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Conn. high court hears same-sex marriage case

The Boston Globe

By Jenna Russell, Globe Staff | May 15, 2007

HARTFORD -- After 16 years together, Stephen Davis and Jeffrey Busch made their relationship official last spring under Connecticut's two-year-old civil union law. They invited no guests and did not even kiss at the ceremony, they said, because the milestone seemed such a pale imitation of marriage.

"It felt like a learner's permit instead of a driver's license," said Busch in an interview yesterday after a lawyer argued on the couple's behalf in a hearing before the Connecticut Supreme Court.

Ben Klein, the attorney representing eight same-sex couples who are seeking the right to marry, argued that the state's civil union law is unconstitutional because it established a separate and therefore inherently unequal institution for a minority group.

"Jeff Busch doesn't want his young son Eli to have to explain to his friends that what his parents have is 'almost' a marriage," said Klein, senior attorney for Boston-based Gay & Lesbian Advocates and Defenders.

Defending civil unions for the state, Assistant Attorney General Jane Rosenberg told the court the state's law respects the tradition of marriage while promoting consistency with the laws of other states, the vast majority of which do not allow same-sex marriage.

She stressed that the question facing the court is not about equal rights, but about the use of a term, marriage, to refer to a package of benefits.

"All we're talking about is a word," she said.

The Connecticut couples sued the state Department of Public Health, which oversees marriage registrations, in 2004 after they were denied marriage licenses by a town clerk. A lower court rejected their

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arguments, and yesterday was the sole hearing before the state's highest court. The court could take weeks or months to issue an opinion.

In 2005, Connecticut became the first state to establish civil unions without a court order. But that measure did not end the same-sex marriage debate. As the couples' court appeal moves forward, some state legislators have begun pushing for gay marriage at the State House.

Massachusetts is the only state where same-sex couples can marry. Vermont and New Jersey also offer civil unions, and New Hampshire is poised to join them next year.

During the three hours of arguments in the oak-paneled courtroom packed with dozens of spectators, the Supreme Court justices peppered Klein with questions and appeared to wrestle with whether gays and lesbians should be treated as a protected class, as are racial minorities.

Senior Associate Justice David Borden asked tough questions of both sides. He pressed Klein to explain why gays and lesbians should be specially protected and probed in particular whether they meet the standard of "political powerlessness." And he nudged Rosenberg to consider the importance of the word marriage for families with children who might be called on to explain their parents' relationship.

"Isn't that something very important . . . that children be able to answer truthfully that their parents are married?" Borden asked.

Peter Wolfgang, public policy director for the Family Institute of Connecticut, a conservative group that opposes both civil unions and gay marriage, said the court seemed to "toy with" the idea of granting special protection for sexual orientation, a move he said would be highly questionable.

"I don't think anyone could argue this group is politically powerless," he said. "Already, two years after civil unions, they got a marriage bill through the Judiciary Committee."

A decision as society-altering as approval of gay marriage belongs in the Legislature, he said.

"If the court says we're going to take the big questions away from you and your elected representatives can focus on fixing potholes, that would do enormous damage to our republic," said Wolfgang, who attended yesterday's arguments.

Outside the court, plaintiffs posed for photographs and voiced optimism about the case's outcome.

Elizabeth Kerrigan, who is raising 5-year-old twins with her partner, Joanne Mock, said the twins are eager for their parents to marry.

She hopes the court will clear the way for that to happen, before she must explain to them the difference between marriage and civil unions.

She dismissed the idea that the difference is solely a matter of language.

"I always say, if [marriage] was just a word, they'd give it to us," she said.

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