

Lawyers Argue Legal Status of Gay Unions



Fred Beckham/Associated Press

Janet Peck, left, and Carol Conklin lead plaintiffs into court in Hartford.

By JENNIFER MEDINA
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Correction Appended

HARTFORD, May 14 — Connecticut’s highest court became the first in the nation on Monday to hear arguments over whether the establishment of civil unions created a fundamentally inferior status for gays and lesbians. But in pondering a new appeal for same-sex marriage, the State Supreme Court’s seven justices also focused on another fundamental question: whether laws that make distinctions based on sexual orientation, like those governing marriage, merit scrutiny similar to that given laws that discriminate based on race or gender.

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Jane R. Rosenberg arguing the state’s case in court Monday.

Connecticut is one of four states — along with Vermont, New Jersey and, most recently, New Hampshire — that have established civil unions for same-sex couples. Only Massachusetts authorizes marriages for gays. Other states, like California, have similar benefits for domestic partnership.

Two years after the General Assembly here established civil unions, the Supreme Court has agreed to decide whether they fulfill the state’s constitutional obligation to treat couples equally.

Jane R. Rosenberg, the assistant attorney general who argued the case for the state, told the court that gay marriage was a policy question that should be left up to legislators and not determined by “court fiat.”

“Is the legislature constitutionally required to use the word ‘marriage’ when it’s referring to the package of rights and benefits it has given to same-sex couples?” Ms. Rosenberg asked in court. “The answer is clearly no.”

But Bennett Klein, the lead lawyer for the eight couples bringing the suit, argued in court that there were several parallels between racial discrimination lawsuits and the legal battle for gay marriage.

Marriage is “something that goes to the heart of equal protection,” Mr. Klein said during his closing argument, adding that gay couples have “the right to be part of the fabric of society when they are just the same as other couples and other families.”

Besides potentially breaking new ground on whether homosexuals deserve the same level of legal protection as blacks and women, the case is being closely watched because it presents more complicated arguments than have other cases regarding civil unions and marriage.

In New Jersey, where the Legislature created civil unions in February to fulfill a Supreme Court mandate for equal treatment, many couples have complained that they are being denied rights and benefits granted married couples, and are considering a lawsuit similar to the one here.

Four of the eight couples in the Connecticut case have had civil unions performed in the state, and the others have held out for marriage. The case is being handled by Gay and Lesbian Advocates and Defenders, the same group that successfully sued for marriage in Massachusetts.

Though some state legislatures have created specific legal protections for gays in their laws against hate crimes or discrimination in housing or employment, there is no precedent in federal or the highest state courts making gays what is known in jurisprudence as a "suspect class," like racial minorities, a category that is accorded strict legal scrutiny when laws are challenged in court. That issue was the focus of much of the three hours of argument on Monday.

The judges repeatedly asked Mr. Klein and Ms. Rosenberg whether they believed gays and lesbians had a history of long-term discrimination and political powerlessness, two elements in establishing a suspect class.

Ms. Rosenberg acknowledged that homosexuals have long been treated as inferior but said it would be difficult to say they are politically powerless in Connecticut, pointing to the civil union law passed by the General Assembly in 2004 without pressure from the courts as evidence.

She added that it was possible that the legislature would approve same-sex marriage within the next several years. (The Joint Judiciary Committee passed a same-sex marriage bill last month, 27 to 15, but legislative leaders announced Friday that they did not have enough votes in the House to pass it, so it will not come to the floor for a vote this year.)

Justice Richard N. Palmer, who was appointed by Gov. Lowell P. Weicker Jr., an independent, noted that African-Americans had made advances over the last several decades but were still considered politically powerless when many discrimination cases made their way through court. Then he turned to Ms. Rosenberg and asked: "Is that your argument: Give them more time and they'll do better?"

"Yes," Ms. Rosenberg replied.

Noting the stall in the legislature on the same issue, Justice Flemming L. Norcott Jr., also appointed by Governor Weicker, said, "If they were doing better, they would have passed that bill across the street," prompting a wave of laughter through the packed courtroom, which is across the street from the State Capitol.

If the court found that gays and lesbians were a suspect class, the state would be required to prove that it had rational basis for making a distinction between homosexual and heterosexual couples.

In many ways, the arguments were complicated by the fact that civil unions officially bestow the same legal protections as marriage, and one judge referred to marriage itself as an "intangible" benefit. "We're talking about a word here," Ms. Rosenberg said. "All those benefits, at least under state law, have been granted."

But Mr. Klein retorted that "marriage is not just a bunch of legal rights."

"It is a status that the state confers on people," he said. "A status that has profound personal meaning to individuals."

Correction: May 19, 2007

An article on Tuesday about a case before the Connecticut Supreme Court that questions whether civil unions for same-sex couples fulfill the state's constitutional obligation to treat individuals equally misidentified the legal standard that would be applied if the court found that gay men and lesbians were a "suspect class," a status, like membership in a racial minority, that makes laws that categorize on that basis suspect. The standard is "heightened scrutiny," which requires the state to prove that discrimination against gay men and lesbians is related to an important or compelling government interest; it is not "rational basis," a more relaxed standard in which the state is required to show only that it had such a basis for making a distinction between single-sex and heterosexual couples.

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