases unforeseen, perhaps even unforeseeable, by the legislature," Kaye, *supra*, which "[c]all[s] upon judge[s] to fill the gaps—and to do so by reference to social justice."

44. *Langan*, 765 N.Y.S.2d at 12-13, quoting Arthur S. Leonard, *Ten Propositions about Legal Recognition of Same-Sex Partners,* 30 CAP. U. L. REV. 343, 354 (2001).

45. *Langan*, 765 N.Y.S.2d at 420.

changing society and recognizes that "[c]oncepts of marriage evolve over time . . .," not only with regard to the status of women, but, also, homosexuals.[46]

Not only did the court look to the broad realities of social change, but, also, to the specific realities of the lives of Langan and Spicehandler. The court emphasized that Langan and Spicehandler conducted their lives in every aspect as a married couple and focused upon the ways in which Langan and Spicehandler "functioned" in their relationship as traditional spouses.[47] Such a fact intensive analysis[48] is implicitly based upon the test utilized in *Braschi* in which the "totality of the relationship . . . control[s]."[49]

A functional approach to statutory construction involves looking beyond the ordinary meaning of the term itself to the ultimate aim of the statute.[50] The dissent in *Raum* asserted that "[p]recedent exists for preferring a functional over a literal interpretation of a statute whose purpose is to promote the public welfare, so that homosexual couples will not be disadvantaged by their inability to give their relationship legal status."[51] Among the precedent to which the dissent referred was the Court of Appeals' decision in *In re Jacob*,[52] an adoption case in which the court found that while "[t]he adoption statute must be strictly construed . . . [w]hat

46. *Id.*

47. *Id.* at 412-13.

48. In support of his Cross-Motion for Summary Judgment, Langan submitted his and Spicehandler's wills, health care proxies, life insurance policies, photographs, cards from family members, letters, and affidavits in which family and friends described their relationship. *See* Plaintiff's Cross-Motion for Partial Summary Judgment, Langon v. St. Vincent's Hospital, 765 N.Y.S.2d 422 (Sup. Ct. 2003), Exhibits A—T.

49. *Braschi*, 543 N.E.2d at 55. While the court quoted this aspect of the *Braschi* opinion extensively, *Langan*, 765 N.Y.S.2d at 416, it did not rely upon *Braschi* in direct support of its conclusion that Langan falls within the definition of the term "spouse," a conclusion to which *Braschi's* broad reading of the definition of "family" lends additional support. Instead, the court only referenced *Braschi* in support of its policy analysis, perhaps to purposely distance its holding from the "functional" analysis employed in *Braschi.*

50. *See, e.g.*, Braschi, 543 N.E.2d at 54 (finding a functional "[d]efinition of 'family' is consistent with both of the competing purposes of the rent-control laws: the protection of individuals from sudden dislocation and the gradual transition to a free market system"); *see, e.g., Jacob*, 660 N.E.2d at 397 (finding the purpose of the adoption statute to protect the best interests of the child).

51. *Raum*, 675 N.Y.S.2d at 344 (Rosenberger, J., dissenting).

52. 660 N.E.2d at 399.

is to be construed strictly and applied rigorously in this sensitive area of law, however, is legislative purpose as well as legislative language."[53] The *Jacob* court awarded second parent adoption rights to a same sex partner emphasizing that this result most effectively achieved the underlying purpose of the statute—to obtain "[t]he best possible home for a child."[54]

In adopting the *Jacob* court's approach, the court in *Langan* reiterated that the purpose behind the wrongful death statute is "[t]o compensate the victim's dependants, [and] to punish and deter tortfeasors . . . ."[55] Based on the fact that Langan and Spicehandler were financially interdependent and were subject to the same obligations as married couples under Vermont law, the court concluded that to grant Langan standing would conform to the purpose of the wrongful death statute to compensate decedent's immediate family.

The court then focused upon the last potential bar to granting Langan standing—the meaning of the term "spouse" within the EPTL. The court framed the question as "[w]hether the EPTL § 4-1.1 excludes spouses . . . because they are both men or both women."[56] As in *Cooper*, the court focused on section 5-1.2 of the EPTL which states, in relevant part:

> A husband or wife is a surviving spouse within the meaning, and for purposes of 4-1.1, 5-1.1, 5-1.1-A, 5-1.3, 5-3.1 and 5-4.4, unless it is established satisfactorily to the court having jurisdiction of the action or proceeding that:
>
> (1) A final decree or judgment of divorce, of annulment . . . was in effect when the deceased spouse died.
>
> (2) The marriage was void as incestuous . . . bigamous . . . or a prohibited marriage . . .
>
> (3) The spouse had procured outside of this state a final decree or judgment of divorce form the deceased spouse . . .
>
> (4) A final decree or judgment of separation . . . was in effect when the deceased spouse died.

---

53. *Id.*

54. *Id.*

55. *Langan*, 765 N.Y.S.2d at 419, quoting *Raum*, 675 N.Y.S.2d at 343 (Rosenberger, J. dissenting).

56. *Langan*, 765 N.Y.S.2d at 419.

> (5) The spouse abandoned the deceased spouse, and such abandonment continued until the time of death.
>
> (6) A spouse who, having the duty to support the other spouse, failed or refused to provide for such spouse . . .

However, in *Cooper*, the court only examined the first few words of the section and concluded that the phrase "A husband or wife" excludes same sex partners based upon the "ordinary and accepted meaning" of the terms.[57] Unlike Cooper, the *Langan* court refused to isolate the phrase "A husband or wife" from the subsequent text of the provision. Instead, the court found the section in its entirety serves to disqualify those from surviving spouse status whose marriage is not "[i]ntact and functioning."[58] The court concluded that "[t]he terms husband and wife appear descriptive rather than exclusionary, based upon the section's focus upon disqualification" and refused to find that the terms "husband" and "wife" alone operated to define "spouse" and deny Langan standing.[59] Moreover, because the Vermont statute employed the term spouse,[60] "a gender neutral word,"[61] the court found that its reading of the term is not contrary to the well established canon of statutory interpretation that "[t]he very language of the statute must be fairly susceptible of such an interpretation[.]"[62] The court directly addressed the First Department's rejection of a functional approach in *Raum* by clarifying that "[t]his court does not address a 'functional' definition of spouse, an approach disapproved of in *Raum*. Plaintiff is a literal

57. *Cooper*, 592 N.Y.S.2d at 797.

58. *Langan*, 765 N.Y.S.2d at 420.

59. *Id.* The court's analysis illustrates a significant problem with relying solely on the "plain meaning" of statutory terms—"[t]he meaning of a text critically depends upon its surrounding context." William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621, 621 (1990) (critically examining Justice Scalia's "new textualism" in which courts focus solely on statutory text instead of attempting to glean the legislative intent behind the statute).

60. Vt. Stat. Ann. tit. 15 § 1204(b) ("A party to a civil union shall be included in any definition or use of the terms "spouse," "family," "immediate family," "dependent," "next of kin," and other terms that denote the spousal relationship, as those terms are used throughout the law.").

61. *Langan*, 765 N.Y.S.2d at 420.

62. *Id.* (quoting People v. Dietze, 549 N.E.2d 1166 (N.Y. 1980)).

spouse under the Vermont statute, not a functional or virtual one."[63]

The existence of the Vermont civil union between Langan and Spicehandler not only allowed the court to assert adherence to the "literal" meaning of the term "spouse," but also lead to the inescapable conclusion that to deny Langan standing would violate equal protection. Because the Vermont civil union is as heavily regulated by the state as marriage, the court was able to distinguish *Raum* on the grounds that Langan is not "an unmarried partner"[64] and found the central premise in *Raum* "[t]hat unmarried couples living together, whether heterosexual or homosexual, similarly lack the right to bring a wrongful death action . . ."[65] to be inapplicable.

In construing the term "spouse" as found in the New York statute, the court adhered to established canons of statutory interpretation. The court afforded the text of the EPTL the most weight, but found its "plain meaning" ambiguous. As legislative intent was unavailing as an interpretive aid, the court necessarily emphasized the general purpose behind the statute and employed a functional analysis. The court acknowledged the impact of changes in public attitudes toward sexuality, examined the reality of Langan and Spicehandler's lives, and underscored the extent to which they functioned as a married couple. Ultimately, the court applied the term "spouse" to Langan to achieve the underlying purpose of the wrongful death statute.

The decision in *Langan* is limited to whether plaintiff is a spouse solely for purposes of the wrongful death statute. However, this decision, as one of first impression, reflects the manner in which another state's legislation can provide the impetus for a re-evaluation of the legitimacy of same-sex couples elsewhere.[66] The

63. *Langan*, 765 N.Y.S.2d at 422.

64. *Id.*

65. *Raum*, 675 N.Y.S.2d at 343.

66. The greatest advances in achieving equality for same-sex couples have occurred at the state level. *See, e.g.*, Goodridge v. Dep't of Pub. Health, 798 N.E.2d 941 (Mass. 2003) (holding that precluding same sex partners from marrying violates the Massachusetts constitution); *see Developments in the Law: II. Inching Down the Aisle: Differing Paths Toward the Legalization of Same-Sex Marriage in the United States and Europe*, 116 HARV. L. REV. 2002, 2014 ("[f]ederal intransigence may prove less significant than what happens at the state and local level, given the federal government's traditional deference to the states in the regulation of 'family matters.'"). *Cf.* 1 U.S.C. § 7 (restricting

Vermont civil union and principles of comity afforded the court an opportunity to acknowledge the realities of Langan and Spicehandler's lives and legitimize same sex relationships under the law. *Langan* reveals the limits of strict statutory construction and demonstrates the efficaciousness of utilizing multiple interpretive methods.

---

the meaning of the terms "marriage" and "spouse" to only opposite sex couples); *cf.* 28 U.S.C. § 1738C (providing that "[n]o state . . . shall be required to give effect to any public act, record, or judicial proceeding of any other State . . . respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State").