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CONNECTICUT NEWS

State's High Court Considers Same-Sex Marriage Lawsuit

4:28 PM EDT, May 14, 2007

By LYNNE TUOHY, The Hartford Courant

The eight same-sexed couples walked into the state Supreme Court Monday to hear arguments on whether they should be allowed to marry, and walked away "hopeful.

"It seemed like a very open group of justices," Joanne "Jodi" Mock, longtime partner of named plaintiff Elizabeth Kerrigan, said on the steps of the courthouse where their cause will be decided. They will likely wait well past summer for an ruling.

The legal issues are multi-faceted, and the Gay and Lesbian Advocates and Defenders law firm representing the couples attacked on so many fronts that Justice David M. Borden at one point told Attorney Bennett H. Klein he was "riding two horses."

Klein argued that marriage for same-sex

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couples is a fundamental right. No appellate court in the country--state or federal--has yet to embrace that notion.

He argued that under Connecticut's Constitution, barring same-sex marriage violates the sex discrimination clause, saying a woman who wants to marry another woman is denied the same right a man has to marry a woman, and vice versa. Klein also argued that the couples are being discriminated against based on sexual orientation.

But the argument the justices seemed most intrigued by is whether sexual orientation entitles the couples to status as a 'suspect class' of people entitled to greater protection due to a history of long term discrimination and political powerlessness. The justices spent the most time peppering Klein and Assistant Attorney General Jane R. Rosenberg on this topic.

If the justices determined that gay and lesbian couples fell into this status, they would more intensively scrutinize the state's motives in distinguishing between civil unions and marriage, and whether those objectives were both rational, and narrowly tailored. It was this type of analysis that formed the underpinnings of the 2003 Massachusetts Supreme Court ruling that afforded same-sex couples


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the right to marry.

Rosenberg argued that same-gender couples are far from politically-powerless, and have made "significant advances" in recent years, noting the passage here two years ago of the first civil union law in the country that was not compelled by a court order. She said she wouldn't be surprised if sexual orientation was soon grafted onto the constitution's equal protection provisions.

"Is that your argument--give them more time and they'll do better?" Justice Richard N. Palmer queried. "For many years, gays and lesbians have been subjected to significant discrimination."

Justice Flemming L. Norcott Jr. drew a round of laughter when he interjected, "If they were doing better, they would have passed that bill across the street." He was referring to a bill that would have included same-sex couples in the state's civil marriage statutes. The bill cleared the Judiciary Committee by a vote of 27-15, catching off-guard lawmakers who thought it would have died in committee. Faces with requests for more time to think and consult their constituents, Judiciary Committee Co-chairmen Sen. Andrew McDonald and Rep. Michael Lawlor said last Friday they would not force a vote this session.

Rosenberg argued that, rather than being deprived of rights, same-sex couples have been granted new privileges.

"No rights have been taken away from this group," she argued. "That been granted a license with all the rights and benefits of marriage. What's different is their license happened to say civil union and not marriage."

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