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COURT OF APPEALS

STATE OF NEW YORK

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MATTER OF MCCABE,

Appellant,

-against-

511 WEST 232ND STREET OWNERS CORP.,

NO. 91

Respondent.

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20 Eagle Street  
Albany, New York  
October 17, 2024

Before:

CHIEF JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE MADELINE SINGAS  
ASSOCIATE JUDGE ANTHONY CANNATARO  
ASSOCIATE JUDGE SHIRLEY TROUTMAN  
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

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Official Court Transcriber



1 CHIEF JUDGE WILSON: Good afternoon. The first  
2 matter on today's calendar is matter of McCabe v. 511 West  
3 232nd Street.

4 Counsel?

5 MR. SILAGY: Good afternoon, Your Honors. Vernon  
6 & Ginsburg by Yoram Silagy for the appellant, Maryann  
7 McCabe.

8 May I respectfully reserve three minutes of reply  
9 time?

10 CHIEF JUDGE WILSON: Yes, of course.

11 MR. SILAGY: Such an honor and privilege to argue  
12 before this court and to witness the grand entrance of the  
13 - - - these justices into this beautiful courtroom. Thank  
14 you.

15 Your Honor, the central legal point in this case  
16 is that two laws passed by the New York City Council, the  
17 Local Restorative Act of 2005 and New York City Local Law  
18 No. 35 of 2016, state that the New York City Human Rights  
19 Law should be interpreted broadly and as maximally  
20 protective of civil rights in all circumstances. These two  
21 laws, and the fact that the New York City Human Rights Law  
22 was amended in 2017 to include a bar against not only  
23 discrimination on marital status, but also discrimination  
24 against partners slash couples clearly means that a  
25 cooperative is barred from treating couples who live

1 together differently than those who are married.

2 Your Honors, this is exactly what the cooperative  
3 did in the case at bar. They violated these laws by  
4 treating my clients, an unmarried couple, Maryann McCabe  
5 and David Burrows, different than a married couple. Under  
6 paragraph 16 of the - - -

7 JUDGE SINGAS: Well, can we really say that, Mrs.  
8 McCabe - - - or not Mrs. McCabe - - - your client was  
9 treated differently because as an unmarried person, she did  
10 own an apartment there, didn't she?

11 MR. SILAGY: That's - - - that's a separate  
12 apartment that she doesn't live in. Her son lives there,  
13 and they're in the process - - - they tried - - - they  
14 moved to evict him in housing court recently, and he just  
15 moved out. So she's selling the apartment.

16 JUDGE SINGAS: But my point is, isn't it really  
17 about whether or not - - - whatever her relationship is to  
18 Mr. McCabe, as opposed to her status as being married or  
19 unmarried?

20 MR. SILAGY: No, Your Honor. Your Honor, that  
21 interpretation is a very narrow interpretation of the  
22 definition of marital status under the laws. And that  
23 interpretation has now been rejected - - - respectfully,  
24 rejected by the City Council, by their passage of the 2015  
25 - - - 2005 - - -

1 JUDGE CANNATARO: So what is the definition of  
2 marital status now?

3 MR. SILAGY: Well, Your Honor, the definition of  
4 marital status is whether you're married or not to another  
5 person. But not only that, not only is there - - -

6 JUDGE CANNATARO: It has to be something more,  
7 because if it's simply that, you don't - - - you lose.

8 MR. SILAGY: Well, Your Honor, one cannot be  
9 married to oneself. One has to be married to somebody  
10 else, and that's why - - - you know, that interpretation of  
11 marital status, the narrow interpretation, was rejected by  
12 the City Council in 2005 and 2016. And in fact,  
13 interestingly - - -

14 JUDGE CANNATARO: In favor of what, Counsel? I  
15 mean, I - - - if we're going to make a rule that's - - -

16 MR. SILAGY: Sure.

17 JUDGE CANNATARO: - - - consistent with your  
18 position, we should know what - - -

19 MR. SILAGY: Sure. It's very straightforward.

20 JUDGE CANNATARO: - - - it is.

21 MR. SILAGY: Now that they've also added  
22 partnerships into the protected class of discrimination,  
23 it's very simple, Your Honor. One cannot treat married  
24 couples differently than unmarried couples - - -

25 JUDGE SINGAS: But are they really treat - - -

1 MR. SILAGY: So in this case, Your Honor - - -

2 CHIEF JUDGE WILSON: The addition of - - -

3 MR. SILAGY: I'm sorry, Your Honor.

4 CHIEF JUDGE WILSON: The addition of partnership  
5 could cut the other way. I mean, it may cut the way you're  
6 suggesting, but one could say, look, the City Council knew  
7 that there were people who were not in domestic  
8 partnerships and they were not married, but they were still  
9 couples and they decided to provide the protection for  
10 people who had registered partnerships, but not for other  
11 couples that hadn't. What's wrong with that  
12 interpretation?

13 MR. SILAGY: Because the City Council in passing  
14 this law, they never require that anyone have to register  
15 in order to be deemed a - - - in order to be detected - - -

16 JUDGE HALLIGAN: Well, but they defined - - -

17 MR. SILAGY: - - - as a partnership status.

18 JUDGE HALLIGAN: They - - - they - - -

19 MR. SILAGY: There's no requirement and Your - -  
20 - I'm sorry.

21 Go ahead, Your Honor.

22 JUDGE HALLIGAN: It's okay. I was just going to  
23 going to ask you - - - and you know, feel free to finish,  
24 but don't - - - doesn't the statute define domestic  
25 partners as someone who is registered?

1 MR. SILAGY: No, it doesn't, Your Honor, because  
2 just - - -

3 JUDGE HALLIGAN: I thought in - - - I thought in  
4 the statute it did define domestic partners as folks who  
5 are - - - who are registered as opposed to someone who is  
6 in a couple in some enduring relationship, but maybe I'm  
7 wrong about that.

8 MR. SILAGY: Well, there was - - - in one part of  
9 the statute, there is some kind of definition of what it is  
10 to be a domestic partner when you're - - - regarding to  
11 registration, but in the specific part of the statute which  
12 says that a protected class is partnership status, it does  
13 not say - - - it does not say that there has to be a  
14 registration.

15 JUDGE HALLIGAN: But I think 3-240(a) defines  
16 domestic partners as persons who have a registered  
17 partnership, and I would think that that definition applies  
18 throughout the statute, as definitions usually do, unless a  
19 provision says otherwise.

20 MR. SILAGY: Well, this provision doesn't  
21 specifically state, quote, domestic partners. It states -  
22 - -

23 JUDGE GARCIA: No, but counsel - - -

24 MR. SILAGY: - - - partnership status.

25 JUDGE GARCIA: It says - - - Section 8-102

1 defines partnership status as the status of being in a  
2 domestic partnership as defined by subdivision 3-240, which  
3 in turn defines domestic partners as persons who have  
4 registered domestic partnerships, which shall include any  
5 partnership registered in accordance with the various  
6 provisions.

7 MR. SILAGY: Even if Your Honor - - - even if  
8 Your Honor was to read it that way, it doesn't - - -

9 JUDGE GARCIA: I don't see any other way to read  
10 it.

11 MR. SILAGY: Right. Well, it doesn't limit the  
12 rights of an unmarried couple to quote - - - they don't  
13 have to be - - - it defines it as being registered, but it  
14 doesn't limit the rights of people who are not registered  
15 but who are also in a partnership relationship. It doesn't  
16 say that if you're not registered, you're not protected  
17 under the statute - - -

18 JUDGE HALLIGAN: Can I - - - can I follow up?

19 MR. SILAGY: And nevertheless, Your Honor, if I  
20 could just address one key point. Even without that  
21 language, even if one just relies on the language that  
22 protects discrimination against marital status, that alone  
23 is sufficient to protect a unmarried couple - - - that it  
24 bars discrimination against an unmarried couple versus a  
25 married couple.

1 CHIEF JUDGE WILSON: Well, then the defense - - -

2 JUDGE HALLIGAN: So to follow - - -

3 CHIEF JUDGE WILSON: Sorry. Go ahead.

4 JUDGE HALLIGAN: Thank you. To follow up, if I  
5 can, on the scope, I believe the HRL applies to terms and  
6 conditions of employment as well as housing accommodations;  
7 is that right?

8 MR. SILAGY: Yes, you are.

9 JUDGE HALLIGAN: Okay. And so under your theory,  
10 could an employer who is operating in New York City and  
11 covered by the HRL offer health insurance only to an  
12 employee and the employee's spouse or domestic partner? Or  
13 would all of those employers be required to, under your  
14 reading, now provide coverage to couples who don't have  
15 either a marriage license or a domestic partner  
16 registration?

17 MR. SILAGY: Your Honor, if they were in a close  
18 relationship, then they would have to - - - that under this  
19 reading, if they were giving it to a spouse - - - a married  
20 couple, they would have to give it to an unmarried couple,  
21 too, who were - - - who were in a close relationship.  
22 That's the law.

23 JUDGE CANNATARO: Do you think that would come as  
24 news to the employers of New York City? Or is this  
25 happening as we speak?

1 MR. SILAGY: No, I think - - - I think that, you  
2 know, in the 21st century, I think more and more employers  
3 are recognizing that - - -

4 JUDGE CANNATARO: That wasn't my question - - -

5 MR. SILAGY: Yeah.

6 JUDGE CANNATARO: You just said it's their legal  
7 obligation under the New York City Human Rights Law - - -

8 MR. SILAGY: Yes.

9 JUDGE CANNATARO: - - - to offer insurance  
10 coverage to all couples, regardless of whether they're  
11 married, domestic partners, or anything else, as long as  
12 they meet some definition of coupled-ness.

13 MR. SILAGY: Yes, if they met a certain standard.  
14 Because, like I said, under these laws, they say that - - -  
15 that the statute protecting marital status as a - - - as a  
16 - - - that one cannot be discriminated based on marital  
17 status. It should be liberally construed. So if an  
18 employer disagrees with that interpretation, or  
19 respectfully, if Your Honor does, or someone else, the  
20 answer would be to change the law - - -

21 CHIEF JUDGE WILSON: Well, so you're - - -

22 MR. SILAGY: - - - but under this law - - -

23 CHIEF JUDGE WILSON: Your - - - your - - -

24 MR. SILAGY: - - - and in fact, Your Honor - - -

25 CHIEF JUDGE WILSON: Your theory that,

1 essentially, we have to interpret it liberally and it means  
2 more than just the words "marital status" or "partnership  
3 status", it applies to close relationships. I don't see  
4 "close relationships" in the statutory language, so we  
5 would have to fashion a test somehow if we were to agree  
6 with you. What would that test be? I mean, you say close  
7 relationship. I'm not sure where you get that from or how  
8 we would measure that.

9 MR. SILAGY: It is in the statute, Your Honor.  
10 It says marital status. What is marital status? Marital  
11 status? Is someone being married to someone else - - -

12 CHIEF JUDGE WILSON: No, and I understand that -  
13 - -

14 MR. SILAGY: - - - versus a couple?

15 CHIEF JUDGE WILSON: Excuse me. Excuse me.  
16 Excuse me a second.

17 MR. SILAGY: Right.

18 CHIEF JUDGE WILSON: I'm trying to ask you  
19 something different.

20 MR. SILAGY: I'm sorry, Your Honor.

21 CHIEF JUDGE WILSON: Maybe I wasn't clear. I  
22 say, even if you have convinced us that it is not so  
23 limited, we need to know where the boundary is - - -

24 MR. SILAGY: Sure.

25 CHIEF JUDGE WILSON: - - - so that it's not

1 somebody that I met five minutes ago who's entitled to all  
2 these benefits.

3 MR. SILAGY: Obviously not.

4 CHIEF JUDGE WILSON: You've been saying close  
5 relationship. I'd like to know how you would ask us to  
6 define that, to put some guardrails around it.

7 MR. SILAGY: Sure. The court could easily limit  
8 it to instances such as this case where a tenant of record  
9 in a co-op, a shareholder, dies; lives with another person  
10 for many years, as was the case in this instance; leaves  
11 their shares and the proprietary lease to their partner and  
12 that partner should be deemed allowed - - - should be  
13 treated - - - that couple, that unmarried couple - - -

14 CHIEF JUDGE WILSON: I think - - -

15 MR. SILAGY: - - - should be treated like a  
16 couple.

17 CHIEF JUDGE WILSON: - - - the issue that Judge  
18 Cannataro is having is I don't - - - I wouldn't see a basis  
19 to limit it to co-ops and proprietary shares. We need to  
20 have something that is a broader articulation of a rule  
21 that has some parameters around it. You know, advocating  
22 that it's just for shareholders and co-ops is probably not  
23 what the City Council imagined.

24 MR. SILAGY: I'm not advocating that it just be  
25 for that, Your Honor, and the courts can fashion their own

1 remedy - - -

2 CHIEF JUDGE WILSON: And I'm asking what is - - -  
3 how would - - - what are the rules you would like us to  
4 apply?

5 MR. SILAGY: Well, here's one definition I could  
6 propose. If someone in a will makes their partner the  
7 primary beneficiary on - - - in their will - - -

8 JUDGE SINGAS: Or their friend.

9 MR. SILAGY: - - - that they would inherit  
10 everything.

11 JUDGE SINGAS: Correct? Their friend in his - -  
12 - in the will. It didn't say my partner. It didn't say my  
13 companion. It said my friend.

14 MR. SILAGY: Your Honor, in the - - -  
15 respectfully, in the will, he left her not only his co-op  
16 shares, but everything else - - -

17 JUDGE SINGAS: No, but we're trying to come up -  
18 - -

19 MR. SILAGY: And he - - - Your Honor, he has - -  
20 -

21 JUDGE SINGAS: - - - with - - - Counsel, we're  
22 trying to come up with a definition for what's a close  
23 relationship - - -

24 MR. SILAGY: Right.

25 JUDGE SINGAS: - - - or what I think you were



1 briefing asking us to look at the equivalent of a spouse -  
2 - -

3 MR. SILAGY: Right. Your Honor, that's done all  
4 the time when there's issues of rent stabilization - - -

5 JUDGE SINGAS: You're not giving us any  
6 parameters for how to define that term - - -

7 MR. SILAGY: Your Honor - - -

8 JUDGE SINGAS: - - - either of those terms.

9 MR. SILAGY: - - - one - - - one parameter, which  
10 I would suggest respectfully, is if someone leaves  
11 everything - - - not just their co-op, but everything in  
12 their will to their partner, whether they call them a  
13 friend, lover, or whatnot, that person qualifies as a - - -  
14 as a partner - - -

15 JUDGE HALLIGAN: What about folks who don't have  
16 a will? I mean, it seems to me you're talking about the  
17 relationship - - -

18 MR. SILAGY: Right.

19 JUDGE HALLIGAN: - - - in a broader way.

20 MR. SILAGY: Right.

21 JUDGE HALLIGAN: So what are the benchmarks?

22 MR. SILAGY: Right. Well, we could look to other  
23 - - - if someone doesn't have a will, did they leave a  
24 health proxy? Here, Ms. McCabe was Mr. Burrows' health  
25 proxy. Did they take care of him - - -

1 JUDGE HALLIGAN: My - - - my guess is - - -

2 MR. SILAGY: - - - when he was ill, when that  
3 person - - -

4 JUDGE HALLIGAN: Right.

5 MR. SILAGY: - - - was ill for all these years?  
6 Did they live together - - -

7 JUDGE HALLIGAN: And - - - and these - - -

8 MR. SILAGY: - - - for a while? There's all  
9 these factors the court can just list. It's done all the  
10 time with rent, regulatory apartments. There are certain  
11 factors when - - - when - - -

12 JUDGE RIVERA: So are those the factors you're  
13 recommending?

14 MR. SILAGY: Sure, Your Honor. Those could be  
15 factors whether there was a close and interdependent  
16 relationship. That's what they wrote in after this court  
17 ruled in Braschi - - -

18 JUDGE GARCIA: So I'm the co-op board - - -

19 MR. SILAGY: - - - that a family member - - -

20 JUDGE GARCIA: I'm the co-op board. How do I  
21 apply that test? Does the person have to come forward and  
22 say I had a close and here's my living will or - - -

23 MR. SILAGY: Yeah, sure. You could just like in  
24 this case, we show them the will and said, look, this  
25 person obviously has been living there for thirteen years.

1 She lived there for thirteen years with Mr. Burrows. He  
2 left her everything in the will. I mean, it's really  
3 simple, Your Honor. Who leaves their co-op shares to a  
4 regular stranger or just a quote, unquote friend? This  
5 person left her his shares and the stock for the apartment  
6 and everything else. And Your Honors, he had three kids,  
7 and it specifically says in the will - - -

8 JUDGE TROUTMAN: So what you're arguing is you  
9 can't just look at the usage of the word "friend". One  
10 should look at the facts and circumstances of each  
11 individual case and what indicia of a close, personal - - -

12 MR. SILAGY: Exactly.

13 JUDGE TROUTMAN: - - - intimate relationship may  
14 or may not exist?

15 MR. SILAGY: Exactly, Your Honor. And it's often  
16 pretty obvious. I mean, just from looking at this and - -  
17 - and whatever he called her in the will, we don't know why  
18 he called her "friend". Some people use - - - you know,  
19 modern young people, they use the term "lover". Some  
20 people are embarrassed by that term. They use something  
21 else. We never know. We don't know why he used the word  
22 "friend". But all actions speak louder than words, and  
23 here, obviously - - -

24 JUDGE RIVERA: What about the words - - - what  
25 about the words that were used in the obituaries?

1 MR. SILAGY: Exactly, Your Honor. I'm glad - - -

2 JUDGE RIVERA: But did he use that in the will?

3 MR. SILAGY: Excuse me?

4 JUDGE RIVERA: Did he use that in the will?

5 MR. SILAGY: No, because he did not - - - he was  
6 not involved in writing - - - he's not - - -

7 JUDGE RIVERA: No, no, I know that, but those  
8 seem to be words that might not be offensive to anyone or -  
9 - - right?

10 MR. SILAGY: Well, Your Honor, we can't say why  
11 he used that word and why he didn't. We don't know why he  
12 used that word versus something else. I mean, he's not - -  
13 - unfortunately, he's not around to tell us that, but we do  
14 - - -

15 JUDGE RIVERA: Well, you didn't only rely on that  
16 anyway, correct?

17 MR. SILAGY: Right. Right, Your Honor. And I  
18 just want to point out that in passing the 2005 and 2016  
19 laws, the City Council in their 2016 law, they ratified  
20 this court's ruling in Albanese - - - Albinio (sic) v. City  
21 of New York, mentioning it as one of three cases where a  
22 court has correctly liberally construed the New York City  
23 Division of Human Rights, and this court in Albino (sic)  
24 stated that all provisions of the City Human Rights Law  
25 must be construed broadly in favor of discrimination

1 plaintiffs to the extent that such a construction is  
2 reasonably possible.

3 JUDGE CANNATARO: Counsel, can I ask you - - -  
4 I'm sorry. Can I ask you a different question?

5 MR. SILAGY: Sure.

6 JUDGE CANNATARO: In this case, for whatever  
7 reason, the co-op chose not to treat McCabe as a spouse,  
8 but they did treat her as family, which is actually  
9 consistent with Braschi, which was really about who's a  
10 family, not whose spouse - - -

11 MR. SILAGY: They - - - they didn't - - -

12 JUDGE CANNATARO: So what's wrong with that? Why  
13 was that not good enough?

14 MR. SILAGY: Well, two reasons. One is they say  
15 they treated her as family, but then if one looks at the  
16 application they made her fill out, they made her fill out  
17 a purchaser application which an outsider would have to  
18 fill out. So they said they were treating her as family,  
19 but then they made her do a whole application, like - - -  
20 like as if it was someone from the street.

21 JUDGE CANNATARO: Well, ye, because it had to be  
22 a financially responsible family member.

23 MR. SILAGY: It wasn't - - - no. They just did  
24 not ask for finance. They made her fill out a purchase  
25 application that was not just looking at the finances. It

1 was like an outsider was buying it, so - - -

2 JUDGE CANNATARO: What other sorts of information  
3 were they looking for?

4 MR. SILAGY: The entire package that any buyer  
5 coming from the street would have to fill out, they made  
6 her fill out. And also second, Your Honor, the standard  
7 was different of a family member versus a spouse. A family  
8 member would have to be financially responsible, whereas a  
9 transfer to a spouse would require no consent in any shape,  
10 matter, and form. So in doing that, they treated a married  
11 couple differently than an unmarried couple.

12 And lastly, I just want to point out once again  
13 to reemphasize, that the City Council has said that these -  
14 - - that the definition of marital status should be  
15 liberally construed. And even the in the legislative  
16 history in 2016, the person who drafted the legislative  
17 history and helped write the law, Honorable Councilwoman  
18 Annabel Palma, rejected this Court's narrow interpretation  
19 of marital status in the Yeshiva case. She specifically  
20 noted that case and rejecting it, and she is now  
21 coincidentally, the ommissioner of the City of the Division  
22 of Human Rights, which shows that this was her area of  
23 expertise. Thank you so much for hearing me.

24 CHIEF JUDGE WILSON: Thank you.

25 MS. QUINN: Good afternoon, Your Honors. May it



1 please the Court, Michelle Quinn of Gallet Dreyer & Berkey  
2 for the respondent, 511 West 232nd Owners Corp.

3 As Your Honors have correctly noted, David  
4 Burrows, the decedent whose shares are at issue here - - -

5 JUDGE RIVERA: So Counsel - - - over here.

6 MS. QUINN: I'm sorry.

7 JUDGE RIVERA: Sorry. Both the city and state  
8 human rights law have been amended. The city more than  
9 once for purposes of this particular topic. What is your  
10 interpretation under those amendments of what the board  
11 could and could not do?

12 MS. QUINN: So this is a matter of contract - - -  
13 the application of a contract term.

14 JUDGE RIVERA: Yeah.

15 MS. QUINN: This is not the application or  
16 redefinition of what constitutes a spouse. A spouse is  
17 entitled to the automatic transfer of shares.

18 JUDGE RIVERA: Right.

19 MS. QUINN: As counsel actually just admitted, to  
20 evaluate Ms. McCabe - - -

21 JUDGE RIVERA: Yes.

22 MS. QUINN: - - - as a spouse even though she's  
23 not legally married - - -

24 JUDGE RIVERA: Yes.

25 MS. QUINN: - - - which is defined in the code as



1 someone - - - a spouse is someone who is legally married.

2 JUDGE RIVERA: You mean the partnership? You  
3 mean domestic partner? Is that what you're talking - - -

4 MS. QUINN: Actually, the term "spouse" is  
5 defined in the human rights law as in - - - under the  
6 caregiver section - - -

7 JUDGE RIVERA: Okay.

8 MS. QUINN: - - - as someone, a caregiver,  
9 legally married to another person. If, as counsel  
10 suggests, we want to expand the definition of spouse to  
11 someone who meets the Braschi standard, that's actually the  
12 family - - - the nontraditional family relationship - - -

13 JUDGE RIVERA: Um-hum.

14 MS. QUINN: - - - which is how the cooperative  
15 treated Ms. McCabe. She did not qualify as a spouse.

16 JUDGE RIVERA: No, no, no, no, no. No. But - -  
17 - but you're not getting my question, anyway. Look, under  
18 the provision, it treats people who are married different  
19 from everybody else. It's an automatic transfer. No  
20 consent. You agree?

21 MS. QUINN: Yes.

22 JUDGE RIVERA: Okay. So my question to you is,  
23 given the amendments to both the city and state laws - - -

24 MS. QUINN: Yes.

25 JUDGE RIVERA: - - - which require a very liberal

1 construction, also inquired - - - included other provisions  
2 that have already been discussed about partnership status  
3 and defining as such. Then what are you permitted or not  
4 permitted to do? It's your position that you can still  
5 favor spouses for an automatic transfer even with these  
6 amendments? And if so, why is that the case?

7 MS. QUINN: Yes, we - - - because it is a  
8 contract term. This is the application of a contract.

9 JUDGE RIVERA: I don't know what that means.

10 CHIEF JUDGE WILSON: Wait, now I - - - now I'm  
11 really confused. If suppose they didn't have a contract,  
12 but they had this as a policy - - -

13 MS. QUINN: No. It's in the proprietary lease.  
14 Paragraph 16 - - -

15 CHIEF JUDGE WILSON: What - - - I'm guessing - -  
16 - for purposes of any kind of unlawful discrimination,  
17 whether it's employment based on, you know, race or gender  
18 or whatever it is, I've never heard anybody say that it's  
19 insulated because it's in a contract.

20 MS. QUINN: What I'm saying is the application -  
21 - -

22 JUDGE RIVERA: Is your position that if you had a  
23 contract that said white people will be treated better than  
24 blacks, that that would be okay?

25 MS. QUINN: It's not a - - - it's not a better or

1 worse. It is a standard of review of the transfer of the  
2 shares. It's not a better or worse. It's not as though -  
3 - -

4 JUDGE RIVERA: Well, it is - - - it is beneficial  
5 to be a spouse - - -

6 MS. QUINN: Yes.

7 JUDGE RIVERA: - - - because all you have to show  
8 is the marriage license and you get the automatic transfer.  
9 That is not the case if you are not a spouse.

10 MS. QUINN: Correct.

11 JUDGE RIVERA: So of course you've got a benefit.  
12 So again, I'm asking you simply, under the amended  
13 statutes, what is it that you can lawfully do? The amended  
14 statutes require a broader interpretation. My question to  
15 you is why is it your interpretation still fits within the  
16 mandates of the City Council and the state to read these  
17 respective statutes liberally?

18 MS. QUINN: Because there's no definition of what  
19 marital status actually means. The City chose not to  
20 define marital status.

21 JUDGE RIVERA: Okay. Then why not take a very -  
22 - -

23 MS. QUINN: So then you revert to - - -

24 JUDGE RIVERA: - - - broad interpretation of  
25 that.

1 MS. QUINN: Then you revert to a plain meaning of  
2 the term marital status. That's - - - that's the  
3 construction of legislation.

4 JUDGE RIVERA: Yes, but I get - - - okay.  
5 Marital status could mean married versus not married.

6 MS. QUINN: Correct. You'd be married, single,  
7 widowed, divorced.

8 JUDGE RIVERA: Yes.

9 MS. QUINN: So in this instance - - -

10 CHIEF JUDGE WILSON: But isn't the plaintiff here  
11 being treated differently because she is not married to Mr.  
12 Burrows?

13 MS. QUINN: She didn't. She's being treated as -  
14 - -

15 CHIEF JUDGE WILSON: Had she been married to him,  
16 she would have gotten an automatic transfer?

17 MS. QUINN: If she had been legally married to  
18 him - - -

19 CHIEF JUDGE WILSON: Yeah. Yeah.

20 MS. QUINN: - - - she would have been entitled to  
21 the automatic transfer of years.

22 CHIEF JUDGE WILSON: So why isn't it the plain  
23 language to say it is therefore her marital - - - marital  
24 status, that is, that she wasn't married to Mr. Burrows  
25 that is causing her the disability of not getting the

1 shares automatically?

2 MS. QUINN: Because marital status is whether or  
3 not you are single or divorced or married or otherwise not  
4 in relation to another person. Otherwise, then you're in  
5 dispute - - -

6 JUDGE RIVERA: It's always in relation to another  
7 person.

8 MS. QUINN: Well, if - - - but if you - - - if  
9 someone were to ask what's your marital status, your  
10 response isn't I'm married to Mr. Brown.

11 JUDGE RIVERA: Well, her response is unmarried.

12 MS. QUINN: I'm - - - I'm single.

13 JUDGE RIVERA: Her response is unmarried - - -

14 MS. QUINN: Her response is - - -

15 JUDGE RIVERA: - - - and therefore she doesn't  
16 get the benefit of the provision. That's - - -

17 MS. QUINN: Right.

18 JUDGE RIVERA: Isn't that what we're talking  
19 about?

20 CHIEF JUDGE WILSON: Well, let me ask you this,  
21 that the provision in the City Human Rights Law that  
22 concerns housing - - -

23 MS. QUINN: Yes.

24 CHIEF JUDGE WILSON: - - - is different from the  
25 employment provision in that the employment provision talks

1 about the status of an individual, of a person, but the  
2 provision relating to housing talks about discrimination  
3 against a person or group of persons. So why shouldn't we  
4 read the group of persons language to say if you're  
5 discriminating against a group of persons based on their  
6 marital status here, Mr. Burrows and Ms. McCabe, that - - -  
7 that that's the reason why this - - - we should read this  
8 broadly, at least to say, group of persons means just what  
9 it says.

10 MS. QUINN: But a group of persons - - - Ms.  
11 McCabe is not a protected class because of her lack of a  
12 marriage to Mr. Burrows.

13 CHIEF JUDGE WILSON: Why not?

14 MS. QUINN: The group of persons isn't marriage  
15 to a specific person. The protected persons are people  
16 that are - - -

17 CHIEF JUDGE WILSON: The group of persons, Mr.  
18 McCabe and Ms. - - - sorry - - - Ms. McCabe and Mr.  
19 Burrows. They're a group of persons. Yes?

20 MS. QUINN: They're two people.

21 CHIEF JUDGE WILSON: Okay. Isn't a group of two?  
22 Is my - - - my math from wherever that algebra is a group  
23 could be two or more?

24 MS. QUINN: She's alleging that she's being  
25 discriminated against because she's not - - -

1 CHIEF JUDGE WILSON: Because the group she's in  
2 doesn't have the marital status of legally married.

3 MS. QUINN: Correct.

4 CHIEF JUDGE WILSON: Okay. Then why isn't that  
5 marital status against a group of persons?

6 MS. QUINN: Because the - - - I get - - - so it's  
7 the application - - - both the supreme court and the  
8 Appellate Division found that there was no discrimination.  
9 You don't even reach the issue of marital status because  
10 they applied - - - the threshold under which Ms. McCabe had  
11 to - - - was entitled to the transfer of shares by the  
12 contract term that she's espoused - - -

13 JUDGE RIVERA: Can I - - -

14 MS. QUINN: - - - or not espoused - - -

15 JUDGE RIVERA: I just want a little clarity  
16 because I'm not sure about this record. The provision  
17 itself only says spouse, correct?

18 MS. QUINN: The provision says spouse.

19 JUDGE RIVERA: It's a yes or no. Thank you.  
20 Okay.

21 MS. QUINN: Yes, it says spouse.

22 JUDGE RIVERA: So then, it does appear, however,  
23 that the Board read that expansively to include domestic  
24 partners. Is that just - - - I just wanted to be clear.

25 MS. QUINN: Yes, and - - - yes.

1 JUDGE RIVERA: Okay. Okay.

2 MS. QUINN: And understanding that there are  
3 protections against - - - for people who at the time - - -

4 JUDGE RIVERA: Um-hum.

5 MS. QUINN: - - - were not permitted to marry  
6 because same sex couples were not permitted - - -

7 JUDGE RIVERA: Okay.

8 MS. QUINN: - - - so when we communicated with  
9 Counsel, we said produce a marriage certificate or a  
10 domestic partnership agreement. And when the City amended  
11 its law to include the term partnership status and then as  
12 - - - as Your Honors recognized, defined partnership status  
13 as someone who is in a partnership - - -

14 JUDGE RIVERA: Um-hum.

15 MS. QUINN: - - - a domestic partnership  
16 agreement, it didn't say with another person or as related  
17 to another person. It didn't expand it. So by analogy,  
18 then marital status can't, then, also expand marital status  
19 as it relates to another person, because then you're giving  
20 greater rights to someone who's not married than to someone  
21 who's in a domestic partnership agreement to another  
22 person. It doesn't evaluate - - -

23 JUDGE RIVERA: I'm sorry. How are you getting -  
24 - - how - - - how - - -

25 MS. QUINN: So - - -

1 JUDGE RIVERA: Are they getting more rights? Is  
2 that what you said?

3 MS. QUINN: Well, because of - - -

4 JUDGE RIVERA: Or greater rights?

5 MS. QUINN: If I'm in a - - - have a - - -

6 JUDGE RIVERA: Yes.

7 MS. QUINN: - - - don't have a domestic  
8 partnership agreement - - -

9 JUDGE RIVERA: Yes.

10 MS. QUINN: I submit. I take that back. If I  
11 have a domestic partnership agreement - - -

12 JUDGE RIVERA: Yes.

13 MS. QUINN: - - - which then - - - I take that  
14 back. I'm trying to figure out the analysis. I'm sorry.

15 JUDGE RIVERA: It's okay. It's okay.

16 MS. QUINN: The part - - - the domestic  
17 partnership agreement, which is what's partnership - - -

18 JUDGE RIVERA: Yes.

19 MS. QUINN: - - - status is covered - - -

20 JUDGE RIVERA: Yes. Okay.

21 MS. QUINN: - - - as discrimination.

22 JUDGE RIVERA: Okay.

23 MS. QUINN: It does not include your partnership  
24 status as it relates to another person. But if we construe  
25 what Mr. Silagy is saying, marital status as it relates to

1 another person - - -

2 JUDGE RIVERA: Um-hum.

3 MS. QUINN: - - - then you're creating broader  
4 coverage, broader protections to marital status than you do  
5 to partnership status. The whole point of the amendment to  
6 the City Human Rights Law was to include, in response to  
7 Levin, the term "partnership status". The abrogation of  
8 Levin, which in Morse discussed at length, was because - -  
9 -

10 JUDGE RIVERA: Well, why don't we read all of it  
11 broadly? Isn't that the mandate?

12 MS. QUINN: Well, then where does it end? Then  
13 you're giving caregivers and close family members, then  
14 you're - - - then you're undermining the - - - -

15 JUDGE RIVERA: Well, clearly - - -

16 MS. QUINN: - - - Braschi standard of a close  
17 family relationship

18 JUDGE RIVERA: Clear - - - clearly, marital  
19 status and domestic partnership is referring to an intimate  
20 relationship. It's not referring to the categories that  
21 you've pointed to.

22 MS. QUINN: But then how do you prove that? So  
23 that a cooperative board is going to then be required to do  
24 a subjective analysis and go behind closed doors - - -

25 JUDGE RIVERA: I thought you did that anyway. I

1 thought you argued - - -

2 MS. QUINN: As a family member.

3 JUDGE RIVERA: I thought you argued that here.

4 MS. QUINN: As a family member.

5 MS. QUINN: So - - -

6 JUDGE RIVERA: I thought you argued it wasn't - -  
7 - that she was not in an intimate partner relationship with  
8 him. I thought you did that.

9 MS. QUINN: Be - - -

10 JUDGE RIVERA: I thought you found a way to do  
11 that.

12 MS. QUINN: We gave her the benefit of the doubt  
13 based on her claim - - -

14 JUDGE RIVERA: Right.

15 MS. QUINN: - - - that she was in a close  
16 relationship.

17 JUDGE RIVERA: Right.

18 MS. QUINN: We said okay, well, we'll evaluate  
19 her as a family member, but let's look at the finances - -  
20 -

21 JUDGE RIVERA: Right. You didn't - - - correct.

22 You didn't evaluate her as an intimate partner.  
23 That's correct. I don't disagree with you. That is - - -  
24 but you did argue that she's not in an intimate partner  
25 relationship in part because he referred to her as - - -

1 MS. QUINN: Friend.

2 JUDGE RIVERA: - - - friend.

3 MS. QUINN: Yes.

4 JUDGE RIVERA: So you did find a way to make an  
5 argument about that.

6 MS. QUINN: Because the decedent himself did not  
7 regard Ms. McCabe as his spouse or domestic partner - - -

8 JUDGE RIVERA: Right. All I'm saying is - - -

9 MS. QUINN: - - - or his fiancée.

10 JUDGE RIVERA: - - - you said you couldn't do  
11 that. How would you do that? And all I'm asking - - -  
12 well, all I'm pointing out to you is that you have argued  
13 that you were able to do that.

14 MS. QUINN: No. What I'm arguing is that we were  
15 able to evaluate her as a family member, not as a spouse.

16 JUDGE RIVERA: Okay.

17 MS. QUINN: The spouse has - - - has - - - gets  
18 automatic transfer of the shares. A family - - -

19 JUDGE TROUTMAN: Why do you say he didn't regard  
20 her as his spouse? When counsel indicated he gave her  
21 everything and that there were other factors - - - they  
22 lived together. She left her apartment to go to his  
23 apartment.

24 MS. QUINN: She - - -

25 JUDGE TROUTMAN: Those - - - those - - -



1 MS. QUINN: So there was - - - so in his will,  
2 which is his own words, which was created four years before  
3 his death, his will and his health care proxy both regard  
4 her - - - he describes her as a friend. It's only her  
5 words that say - - -

6 JUDGE TROUTMAN: But you recognize, just simply,  
7 the usage of a particular word is not necessarily always  
8 dispositive as to what a relationship is.

9 MS. QUINN: But then - - - but then her words  
10 can't be dispositive of what the relationship is. Her just  
11 saying we're lifetime - - - lifelong partners - - -

12 JUDGE TROUTMAN: It is not just saying - - - in  
13 NYCHA Housing, they look at different factors.

14 MS. QUINN: Right.

15 JUDGE TROUTMAN: So - - -

16 MS. QUINN: And - - -

17 JUDGE TROUTMAN: You can define parameters as to  
18 which relationship is close family member or if it is an  
19 intimate relationship equivalent to that of marriage.

20 MS. QUINN: But then you're asking a board to do  
21 a subjective analysis and to determine - - -

22 CHIEF JUDGE WILSON: No, come - - - please - - -

23 MS. QUINN: - - - and potentially treat  
24 shareholders differently.

25 CHIEF JUDGE WILSON: I've applied to co-ops a

1 bunch of times, and I think that's exactly what they're  
2 doing. They're doing a subjective analysis about whether  
3 they want me living there. Aren't they?

4 MS. QUINN: When there's a - - - if it's a spouse  
5 - - -

6 CHIEF JUDGE WILSON: No, no. I'm not talking  
7 about a spouse. Just somebody from the outside who's  
8 applying to - - -

9 MS. QUINN: Yes.

10 CHIEF JUDGE WILSON: - - - buy an apartment in a  
11 co-op - - -

12 MS. QUINN: Yes.

13 CHIEF JUDGE WILSON: - - - that's a subjective  
14 analysis.

15 MS. QUINN: Yes. Well, it's - - -

16 CHIEF JUDGE WILSON: So why not?

17 MS. QUINN: Well, it's usually an analysis of  
18 their financial abilities to - - -

19 CHIEF JUDGE WILSON: Well, there - - - you know,  
20 there are plenty of wealthy people who tried to get into  
21 exclusive co-ops and have been turned away because they're  
22 a rock star or they're whatever, right? I mean, it's - - -  
23 you're not arguing that's objective, that there's some  
24 checklist that every board applies and they - - - it's  
25 uniform and they produce the same result every time.

1 MS. QUINN: But what I'm saying is if you're  
2 trying to apply a subjective analysis of the word "spouse"  
3 - - -

4 CHIEF JUDGE WILSON: Yeah.

5 MS. QUINN: What's the proof of whether or not  
6 you're a spouse?

7 CHIEF JUDGE WILSON: Well, not of the word  
8 spouse, no, no. It's the proof of the subjective - - -  
9 it's subjective proof of the closeness of a relationship.  
10 That's subjective, yes. But - - - but boards make  
11 subjective analyses all the time.

12 MS. QUINN: Right. So in a nontraditional family  
13 relationship under Braschi - - -

14 CHIEF JUDGE WILSON: Um-hum.

15 MS. QUINN: - - - it has to be the  
16 interdependence - - -

17 CHIEF JUDGE WILSON: Right.

18 MS. QUINN: - - - financial and emotional  
19 interdependence - - -

20 CHIEF JUDGE WILSON: Yup.

21 MS. QUINN: - - - as evidenced by - - -

22 CHIEF JUDGE WILSON: Yeah.

23 MS. QUINN: - - - and there are a list - - - a  
24 whole legion of things that - - -

25 CHIEF JUDGE WILSON: Um-hum.

1 MS. QUINN: - - - you can prove.

2 CHIEF JUDGE WILSON: And the board can't do that?

3 MS. QUINN: And they - - - she didn't prove it.

4 CHIEF JUDGE WILSON: I know that - - -

5 MS. QUINN: She didn't - - -

6 CHIEF JUDGE WILSON: Different question. Could  
7 the board use those factors? If it were compelled by law,  
8 could it do that or are you saying this is not a possible  
9 exercise for a co-op board?

10 MS. QUINN: But there's no reason for it to  
11 because of the spouse - - -

12 CHIEF JUDGE WILSON: Not my question. Not my  
13 question. Could the members of the board of your co-op use  
14 the Braschi factors and come to a result? In general, not  
15 even in this case in particular. In general.

16 MS. QUINN: Well, it does do that when there is a  
17 nontraditional family member - - -

18 CHIEF JUDGE WILSON: Okay.

19 MS. QUINN: - - - or status, or a family member  
20 status.

21 CHIEF JUDGE WILSON: Okay.

22 MS. QUINN: They use - - - they do use those - -  
23 -

24 CHIEF JUDGE WILSON: Okay.

25 MS. QUINN: - - - standards.

1 MS. QUINN: I mean, yes - - -

2 CHIEF JUDGE WILSON: Okay.

3 MS. QUINN: - - - but given that there is the  
4 automatic transfer provision to a spouse, it's not  
5 necessary to do that subjective analysis. And - - - and to  
6 me, it would be a very difficult threshold to analyze.

7 JUDGE HALLIGAN: Well, why would it be difficult?  
8 That's what I'm having trouble with. It sounds to me like  
9 you already engage in the inquiry about whether someone  
10 qualifies as family - - -

11 MS. QUINN: Um-hum.

12 JUDGE HALLIGAN: - - - when that's what the  
13 nature of the relationship is, and you're looking to see  
14 whether they're a financially responsible member, right?  
15 So it seems to me the co-op board can and does engage in  
16 that analysis. Why would it be - - - I understand your  
17 position is you don't have to do it with respect to  
18 spouses, but why would it be hard as an administrative  
19 matter to do it with respect to more folks?

20 MS. QUINN: So it wouldn't necessarily be  
21 difficult. It's that then are you analyzing them as a  
22 family member versus a spouse? So where there's a spouse,  
23 and you can show a marriage certificate, I get the  
24 automatic transfer. If you're saying I'm a - - - I'm a  
25 equivalent of a spouse - - -

1 JUDGE HALLIGAN: Right. But if we were to  
2 conclude - - - and I think this is your adversary's  
3 argument - - - that the City HRL requires you to make a  
4 benefit that you're going to make available to someone in a  
5 couple, not just to a spouse, but to someone who can  
6 demonstrate that they're in that type of intimate  
7 relationship, you could apply factors like you do in the  
8 Braschi family context, even if you're saying you're not  
9 obligated to under the HRL, right?

10 MS. QUINN: Right, right. But then the question  
11 becomes, in doing that evaluation, do you then have the  
12 ability to approve or not approve? If I do an evaluation,  
13 and I say, well, no, that's not sufficient, then you are  
14 then going to the next category of applicants for the  
15 transfer of shares, which is a financially responsible  
16 family member. That's the evaluation. If he - - - if - -  
17 - if an applicant says, I'm like a spouse, and I ask for  
18 indicia of what that relationship is, that's qualification  
19 under the family member provision, not the spouse  
20 provision.

21 JUDGE CANNATARO: But Counsel, surely you must  
22 agree in the same way that there's a list of factors that  
23 would indicate that someone is in a family-like  
24 relationship, you could create a list of factors to say  
25 that someone is in a marriage-like relationship. Don't you

1 think so? To me, as a general principle, that seems not  
2 remarkable.

3 MS. QUINN: Right. So but that's the analysis  
4 under a family member standard.

5 JUDGE CANNATARO: So you're saying regardless - -  
6 - so the only thing that could be spouse is - - -

7 MS. QUINN: Spouse - - -

8 JUDGE CANNATARO: - - - spouse?

9 MS. QUINN: - - - or domestic partner.

10 JUDGE CANNATARO: You have to be married - - -

11 MS. QUINN: Spouse or a domestic partner.

12 JUDGE CANNATARO: - - - or a domestic partner.

13 And - - -

14 MS. QUINN: Language of the lease.

15 JUDGE CANNATARO: And so but couldn't you make up  
16 a - - - couldn't you make up a list of factors that  
17 indicate that a relationship is like a spouse or a domestic  
18 partner - - -

19 MS. QUINN: But then you're changing - - -

20 JUDGE CANNATARO: - - - which by definition would  
21 take it out of family.

22 MS. QUINN: But then you're changing the terms of  
23 the lease.

24 JUDGE RIVERA: Correct. And that might be  
25 necessary because of the law. That's the point that's

1 being pushed. Can I just ask a different question here?

2 MS. QUINN: That would - - -

3 JUDGE RIVERA: If I may. If I may. If I may,  
4 thank you. My understanding is that they lived in this  
5 unit for thirteen years, or have I got the wrong number on  
6 that?

7 MS. QUINN: I - - - I believe - - - according to  
8 Ms. McCabe, she has lived in the apartment with Mr. Burrows  
9 since 2006.

10 JUDGE RIVERA: Okay. So what was the board's  
11 understanding of their relationship?

12 MS. QUINN: Caregiver.

13 JUDGE RIVERA: For the entire period of time?

14 MS. QUINN: Roommates. I mean, I don't - - - I  
15 don't - - - the board is not looking behind closed doors to  
16 determine what their relationship was. They were living  
17 together. She had an apartment next door. She went back  
18 and forth. Nobody really knows.

19 JUDGE RIVERA: So - - -

20 MS. QUINN: It's only according to her  
21 statements.

22 JUDGE RIVERA: So if he brought someone in off  
23 the street - - -

24 MS. QUINN: Which is - - -

25 JUDGE RIVERA: - - - to live there, it wouldn't

1 matter to the board? I just want to be clear.

2 MS. QUINN: She's - - -

3 JUDGE RIVERA: You're saying - - -

4 MS. QUINN: If she - - -

5 JUDGE RIVERA: - - - you don't look behind closed  
6 doors?

7 MS. QUINN: Yes.

8 JUDGE RIVERA: You literally brought in someone  
9 off the street - - -

10 MS. QUINN: Yup.

11 JUDGE RIVERA: - - - kept them - - - kept them in  
12 the apartment. The Board is not going to look behind that?  
13 It doesn't matter to them?

14 MS. QUINN: Well, she's actually - - -

15 JUDGE RIVERA: I'm not asking about her.

16 MS. QUINN: I understand - - -

17 JUDGE RIVERA: I'm asking about this.

18 MS. QUINN: Because the roommate law provides  
19 that a shareholder can have someone else live in the  
20 apartment with them, so they're not allowed to inquire  
21 other than the identity of the roommate.

22 JUDGE RIVERA: Um-hum.

23 MS. QUINN: They can't - - -

24 JUDGE RIVERA: But you - - -

25 MS. QUINN: - - - pass judgment on that.

1 JUDGE RIVERA: Do you inquire as to whatever the  
2 relationship is that established that they are roommates?

3 MS. QUINN: No. I'm not entitled to. Someone  
4 else - - - so I'm a shareholder. I can bring someone else  
5 in to come in and live with me, and I'm allowed to do that.  
6 The only thing I need to disclose to my landlord or my co-  
7 op is the identity of my roommate and when they moved in,  
8 and that is the end of the inquiry.

9 JUDGE RIVERA: Um-hum.

10 MS. QUINN: So this is - - - this - - - again,  
11 the supreme court, the Appellate Division all found that  
12 there was a rational basis for this decision. This  
13 decision was governed - - - protected by the business  
14 judgment rule. It's - - - counsel does not dispute the  
15 fact that Ms. McCabe was not married or a domestic partner  
16 of David Burrows.

17 JUDGE RIVERA: Let me ask you this. What if the  
18 court holds in his favor to this extent and says that under  
19 the City Human Rights Law and the State Human Rights Law,  
20 you could not choose to treat her differently than if she  
21 had been his spouse, for purposes of this provision, right?  
22 Okay. So that means you get the automatic transfers. But  
23 what would the board do differently the next day moving  
24 forward? What, if anything, would you have to do?

25 MS. QUINN: With respect to - - - to her, or - -

1 -

2 JUDGE RIVERA: No, no, no, no.

3 MS. QUINN: - - - evaluation.

4 JUDGE RIVERA: If we held in her favor, you know,  
5 you're kind of done with that if, indeed, she can establish  
6 whatever it is we say. But let's say moving forward after  
7 that - - -

8 MS. QUINN: I'm not sure I - - -

9 JUDGE RIVERA: - - - how would that - - -

10 MS. QUINN: - - - follow the question. I - - -  
11 how would you - - - how would the board act differently?

12 JUDGE RIVERA: Right now, you choose only  
13 spouses. If we were to say you cannot only benefit spouses  
14 in the way you have interpreted that, perhaps in the way  
15 we've interpreted it in the past, how might that change?  
16 Would it mean, for example, as some members of the court  
17 have asked, would it mean that you'd have to apply what you  
18 had identified as the Braschi factors or these factors to  
19 other cohabiting couples who are not married or registered  
20 domestic partners?

21 MS. QUINN: The difficulty is going to be - - -  
22 yes, they would have to establish some sort of a policy,  
23 but the difficulty there is then going to be - - -

24 JUDGE RIVERA: Yes.

25 MS. QUINN: - - - so for boyfriends and

1 girlfriends or other kinds of couples that are living  
2 together, now, you're treating shareholders differently for  
3 someone who claims that they are the equivalent of a spouse  
4 versus someone who is just your boyfriend or girlfriend.

5 JUDGE CANNATARO: Counsel, can I ask a similar  
6 question along the same lines? If we were to hold  
7 consistent with your adversary, that, you know, this  
8 relationship needs to be examined for its spousal-like  
9 qualities, and here's the list and this qualifies, could  
10 the co-op then just remove from its proprietary lease this  
11 spousal preference for nontitled individuals?

12 MS. QUINN: Well, to amend the proprietary lease  
13 they would need two - - - a two-thirds - - -

14 JUDGE CANNATARO: Is it possible?

15 MS. QUINN: - - - representing the majority. And  
16 then you're going to have - - -

17 JUDGE CANNATARO: Could you just say we're going  
18 to treat everybody exactly the same? It doesn't matter if  
19 you're married, not married. If you're not a titled  
20 shareholder and someone leaves, you know, the apartment to  
21 you in their will, you're going to have to get board  
22 approval. Is that something you could do? Conceivably?

23 MS. QUINN: In theory, but it would be a very  
24 tall standard because it would require a supermajority of  
25 all the shareholders to vote in favor of changing the

1           proprietary lease. You would have to change the  
2           terminology. You would have to remove that provision from  
3           the proprietary lease, because then anyone purchasing the  
4           shares would have to know what - - - how they're going to  
5           be treated upon - - - for transfer of shares upon the death  
6           of a shareholder, et cetera. So they would - - - that's a  
7           contract term that you would have to know upon entering  
8           into the purchase.

9                   JUDGE RIVERA: What do you get - - - what is  
10           required to gain consent?

11                   MS. QUINN: Of the - - -

12                   JUDGE RIVERA: Numerically.

13                   MS. QUINN: I'm sorry?

14                   JUDGE RIVERA: Numerically, what does it require  
15           to get consent?

16                   MS. QUINN: The financial responsibility. It's  
17           an evaluation of - - - of what the person's - - -

18                   JUDGE RIVERA: No, no. Numerically, how many  
19           votes?

20                   MS. QUINN: Oh, oh, I don't know that off the top  
21           off - - - Your Honor - - -

22                   JUDGE RIVERA: Is it - - - I'm sorry. Is it - -  
23           - let me back up.

24                   MS. QUINN: It's a sixty-six and two-thirds  
25           percent vote of the shares.

1 JUDGE RIVERA: Okay.

2 MS. QUINN: So it's a supermajority. It's a - -  
3 - usually a very tall standard.

4 JUDGE RIVERA: That's the shareholder's not the  
5 board. That's - - -

6 MS. QUINN: Correct. The shareholders would have  
7 to vote to amend the proprietary lease, yes.

8 CHIEF JUDGE WILSON: Thank you.

9 MS. QUINN: Okay. Thank you.

10 MR. SILAGY: Very quickly, just to clear  
11 something up, I had suggested a minimum simple standard  
12 that whereas like here, where the shareholder dies and  
13 clearly leaves the co-op shares in the will to their  
14 unmarried partner who lives with them, that would be a  
15 simple standard where they would have to allow the  
16 automatic transfer.

17 And Your Honor had said - - - had asked me, well,  
18 what if there's no will? Well, if there's no will, then  
19 the decedent is not leaving the shares to his partner, so  
20 that partner cannot stay there because they would not be  
21 left the shares.

22 Second, Your Honor, I just want to point out - -  
23 -

24 JUDGE GARCIA: Let's say the state has a rule  
25 when you pass away without a will - - - and let's assume in

1 this alternate universe, the state is subject to this law -  
2 - - the state has a law that says when you die intestate,  
3 your property default first goes to your spouse. Would  
4 that violate this provision?

5 MR. SILAGY: Your Honor, I'm not clear on that.  
6 I'm not a surrogate's court expert.

7 JUDGE GARCIA: Well, just assume it's - - -  
8 that's the law. Would that - - - and assume this rule,  
9 this law, applies to that law. Would a statute that says  
10 if you die intestate, your property goes to your spouse,  
11 violate the Human Rights Law?

12 MR. SILAGY: If - - - it would violate the Human  
13 Rights Law unless there was an exception, and in another  
14 instance - - -

15 JUDGE GARCIA: So in other words, we have to come  
16 up with a test.

17 MR. SILAGY: And let me just say why, Your Honor.  
18 Because the whole reason you have these protected classes  
19 and why it's interpreted broadly is because we shouldn't  
20 rely on stereotypes in defining spouses on that - - -

21 JUDGE GARCIA: So the answer would be yes.

22 MR. SILAGY: Yes. Because you - - -

23 JUDGE GARCIA: So in that case, the Surrogate's  
24 Court would - - -

25 MR. SILAGY: Yes.

1 JUDGE GARCIA: - - - apply your test.

2 MR. SILAGY: Yes, because you could have a  
3 married couple that - - - that were not in a close  
4 relationship at all and just were married because they had  
5 a certificate, versus an unmarried couple who had a close  
6 relationship like they had here for twenty-seven years. I  
7 just want - - -

8 JUDGE HALLIGAN: Do we really want courts in the  
9 business of drawing those lines about whether a  
10 relationship is - - - I don't know what - - - enduring  
11 enough or close enough - - -

12 MR. SILAGY: What we do - - -

13 JUDGE HALLIGAN: - - - to qualify?

14 MR. SILAGY: What we do want, Your Honor, is  
15 courts enforcing the discrimination laws, which should be  
16 interpreted.

17 JUDGE HALLIGAN: I think you said in response - -  
18 -

19 MR. SILAGY: So if that's what it takes - - -

20 JUDGE HALLIGAN: If I can finish my question - -  
21 -

22 MR. SILAGY: Right. I'm sorry.

23 JUDGE HALLIGAN: In response to Judge Garcia's  
24 question, I think you said that - - - that your - - - your  
25 interpretation would mean that you couldn't simply use a

1 marriage license or domestic partnership certificate. So  
2 it seems to me like that would put courts in the position  
3 of assessing relationships pretty frequently.

4 MR. SILAGY: Well, if that's what it takes to  
5 enforce discrimination laws, then the court should do that  
6 - - -

7 JUDGE GARCIA: How about a limit - - -

8 MR. SILAGY: - - - because the whole purpose of  
9 it is to avoid relying on - - -

10 JUDGE GARCIA: How about - - - I'm sorry. How  
11 about a limit - - -

12 MR. SILAGY: - - - stereotypes.

13 JUDGE GARCIA: - - - a limit that says city law  
14 that says spouses are responsible for the medical debt of  
15 the other spouse. Now, would the city be entitled to read  
16 that to include this definition of spouse? Because  
17 otherwise you're discrimination - - - you're discriminating  
18 based on marital status there.

19 MR. SILAGY: Well, you would need to treat them  
20 equally. It's - - - you know, it - - - the other analogy  
21 is let's say someone's giving birth and the hospital allows  
22 the husband to be present, but they don't allow an  
23 unmarried partner to be present - - -

24 JUDGE GARCIA: That's - - -

25 MR. SILAGY: - - - would be discrimination on the

1 flip end. So it's the same thing, Your Honor. It does  
2 work both ways. I agree with Your Honor. And I also just  
3 want to point out that my colleague basically argued  
4 throughout her argument on behalf of the co-op for a very  
5 narrow interpretation of the marital status definition, and  
6 that has been strictly - - - that has been completely  
7 rejected by the City Council.

8 So while it's a position that one's entitled to  
9 take, that is not what the law is in New York City, and if  
10 one doesn't like it, one should change the law.

11 CHIEF JUDGE WILSON: The red light is on.

12 MR. SILAGY: One has to change the law.

13 CHIEF JUDGE WILSON: The red light is on. Thank  
14 you.

15 MR. SILAGY: Yeah. And the business judgment  
16 rule - - -

17 CHIEF JUDGE WILSON: Counsel - - -

18 MR. SILAGY: - - - does not protect - - -

19 CHIEF JUDGE WILSON: The red light - - -

20 MR. SILAGY: - - - discrimination.

21 CHIEF JUDGE WILSON: - - - is on.

22 MR. SILAGY: Thank you, Your Honor. Appreciate  
23 it.

24 (Court is adjourned)

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C E R T I F I C A T I O N

I, Sophia Long, certify that the foregoing transcript of proceedings in the Court of Appeals in the Matter of McCabe v. 511 West 232nd Owners Corp., No. 91 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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