

Prospects for overturning Connecticut's marriage decision are dim

by Lisa Keen
contributing writer
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Elijah, son of plaintiff couple Stephen Davis and Jeffrey Busch, stood with his dads at a press conference at the Hartford Hilton Oct. 10 following the release of the Connecticut Supreme Court decision granting same-sex couples the right to marry. (Source:Photo: Laura Kiritsy)

As same-sex couples across Connecticut make wedding plans in the aftermath of the state Supreme Court's Oct. 10 ruling in favor of marriage equality, it appears that the odds are stacked against foes seeking to overturn the decision.

Connecticut's marriage victory comes at a particularly critical time -- less than four weeks away from a rare Connecticut statewide vote on whether to hold a constitutional convention to consider amendments to its constitution. The Connecticut vote on whether to hold a constitutional convention

comes every 20 years and, by coincidence, was already on the ballot for this year and already being supported by anti-gay marriage activists.

If voters call for such a convention, the legislature could -- with two-thirds majority of both houses -- amend the state constitution to ban same-sex marriage. That amendment would then have to go back to voters for approval.

But statements from various elected officials on the decision indicate there is little appetite for tackling the issue in the political arena, even if marriage equality opponents, led by the Family Institute of Connecticut -- which staged a massive rally at the state capitol earlier this month -- are successful in their campaign for a voter-approved constitutional convention (known as Question 1) on Election Day.

For starters, the state's top legislative leaders -- Senate President Pro-Tempore Don Williams (D-Brooklyn), Senate Minority Leader John McKinney (R-Fairfield) and House Speaker-elect Chris Donovan (D-Meriden) have all expressed support for the ruling. In addition to releasing a statement applauding the ruling, Williams was present at the Oct. 10 press conference held by Gay and Lesbian Advocates and Defendants (GLAD), the organization that spearheaded the marriage lawsuit, at the Hartford Hilton; Donovan spoke at a rally held by pro-equality forces later that day.

Additionally, even Gov. Jodi Rell, a Republican who has repeatedly expressed opposition to same-sex marriage, said she would abide by the court's decision. "I disagree with today's State Supreme Court ruling but as governor, I will uphold it," said Rell, who signed the state's civil union law in 2005, said in an Oct. 10 statement. Though Rell stated that she does not believe the high court's decision "reflects the majority of the people of Connecticut," she added that she is "firmly convinced that attempts to reverse this decision -- either legislatively or by amending the state Constitution -- will not meet with success."

Speaking at the press conference, Anne Stanback, the executive director of Love Makes a Family, the organization that has lead the effort to secure marriage equality in Connecticut, acknowledged that the Family Institute of Connecticut's goal was to get a constitutional convention on the legislative agenda and then pressure the legislature to pass a constitutional amendment on to the voters. "I think the reality is that we have the votes to defeat that," said Stanback. "But we aren't taking anything for granted and we will be mobilizing our ... supporters across the state. But even legislators who so far have not said that they proactively support marriage equality have said very clearly that they oppose amending the state constitution to ban it."

During the years that the case was making its way through the courts, Love

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Makes A Family, working in coalition with other LGBT and civil rights organizations, including the Boston-based MassEquality, built a grassroots movement aimed at swaying legislators to support marriage equality. Similar to the successful effort here in Massachusetts, Love Makes A Family helped same-sex families across the state reach out and educate their legislators about their lives and the need for the legal protections afforded by marriage.

State Rep. Michael Lawlor (D-East Haven), an openly gay lawmaker who has long lead legislative efforts to secure LGBT rights, said that when the new legislative session begins next January, he expects that legislation to codify the court's ruling and eliminate the civil unions law would pass with bipartisan support. "I'll predict today that what you will hear that way is an overwhelming an very bipartisan consensus that this is the right thing to do and the time is right to do this," Lawlor said in an interview after the press conference.

Attorney General Michael Blumenthal has said the ruling takes effect on Oct. 28. GLAD expects that same-sex couples will be able to begin marrying in Connecticut by Nov. 7, after the Supreme Court's judgment has been entered in New Haven Superior Court, where the lawsuit originated. GLAD is also advising Connecticut residents that the court's decision does not affect the state's civil union law and those who were joined in a civil union may now get married, provided they are marrying the same partner.

Civil unions = 'segregation'

In very strong language, the Connecticut Supreme Court majority characterized civil unions as a form of "segregation" and says they do "cognizable harm." It said the disparate treatment of gay and straight couples violates the state law against sexual orientation discrimination and that the courts should scrutinize such discrimination as carefully they do gender discrimination.

This latter statement is seen as especially significant, legally speaking, because it says the Connecticut courts should view sexual orientation as a "quasi-suspect classification." Such a classification requires that laws treating people differently based on sexual orientation must have more than just a rational reason, though it stops short of requiring a more difficult, compelling reason.

The California Supreme Court, in its landmark decision in May, said laws banning gay marriage discriminate against gay people as a suspect class and impinge on their fundamental right to have "their family relationship accorded the same respect and dignity enjoyed by an opposite-sex couple." The California court then concluded that the state's rationale for treating gays different -to retain a traditional and well-established definition of marriage- cannot be seen as either compelling or necessary.

Connecticut's case was argued May 14, 2007, but conspicuously absent from that panel was and this decision was the court's new chief justice, Chase T. Rogers. Rogers recused herself because members of her husband's law firm, Robinson & Cole, authored a friend-of-the-court brief for the Lambda Legal Defense and Education Fund. Lambda is a national organization that supports gay marriage and has been involved in lawsuits in six states where same-sex couples sought the right to marry.

The Connecticut decision was a 4 to 3 vote, with the three dissenting justices each submitting his or her own brief.

The majority decision, penned by Justice Richard Palmer, an appointee of former Governor Lowell Weicker, concluded, "our conventional understanding of marriage must yield to a more contemporary appreciation of the rights entitled to constitutional protection."

"Interpreting our state constitutional provisions in accordance with firmly established equal protection principles," wrote Palmer, "leads inevitably to the conclusion that gay persons are entitled to marry the otherwise qualified same sex partner of their choice. To decide otherwise would require us to apply one set of constitutional principles to gay persons and another to all others. The guarantee of equal protection under the law, and our obligation to uphold that command, forbids us from doing so. In accordance with these state constitutional requirements, same sex couples cannot be denied the freedom to marry."

Palmer was joined in the decision by three other Republican appointees.

Two of the three dissenting justices were Republican appointees. Justice David Borden, the lone Democratic appointee on the court, disagreed with the majority's conclusion that laws based on sexual orientation are a quasi-suspect class, deserving of the same level of scrutiny as laws based on sex. Justice Peter Zarella said the majority failed to appreciate the original purpose of marriage laws, which he said is procreation. As such, he said, those laws do not discriminate based on sexual orientation and "persons who wish to enter into a same sex marriage are not similarly situated to



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persons who wish to enter into a traditional marriage."

GLAD filed the lawsuit, *Kerrigan and Mock v. Connecticut Dept. of Public Health*, on behalf of Elizabeth Kerrigan and her partner Joanne Mock, and seven other same-sex couples. The couples attempted to obtain marriage licenses in Connecticut just after the Massachusetts marriage decision went into effect in 2004 but were refused.

Now, the remaining same-sex marriage case pending before a state supreme court is in Iowa.

Editor-in-chief Laura Kiritsy contributed to this report

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