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Court permits same-sex marriage

[Victor Morton](#) (Contact)

The Connecticut Supreme Court gave gay couples the right to marry, ruling Friday that the legislature's civil-unions law discriminates against homosexuals in violation of the state constitution.

The 4-3 decision makes Connecticut the third state - after California and Massachusetts - to allow same-sex marriages and also casts doubt on the long-term viability of gay civil unions as a compromise measure, which has happened in seven other states and the District of Columbia. The Connecticut legislature passed a civil-unions bill in 2005 that granted all the rights and responsibilities of marriage, but the court ruled that wasn't enough.

"In light of the history of pernicious discrimination faced by gay men and lesbians, and because the institution of marriage carries with it a status and significance that the newly created classification of civil unions does not embody, the segregation of heterosexual and homosexual couples into separate institutions constitutes a cognizable harm," Justice Richard N. Palmer wrote in the majority decision.

• [Click here for the state's decision \(PDF\)](#)

The three judges who opposed the decision filed separate sharply worded dissents and denounced the majority's claim that the traditional definition of marriage is merely the product of anti-gay prejudice.

Justice Peter T. Zarella wrote that the court's majority failed to discuss the purpose of marriage laws, which he said is to "privilege and regulate procreative conduct," adding that "the ancient definition of marriage as the union of one man and one woman has its basis in biology, not bigotry. 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 praising the decision, Lee Swislow, executive director the Gay & Lesbian Advocates & Defenders, said it should show other states that domestic partnerships are not sufficient.

"Connecticut's Supreme Court ruled today that gay and lesbian couples in the Constitution State deserve marriage. Not domestic partnerships or civil unions, but full and equal marriage and the respect, dignity and security that only marriage provides," he said.

This aspect of the decision also fueled the anger among social conservatives.

"Even the legislature, as liberal as ours, decided that marriage is between a man and a woman," said Peter Wolfgang, executive director of the Family Institute of Connecticut. "This is about our right to govern ourselves. It is bigger than gay marriage."

"Why do we even need the legislative and executive branches of government if the courts are going to brazenly legislate from the bench?" said Matt Barber, director of cultural affairs with Liberty Counsel.

Brian Burch, president of the Catholic group Fidelis Political Action noted that "in each case, from Massachusetts to California to now Connecticut, gay marriage has not been chosen by referendum or by a legislative vote. In each circumstance, gay marriage has been imposed by judicial fiat."

But state Sen. Andrew McDonald, a Democrat and a longtime supporter of gay marriage, said the state legislature had already been on an "unstoppable march to achieve marriage equality."

He noted that the legislature's unified Judiciary Committee, of which he is co-chairman, passed a gay marriage bill last year, although it did not come to a vote in the full legislature and the governor threatened a veto.

"I'm certain that we would have passed it in this coming session anyway," Mr. McDonald said.

Republican Gov. M. Jodi Rell said that she disagreed with the ruling but that "the Supreme Court has spoken." She also warned against efforts to reverse the decision, saying she is "firmly convinced" that they "will not meet with success."

Connecticut's attorney general, Democrat Richard Blumenthal, said the state would not try to appeal the decision, which will take effect some time after Oct. 28.

Opponents of gay marriage said they would try to reverse the ruling via a regularly scheduled ballot measure in November that would open a state constitutional convention. They said they hoped such a convention could take up the issue of gay marriage.

"Then we will put a question on the ballot to allow the public, not our robed masters, to decide once and for all if marriage will be protected in our state constitution as the union between a man and a woman," Mr. Wolfgang said.

The Bush administration issued a statement last night denouncing the ruling, which domestic-policy assistant Karl Zinsmeister said "illustrates that a federal constitutional amendment may be needed if the people are to decide what marriage means."

Neither Sen. Barack Obama nor Sen. John McCain had issued a public statement on the ruling as of Friday night.

The decision comes just three weeks before Californians will vote on a state constitutional amendment that would reverse their state's high court and define marriage as the union of a man and a woman.

After months of trailing in polls, the latest CBS News/SurveyUSA Today poll shows California's Proposition 8, leading by 47 percent to 42 percent, with 10 percent undecided.

More than 25 states have constitutional amendments against same-sex marriage.

Eight same-sex couples brought the lawsuit, *Kerrigan v. Commissioner of Public Health*, in 2004 after applying for marriage licenses and being denied. They said their constitutional rights to equal protection and substantive due process were violated.

The Connecticut legislature passed its civil-unions law in 2005, the first state to do so through the democratic branches, in an attempt to address the claims of discrimination and to provide gay couples with the benefits of marriage.

But Friday's decision, which overturned a lower state court ruling, rejected the state's claim that its civil unions law meant the inability to marry did not harm gays.

In his dissent, Justice David M. Borden criticized the court for judging civil unions as inferior, writing that "it is simply too early to know this with any reasonable measure of certitude."

Justice Palmer brushed aside that objection, saying that although the legislature granted all the benefits of marriage, it "nonetheless created an entirely separate and distinct legal entity for same sex couples even though it readily could have made those same rights available to same sex couples by permitting them to marry. In view of the exalted status of marriage in our society, it is hardly surprising that civil unions are perceived to be inferior to marriage" and thus harms gay couples by the very fact of the civil-union status.

Anne Stanback, executive director of Love Makes A Family, which has lobbied for gay marriage in Connecticut for nearly a decade, exulted in the victory.

"Today, same-sex couples, who have made a lifelong promise to take care of and be responsible for each other, celebrate being welcomed into one of society's most fundamental institutions," she said. "And today, Connecticut can proudly and appropriately claim its nickname, 'The Constitution State.' "

• Cheryl Wetzstein contributed to this article, which was based in part on wire-service reports.