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Connecticut Supreme Court legalizes same-sex marriage

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October 10, 2008 11:55 AM



(Fred Beckham/AP)

Joanne Mock, left, and Beth Kerrigan, two of the plaintiffs in the case, spoke to the media in front of the Connecticut State Supreme Court in Hartford in May 2007.

By Michael Levenson and Andrew Ryan, Globe Staff

Connecticut became the third state to legalize same-sex marriage today in a 4-3 decision by the state Supreme Court.

In an [85-page decision](#) issued at 11:30 a.m., the court struck down a law barring same-sex marriage, ruling that the state had "failed to establish adequate reason to justify the statutory ban."

The justices noted in the majority opinion that they recognized "as the Massachusetts Supreme Judicial Court did in *Goodridge v. Dept. of Public Health* ... that 'our decision marks a change in the history of our marriage law.'"

The case, *Kerrigan v. the state Commissioner of Public Health*, was brought by eight same-sex couples who were denied marriage licenses by the Madison town clerk. They argued that the state's civil union law was discriminatory and unconstitutional because it established a separate and therefore inherently unequal institution for a minority group. Citing equal protection under the law, the state Supreme Court agreed.

"In accordance with these state constitutional requirements, same sex couples

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cannot be denied the freedom to marry," said the majority opinion, which was written by Justice Richard N. Palmer.

State Senator Andrew J. McDonald, cochairman of the state Assembly's Judiciary Committee, said he believes that gay couples will be allowed to marry in 20 days, barring attempts by opponents to delay the ruling with procedural maneuvers. He said he expects the Assembly to update the state's marriage laws when members reconvene in January, without much opposition.

"I continue to expect a bipartisan effort to eradicate any remaining vestiges of discrimination," McDonald said, hailing the ruling as a "dramatic reaffirmation of Connecticut's commitment to civil rights and equality for all of her citizens."

"The court has seen through many of the diversionary arguments of our opponents," McDonald said, "and has firmly established that discrimination in any context and in any form is unacceptable and unconstitutional."

Peter J. Wolfgang, executive director of the Family Institute of Connecticut, which opposes same-sex marriage, blasted the ruling.

"The decision is an outrage," Wolfgang said in a telephone interview. "It is essentially a handful of judges acting as if they were rogue masters usurping the democratic process in Connecticut and radically redefining marriage by judicial fiat."

Wolfgang said that "our only shot" to stop same-sex marriage is to push for passage of a ballot question that will appear before Connecticut voters next month.

Connecticut Governor M. Jodi Rell said in a statement that she would abide by the decision even though she disagreed with the court because of her belief that "marriage is the union of a man and a woman."

"The Supreme Court has spoken," Rell said. "I do not believe their voice reflects the majority of the people of Connecticut. However, I am also firmly convinced that attempts to reverse this decision -- either legislatively or by amending the state Constitution -- will not meet with success."

Connecticut joins California and Massachusetts, which became the first state to allow same-sex marriage in 2004.

In a scathing 25-page dissenting opinion today, Justice Peter T. Zarella wrote that "there is no fundamental right to same sex marriage."

"The ancient definition of marriage as the union of one man and one woman has its basis in biology, not bigotry," Zarella wrote. "If the state no longer has an interest in the regulation of procreation, then that is a decision for the legislature or the people of the state and not this court."

In a dissenting opinion written by Justice David M. Borden and signed by Justice Christine S. Vertefeuille, the judges wrote that, contrary to arguments made by the plaintiffs, Connecticut's civil union law is not discriminatory.

"The development of the law in this state dealing with sexual orientation demonstrates that the legislature had no intention, in passing the civil union statute, to encourage discrimination against or to stigmatize homosexuals," the judges wrote. "On the contrary, that history supports the conclusion that the legislature has been working toward the eventual passage of a gay marriage bill, and that the civil union statute was an important step in that process."

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. The eight gay couples who were denied licenses sued the state Department of Public Health, which oversees marriage registrations.

Following the governor's lead, there appeared to be little appetite in the Assembly

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to fight the ruling.

State Senate Minority Leader John McKinney, a Republican of Fairfield, issued a statement today saying: "While I believe these decisions are better left to elected representatives, it is ultimately the province of the State Supreme Court to interpret our constitution. The Court carried out that responsibility today and ruled that the institution of marriage in Connecticut must include same-sex couples. Whether people agree or disagree, we all need to respect the Court's decision and abide by the ruling."

At the Family Institute of Connecticut, Wolfgang said that next month's ballot question asked voters whether the state should hold its first constitutional convention in 40 years. If the measure passes, Wolfgang said, activists opposed to gay marriage will press the Legislature to pass a constitutional amendment that would define marriage as the union of one man and one woman. The measure would then need approval from the voters, and the soonest it could be ratified would be two years, he said.

"Our only shot is to get a yes vote on Election Day," Wolfgang said. "That is our one opportunity to let people have the same remedy here in Connecticut as they have out in California," where voters are also scheduled to take up a ballot amendment next month that would ban same-sex marriage.

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