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Power of word 'marriage' debated in court

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HARTFORD — Gay couples said Monday that while "marriage" may only be a word, it's also an important right that they're being denied under the state's civil-union law.

During a three-hour appeal before the Connecticut Supreme Court, a lawyer for eight committed lesbians and gays, including John Anderson and Garrett Stack of Woodbridge, asked the court to give them the same rights enjoyed by heterosexuals.

But an assistant Connecticut attorney general said that the landmark 2005 law on civil unions already gives gays and lesbians the same rights as married couples and if the Legislature wanted a marriage law, it would have enacted it.

The seven-judge panel, however, spent most of the time poking holes in both arguments, while trying to gauge the relative harm homosexuals may be vulnerable to by not being allowed to marry.

"There's no question that as far as the legal incidence of marriage, civil union

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grants all those," said Associate Justice David M. Borden, who presided over the hearing and asked lawyers on both sides more than two dozen questions each.

"So what is being withheld are kind of deeply held and maybe very, very important intangible, kind of, social benefits from being able to claim the status as well as the name of marriage?" Borden asked Bennett Klein, the plaintiffs' lawyer.

"Right," Klein agreed, stressing that gays have experienced prejudice, exclusion and stereotyping for decades and are still prohibited from the nation's armed

services.

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"In this case what's withheld is something that this society values and that is undisputed here and that is the word 'marriage,'" Klein said.

"Marriage is not just a bundle of legal rights," Klein said during his 90-minute portion of the arguments before the high court. "It is a status that the state confers on people and it's a status that has with it profound personal meaning to individuals and that is the reason the Legislature denied it to same-sex couples."

He said that while it's just a word, it's an important one.

"Depriving same-sex couples of the word marriage is a way of depriving them of equality as couples and families and that is particularly true, as you mentioned, with respect to the children in these families," Klein said.

The gay-rights activists, who all tried, and failed, to obtain marriage licenses at Madison Town Hall, are suing the town and the state Department of Public

Health, which administers the civil-union process.

They claim that the civil-union law is a separate and unequal provision in violation of the state constitution, citing the history of racial discrimination as a similar process.

"Separate institutions for a minority group are unheard of in our jurisprudence today," Klein said. "This court has said that separate can never be equal."

Associate Justice Richard N. Palmer asked more than 10 questions of each side, while Justice Flemming L. Norcott Jr. and Appellate Judge Lubbie Harper Jr., promoted to the high court for the case, added several more questions.

Palmer's questions and remarks appeared to be the most sympathetic to the plaintiffs' arguments. But Borden — the senior justice after Chief Justice Chase T. Rogers and the former chief, Senior Justice William J. Sullivan, dropped off the panel — drove the proceeding.

Borden warned that Klein was essentially undermining the court challenge by admitting that it has little to do with the civil-union statute, which took effect on Oct. 1, 2005.

"Even if we didn't have a civil-union law, the court would and should make the determination that same-sex couples are similarly situated to different-sex couples," Klein responded. This is the first time that a state court has been asked to rule

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on the constitutional value of an existing civil-union law.

Assistant Attorney General Jane Rosenberg, who won the issue at the Superior Court level, said it's up to the Legislature to determine the law of the state and in 2005, it chose to equalize the rights of gays by creating a Vermont-style civil-union statute.

"I think the civil-union law is important because it shows the advances that this state, this Legislature has made in recognizing the rights of gay and lesbian individuals," Rosenberg said.

"If the Legislature had not granted all the rights and benefits to same-sex couples, then it might be harder to make an argument that there's a rational basis for denying those couples all of those rights," she said. Palmer asked why the civil-union law might "stigmatize" gay couples. "From a legal standpoint there are no rights being taken away from that group and in fact, equal rights have now been granted to that group," Rosenberg said. "They've been granted a license which has all the benefits attached to it of marriage, but what's different is that their license happens to say 'civil union' instead of 'marriage' on it."

"Are we talking about a distinction without a difference?" Harper asked.

"I think what the trial court was saying was that equal protection tolerates some differences," Rosenberg said.

The court has no deadline to issue a verdict, but it is expected to be published by the late summer or early fall. The court could also kick the whole issue back to the General Assembly.

When the hearing ended about 1 p.m., Anderson and Stack, who have been partners for 27 years, held hands as they walked outside and down the steps of the courthouse with the other plaintiffs, who have been together between 13 and 31 years.

Anderson and Stack seemed optimistic about the hearing and the even-handedness of the justices.

"I saw a very engaged group of justices asking very important questions so they could understand exactly what it is we are going through and equally they asked very pointed questions to the state," said Stack, a retired Stratford public school administrator.

Anderson said that Klein's point about how the children of gay couples should be allowed to say their parents are married, was a good one. "They got the point," said Anderson a retired Latin teacher at Stratford's Bunnell High School. "The justices understand the importance of the issue."

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