

## What's Love Got to Do With It?

A lot. Beneath the legal language of equal protection and due process beats the heart of Connecticut's new gay-marriage suit: the question of what modern marriage is all about.

by [Carol Bass](#) - September 9, 2004

John loves Garrett. Barb loves Robin. It's right there in the first paragraph of the suit that they and five other gay and lesbian couples filed in New Haven Superior Court on Aug. 25:

"They have been denied the right to marry the person they love in violation of the law of the State of Connecticut."

Now, everyone knows love is not legally *required* for two people to get married. But is it legally sufficient? Is it true that, as the name of the pro-gay-marriage group proclaims, Love Makes a Family?

Backed by the legal team that won the landmark Massachusetts gay-marriage case last November, the Connecticut couples are now asking that question of our own courts. They hope for the same outcome: a state Supreme Court declaration that same-sex couples have a constitutional right to marry.

But wait, you say. The Connecticut Constitution doesn't talk about love. It talks about liberty, equality, due process.

True. And after that first paragraph, the word "love" appears only twice more in the Connecticut couples' 24-page suit.

So legally speaking, the case of *Kerrigan vs. Department of Public Health* is not about love. It's about constitutional rights. But love is key.

You can see it in the way the suit is drafted. A lot of care went into describing each couple: how they met, how long they've been together, how they care for each other in sickness and in health, how they're raising children together.

In short, how they love each other. Why else would they go to court over the right to get married?

Those stories are central to the case. (See accompanying article.) Because before they rule on *who* may marry, our Supreme Court justices will have to answer--in their hearts, if not in their written decision--another question: What's marriage all about?

To win, Elizabeth Kerrigan and Joanne Mock and Garrett Stack and John Anderson and all the other plaintiffs must persuade the justices that marriage is

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Garrett Stack and John Anderson have shared a home for 22 years.

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not primarily about procreation. It's no longer about transferring legal control over a woman from her father to her husband. And while it's very much about securing property rights and health benefits and child custody, that can't be all.

Stack adopts a whiny tone to voice "the big question everyone wants to know: 'Why do you want to get married?'"

His first answers are practical, having to do with retirement benefits and medical decisions.

But there's more.

"John and I have built a life together for 24 years," he says. "Why else do people get married? Because they love each other."

A few things that *Kerrigan vs. Department of Public Health* is not: It is not yet before the Connecticut Supreme Court. In fact, it was just filed and is nowhere near going to trial in Superior Court, which has to happen first.

It is not a question of whether Connecticut law currently allows same-sex couples to marry. Rather, it's a question of whether that law must change in order to allow it.

And the suit is not the only effort to change Connecticut law. Love Makes a Family and other groups will try next year, as they have previously, to get the legislature to legalize same-sex unions--with or without a court order.

What the case *is* about: equal protection and due process.

These are fundamental constitutional guarantees, separate but related. The Massachusetts Supreme Judicial Court, in last year's *Goodridge vs. Department of Public Health* decision, described them as "freedom from" and "freedom to." In other words, government should treat people equally, free from discrimination. And people should be free to pursue their goals and dreams.

"Both freedoms are involved here," the Massachusetts court wrote in *Goodridge*. "Whether and whom to marry, how to express sexual intimacy, and whether and how to establish a family--these are among the most basic of every individual's liberty and due process rights. And central to personal freedom and security is the assurance that the laws will apply equally to persons in similar situations."

The *Goodridge* case provides a model for Connecticut's *Kerrigan*. Lawyers from Gay & Lesbian Advocates & Defenders, a nonprofit legal rights organization based in Boston, filed both cases. The legal issues are similar. (Even the defendants' names are the same, because each state's public department is responsible for granting marriage licenses.)

Lawyers in the *Kerrigan* case couldn't be reached for comment.

In a different way, the difference between "freedom from" and "freedom to" is critical to how you look at the constitutional question of same-sex marriage.

Is freedom *to* marry the person of your choice a basic, affirmative right, which government may restrict only if it has a good reason?

Or does the Constitution merely give same-sex couples freedom *from*

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government interference--such as laws banning homosexuality or forcing people to marry someone of the opposite sex?

To put it another way, does the state have to justify excluding gay people from marriage? Or is the burden on gay folks to show why the law should change?

The Massachusetts court, by a narrow 4-3 majority, took the first view.

"The right to marry means little if it does not include the right to marry the person of one's choice," the majority wrote. Comparing same-sex marriage to interracial marriage--which many states once prohibited--the court declared: "History must yield to a more fully developed understanding of the invidious quality of the discrimination."

Laws based on race must meet a very high constitutional standard, known as "strict scrutiny." The *Goodridge* court held Massachusetts' hetero-only marriage law to a more lenient standard, called "rational basis."

Under that standard, government has to show that a law that discriminates against a group of people bears some rational relationship to protecting the public good.

Massachusetts offered two main reasons for its one-man-one woman definition of marriage: providing a "favorable setting for procreation;" and promoting an "optimal environment" for child-rearing. The court rejected both.

**Procreation** : Willingness or ability to have babies has never been a requirement for marriage, the court pointed out. There's no fertility test. Courts have validated marriages that were never consummated.

**Child-rearing**: There's no evidence, the court said, that banning gay marriage increases the number of "optimal" straight marriages. Therefore, the ban has no "rational relationship" to the state goal. And children are hurt, not helped, when the state won't allow their parents to marry.

The job of defending Connecticut's marriage laws falls to the state attorney general, Richard Blumenthal. A cautious politician who doesn't want to antagonize voters on either side of the deep gay-marriage divide, he presents himself as just doing his job.

"My office has a duty to defend our statutes against constitutional challenges," he says in a written statement. "The courts have a duty to make the final judgment."

Although his statement says he "cannot comment further on the merits" of the case, Blumenthal is likely to outline the good things that the legislature might reasonably believe it accomplishes by limiting marriage to a man and a woman. That's enough to meet the "rational basis" test.

Blumenthal is unlikely to build a defense by attacking gay marriage as a source and symptom of social ills.

That's why the Family Institute of Connecticut wants in on the case.

The conservative, Catholic-rooted

Institute

went to court last week asking to be made a party to the *Kerrigan* case. In a press conference on the New Haven courthouse steps, the Institute's Brian Brown described gay marriage as part of an unhealthy social slide, away from traditional nuclear families and toward divorce, childlessness and other selfish forms of individual gratification.

"Marriage isn't simply a private contract between two people," Brown argued. "It's a public good. It's not just about love."

Or is it?

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Meet the Kerrigan Couples

### ***Janet & Carol & Jeffrey & Stephen & five other couples who are demanding the right to marry in Connecticut***

*By Carole Bass*

They have homes and gardens, jobs and volunteer positions. They're active in church and synagogue, school and community. They take care of elderly parents and young children and each other. They go to basketball games and visit with family and friends.

And then, into their ordinary daily lives, legal reality comes galloping.

Under the law, these ordinary families are not ordinary. They live as married couples. But Connecticut law does not permit their marriage, because they are gay.

And so they can't share insurance or Social Security. They can't visit each other in the ICU. Medics and customs agents demand: "Which one is the mother? Where's the other parent?"

Ordinary legal documents are bare-bones recitations of facts and law. But *Kerrigan vs. Department of Public Health* is no ordinary suit. It tells the everyday stories of Connecticut couples who want state law to reflect and protect the lives they have built together.

Here are excerpts from the *Kerrigan* complaint, edited for length and style:

#### **Joanne Mock & Elizabeth Kerrigan**

Joanne Mock, 50, and Elizabeth Kerrigan, 49 ("Jody and Beth"), have known each other since 1993. Eleven years ago this coming March they made a personal vow of commitment to one another for life.

In 2001, they jointly purchased a home in West Hartford. Both women work in the insurance industry .

In June 2002, they brought home from Guatemala their sons, Fernando and

Carlos. Their neighbors and co-workers threw a shower and celebrated their boys' homecoming with balloons and a welcome sign. They purposely live in a city with a significant Latino school-age population, and there are other adopted children in their neighborhood. Both women initially took time off from work to be with the boys.

Jody and Beth have taken all the legal steps they know of to protect their family. In addition to wills and documents for medical and financial decision-making, they completed second-parent adoptions for their sons.

Jody and Beth can not share their retirement savings on the same terms that spouses can. Jody is able to provide health insurance for Beth through a domestic partnership plan at her workplace, but, unlike a spouse, has to add the value of Beth's insurance to her taxable income each year.

Jody and Beth seek to marry because they have assumed the responsibilities of married spouses and seek the same protections for their family that marriage provides. They also seek marriage as the most secure and stable family structure in which to raise Carlos and Fernando.

### **Janet Peck & Carol Conklin**

Janet Peck, 53, and Carol Conklin, 51, of Colchester, have been a committed couple for the last 28 years. The Peck-Conklin home is the site of many holiday celebrations. When Carol's father began to deteriorate from the affects of Alzheimer's, the couple brought him from North Carolina to an assisted living facility in Connecticut.

When Janet had benign tumors removed from her liver, a life-threatening operation, Carol was not allowed to visit Janet in intensive care immediately after the surgery. When Carol identified herself as Janet's partner, the attending nurse said she did not know what that meant.

They were unable to secure a home construction loan because they were not seen as a couple with a joint income. At different times, each returned to school while the other continued working to support the household. At tax time, however, neither could claim the other as a dependent.

### **Geraldine & Suzanne Artis**

Geraldine Artis, 35, and Suzanne Artis, 33, have shared a committed partnership for 10 years. They moved to Middletown in 1995 and have owned a home there since 1997. Suzanne changed her last name to "Artis" to reflect their mutual commitment.

Suzanne teaches public school and Geraldine works as a recreation therapist. Their family now includes 6-year-old Geras and 4-year-old twins Zanagee and Gezani. Geraldine and Suzanne have juggled their work schedules in order to be able to teach their children at home. The children participate in playgroups, art classes, T-ball, soccer camp, basketball, art and music lessons and a reading club at the Middletown Library.

In 2001, Gezani needed emergency medical care. The emergency medical technician delayed transporting Gezani to the hospital until he knew who was the "mother."

## **Jeffrey Busch & Stephen Davis**

Jeffrey Busch, 41, and Stephen Davis, 52, have shared a committed and loving partnership for nearly 15 years. In 1997, in anticipation of bringing a child into their lives, they moved to Wilton, Jeffrey's childhood home.

In August 2002, their son Elijah (Eli) Davis Busch was born. They are raising Eli in the Jewish faith and are members of a synagogue near their home.

Jeffrey takes Eli to activities all around Wilton, including a music group and "Yoga for Tots." Jeffrey was a welcome participant in the "New Moms" group in Wilton.

In June 2004, Jeffrey, Stephen and Eli were returning from a trip abroad when they were stopped and pulled out of line by officials with Canadian Customs. The agent demanded to know where the mother was and what Stephen's relationship to the child was. The agent was not responsive to the fact that Jeffrey was the parent listed on Eli's passport and that he also had Eli's birth certificate, showing Jeffrey as parent.

## **J.E. Martin & Denise Howard**

J.E. Martin, 42, and Denise Howard, 47, met in 1990 and have now been a committed couple for 14 years. They have lived in Stratford for 10 years. J.E. has worked for General Electric for 20 years. She is a Master Black Belt, or six sigma quality coach. Denise has been an account representative with HealthNet for the last eight years.

Denise adopted their children, 7-year-old Rachel and 4-year-old Ross, three years ago. Rachel is involved in dance, theater and T-ball. Ross is keen on sports and is eager to play T-ball, basketball and soccer when he turns 5.

In 2001, J.E. completed second-parent adoptions for the children. They have meals as a family, do homework together, and go on walks and vacations together. The children view both J.E. and Denise as their mothers. They volunteer in Rachel's school and Ross's preschool. J.E. coordinates the Sunday school program at the Metropolitan Community Church in New Haven.

## **Barbara & Robin Levine-Ritterman**

Barbara Levine-Ritterman, 51, and Robin Levine-Ritterman, 45, have been living in a committed and loving partnership since 1989.

Barb owns and operates a business in New Haven assisting customers with computer databases. Robin works as a naturopathic physician and acupuncturist in Hamden. They jointly purchased a home in New Haven in 1993.

Barb and Robin had a religious ceremony celebrating their love and commitment with over 100 members of their family and friends in 1992.

Barb gave birth to Maya in 1995 and Robin to Joshua in 1997 using the same anonymous sperm donor. Both mothers took off time from work after each birth. They gradually transitioned up to working four days each per week.

Both children have had hyphenated surnames since birth, and the parents completed second-parent adoptions for both children in 2001. Barb and Robin

officially changed their names to hyphenated surnames in 1999. Both children are thriving in the New Haven public school they attend.

The Levine-Ritterman family belongs to a local Reform Jewish temple. Maya attends Hebrew school and Joshua will start in the fall.

Barb and Robin have merged their incomes and financial lives. They have designated the other to make financial and medical decisions if one is incapacitated.

These issues have come into sharper focus since June 2004, when Barb was diagnosed with breast cancer and had surgical treatment.

They dread the possibility of a time when Robin would have to contend with her grief, the children's grief, and the loss of Barb as a mother, loving partner and friend, and wage earner. Moreover, Robin would not even be able to claim Social Security survivor benefits as a surviving spouse, even though Barb has paid into that system for over 30 years.

Their family is not always respected. For example, when attempting to join a Ritterman family reunion abroad in December 2002, they were pulled out of line by airline employees at Bradley Airport because they thought Barb and Robin were taking their children out of the country without their father's permission. After much discussion, the issue resolved, but it has heightened Barb's and Robin's sense of vulnerability when they travel.

## **John Anderson & Garrett Stack**

They're an old married couple in Woodbridge. (Well, not that old.) Both spent their careers in the Stratford public schools: Garrett retired last year; John just started his 20th year teaching Latin.

You may recognize their names. John writes a column on gay & lesbian issues for the New Haven Register. Garrett does an oldies show on WMNR and sings in the Connecticut Gay Men's Chorus.

After 24 years together, they look forward to sharing their retirement years. But they have more than the usual amount of trepidation about aging--not because of physical infirmity, but because of their legal infirmity. Because they are gay, they can't legally marry. And that causes all kinds of problems.

"He's 61. I'm 57," Garrett says in an interview. "We're starting to head into that retirement age. You want to protect what you've built together."

They have shared a home for 22 years. But if they put it in both names--Garrett originally bought it--they would get whacked by a gift tax. Similarly, taxes cut into their ability to share retirement benefits in a way that spouses don't have to worry about.

They're also worried about medical decisions, Garrett says: "Being able to go in the hospital and [visit] in the intensive care unit, God forbid. Being able to claim the body, when one of us goes. Your long-lost cousin from Wyoming is the next of kin."

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