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State Supreme Court Legalizes Same-Sex Marriage

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The state Supreme Court on Friday delivered gay and lesbian couples the validation they have long been seeking — the right to marry.

In a 4-3 decision, the court ruled that same-sex couples cannot be prevented from marrying — and that civil unions, those marriage-like legal arrangements that Connecticut has offered to gay people since 2005, are not an acceptable substitute.

"Interpreting our state constitutional provisions in accordance with firmly established equal protection principles leads inevitably to the conclusion that gay persons are entitled to marry the ... same-sex partner of their choice," Justice Richard Palmer wrote. "To decide otherwise would require us to apply one set of constitutional principles to gay persons and another to all others."

The 85-page ruling means that thousands of gay couples soon will be able to marry in Connecticut, perhaps as early as next month. It also provides fresh fuel to opponents of same-sex marriage, who are pushing for a mechanism that would permit them to amend the state constitution to prohibit same-sex unions.

Connecticut will join Massachusetts and California as the only states to permit gay partners to wed. Meanwhile, high courts in New York and New Jersey have opted not to expand the legal rights of same-sex couples.

Friday's landmark decision was met with cheers and tears of joy from gay activists throughout the state and nation. Janet Peck held the hand of Carol Conklin, her partner of more than three decades, as they walked to the podium at an afternoon press conference at the Hilton Hartford hotel.

"For 33 years, my heart has ached for this moment," said Peck, 56. The Colchester couple, one of eight plaintiff couples in the case, chose not to get a civil union because they considered it inferior to marriage.

On Friday, Peck called Conklin "my soon-to-be spouse."

The ruling culminates a long march toward acceptance for gay and lesbian couples, a journey that has shifted from the halls of the state Capitol to the chambers of the state's highest court. Through the years, legislators held countless hearings, and political support kept building — but gay rights activists decided last year to wait until the courts had weighed in.

"For nine years, the Connecticut legislature and the Connecticut courts have been moving along a path where they have considered a whole host of decisions pertaining to same-sex couples," said Rep. Michael Lawlor, a Democrat from East Haven and outspoken supporter of same-sex marriage. "Both the courts and the legislature have evolved. ... This is a topic most people didn't even think about 15 years ago."

The majority opinion, written by Palmer and joined by Justices Flemming L. Norcott Jr. and Joette Katz, along with Appellate Judge Lubbie Harper (sitting for Chief Justice Chase T. Rogers, who recused herself), rejects the notion of a "separate but equal" system of civil unions.

"Although marriage and civil unions do embody the same legal rights under our law, they are by no means 'equal,'" Palmer wrote. "As we have explained, the former is an institution of transcendent historical, cultural and social significance, whereas the latter most surely is not."

In other words, "separate but equal is not OK," said Susan Schmeiser, professor of family and gender law at the University of Connecticut School of Law. "Nothing short of marriage is going to satisfy the equal protection concern."

The court's ruling significantly expands the judicial protections afforded to gays and lesbians, Schmeiser said. "The bulk of the opinion is devoted to establishing that gay men and lesbians warrant protected status under the Connecticut constitution ... based on the history of discrimination that gay men and lesbians have suffered."

In a statement released minutes after the decision was posted on the judicial branch website, Gov. M. Jodi Rell said that she disagreed with it but would uphold it. She said that she was proud to sign the state's civil unions law in 2005, the first in the nation enacted without a court mandate, and thought it was "equitable and just," but that she does not support same-sex marriage.

And yet, Rell added, "the Supreme Court has spoken. ... 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. I will therefore abide by the ruling."

Other opponents, however, are already ratcheting up their campaign to stop same-sex marriage. They are pushing for passage of a ballot question asking voters if the state should convene a constitutional convention. Their hope is to use the convention to allow the state constitution to be reworked to allow for something called "direct initiative," a mechanism that permits citizens to force a vote on matters of public policy, such as same-sex marriage.

"The court has just usurped democracy in Connecticut and redefined marriage by judicial force," said Peter Wolfgang, executive director of the Family Institute of Connecticut. Connecticut voters will have one opportunity on Nov. 4 to reassert their right to self-government, he said.

Dissenting opinions were written by now-retired Justice David Borden, who was acting chief justice when the case was heard in May 2007, Justice Christine Vertefeuille and Justice Peter Zarella.

Senior Justice William J. Sullivan, one of the more conservative members of the court, removed himself from the panel just days before the case was scheduled to be heard. He did not give a reason.

Borden said it was far too early to say that civil unions signify second-class status. "Our experience with civil unions is simply too new and the views of the people of our state about it as a social institution are too much in flux to say with any certitude that the marriage statute must be struck down in order to vindicate the plaintiffs' constitutional rights," he wrote.

In his dissenting opinion, Zarella invoked that traditional view of marriage. "The ancient definition of marriage as the union of one man and one woman has its basis in biology, not bigotry," he wrote. "The fact that same sex couples cannot engage in sexual conduct of a type that can result in the birth of a child is a critical difference in this context."

Most of the eight couples in the case, Kerrigan et al. v. Commissioner of Public Health et al., are parents — in fact, there are 14 children spread among them.

According to an analysis of a U.S. Census Bureau survey by the Williams Institute, about 30 percent of the 9,546 same-sex couples in Connecticut are raising children.

Courant Staff Writer Bill Leukhardt contributed to this story.