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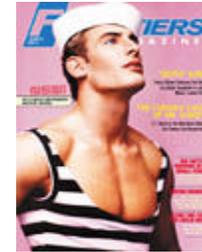
Big Battle Brewing in a Small State

Connecticut Couples File Lawsuit in Quest for Marriage Equality

By Olivia Kienzel

Photos by Mainframe Photographics

Janet Peck and Carol Conklin have been together since they were 24 and 22, respectively. With their 30th anniversary coming up next year, Peck said they were "getting really tired of waiting around" for the right to



Vol. 23, Iss. 12



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marry, so they decided to do something about it. Along with six other couples in the state of Connecticut, they have recently filed suit to gain that right.

Leading the charge for them and the other plaintiffs, is the championship team from the Boston-based Gay and Lesbian Advocates and Defenders, fresh off their victory in Massachusetts, as well as the Connecticut affiliate of the American Civil Liberties Union.

And though the case, Kerrigan & Mock v. Connecticut Dept. of Public Health, could take upward of three years to work its way through the courts, in a state without a "defense of marriage" act that also has a reasonably progressive electorate, it may just be an idea whose time has come.

Connecticut has found itself literally surrounded by this important issue. It is sometimes difficult for people in California



Elizabeth (Beth) Kerrigan and Joanne (Jody) Mock



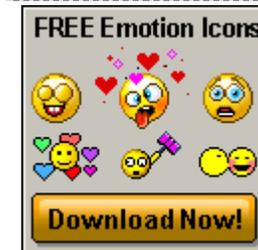
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to remember just how intimately connected the New England states are: Many people actually live and work in different states, and it's not at all unusual for people who live in the suburbs of New York City, for example, to go to Connecticut to see a movie.

So when Vermont approved civil unions, Massachusetts legalized gay marriage, and lawsuits were filed in New York and New Jersey seeking to either recognize those marriages or to allow same-sex marriages of their own, it had a big effect on Connecticut. According to Teresa Younger, the executive director of the state's ACLU chapter, conditions in the state are favorable to a court challenge: Connecticut is one of only 12 states that have not passed laws specifically barring same-sex couples from marrying. Although some of its statutes do explicitly refer to husbands and wives, there are



Stephen Davis and Jeffrey Busch



Carol Conklin and Janet Peck

provisions in the Constitution that, like Massachusetts', provide for equal protection, guarantee due process, and protect an individual's rights "of intimate and expressive association," according to the recently filed lawsuit.



John Anderson and Garrett Stack

All of that sounds theoretical to the layperson. That's why the bulk of the complaint is a litany on how each couple has experienced serious negative effects from not having access to marriage. There are tales of being pulled out of line at the airport and questioned because authorities believed a lesbian couple was trying to take their children out of the state without the father's knowledge. Even



Geraldine and Suzanne Artis

more harrowing is the story of Geraldine and Suzanne Artis: an emergency medical technician delayed transporting their young son to the hospital until he knew who the mother was, according to the complaint.

"That's what's so difficult," Peck said. In times of great stress, when the situation itself is overwhelming enough, same-sex couples find themselves having to explain their relationships to often-unsympathetic parties in order to gain important forms of access that are automatically granted to those

legally recognized as next of kin. "It all depends on who you come into contact with," Peck said, noting it makes her and Conklin feel extremely vulnerable.

In their own case, the night before Peck had surgery for a life-threatening condition in 1996, she spent a considerable amount of time on the phone with a hospital employee who refused to accept that Conklin was her legal next of kin, despite the fact that she has Peck's power of attorney. Finally, under great stress, Peck relented and gave one of her brothers' names. "I found out later that, if something had happened to me, they could not have released my body to anyone but a blood or a legal relative," Peck said. Luckily, her brother is accepting of the women's relationship and would have let Conklin execute Peck's wishes. "In other family situations," she pointed out, "a person might not have such an understanding brother. He doesn't know my wishes; Carol knows my wishes."

After eight hours of waiting for the surgery to end, Conklin finally found out from the surgeon that all had gone well. He also told her she could go see Peck. But when the anxious woman got down to the intensive care unit, the nurse would not let her in because she was not considered immediate family. "I told her I was Janet's partner, and she said she did not know what that was. I had to explain it to her--that we live together, that we love each other, that I also had her medical power of attorney." Still, the nurse barred the door. It took the surgeon interceding on her behalf to gain access to her partner.

Even though Connecticut has since passed laws giving partners hospital-visitation rights, the couple still has reservations. As Peck put it: "You would have to fill out another form, bring your power of attorney paperwork [and rely on the staff to understand you]. It would be much simpler to be able to

say, 'This is my spouse.' There is no language for who we are, [but] when you say you're married, people know what you mean immediately."

There it is: the importance of marriage in our society--perhaps the one thing upon which both sides can agree. It is precisely this symbolism that opponents of same-sex marriage say they are defending. They believe that any deviation from the traditional one-man, one-woman model degrades the institution and therefore society as a whole. This view--along with some strong ideas about the importance of modeling "proper" behavior for children--is the one being espoused by the Family Institute of Connecticut. The group is trying to get itself named as a party to the lawsuit so that it can argue against lifting the ban on same-sex marriage.

Younger of the ACLU said that she was uncertain whether the group's petition to be part of the lawsuit would succeed: In a case in Oregon, an antigay group was prevented from joining the fray, but in Washington, another group arguing against gay marriage was allowed in.

Although the operation consists of basically one person, an advisory board, and a mailing list, the FIC is backed by the deep pockets and the legal muscle of the ironically named American Center for Law and Justice. (This conservative group, which also defends the display of the Ten Commandments in public spaces and the activities of anti-abortion protesters, has been involved in arguing against gay-marriage rights. They have been particularly active in the movement for the Federal Marriage Amendment.)

Because the ACLU and other groups have been trying to gain marriage rights for gays through the Connecticut Legislature for the past couple of years (although those bills have never left the committee room and gone to the floor for a vote), the FIC has had plenty of time to circulate a petition that would define marriage as between one man and one woman. Brian Brown,

the group's executive director, said they have managed to get 80,000 signatures. If they do not succeed this year, their next opportunity will come in 2006, when the regular constitutional convention is scheduled to occur. (Many states hold constitutional conventions in order to amend the existing constitution or draft a new one.) That could be soon enough to pre-empt any court decision.

"Marriage is a binary institution based on the complementarity (sic) of female and male," according to Brown. "It's not just a bundle of rights. Children do best with a mom and a dad, and the people that want to change an institution have to prove that this change will do no harm."

He went on to say that "marriage is a public institution. The reason there aren't fertility tests [for prospective married couples] is because even [heterosexual] couples that don't marry model a behavior"--that is, of heterosexuality--which he believes is more "ideal" for children. One of the main concerns from opponents, not so much articulated but nonetheless clearly visible, is that children are going to "turn out" gay if they're exposed to same-sex couples, or even if society doesn't do a good enough job underscoring the superiority of heterosexual relationships through the exclusivity of marriage rights.

"The big problem," Brown said, "is the idea that gender doesn't matter." In those few words, he exposed not only a great deal of homophobia, but what might be at the heart of the whole debate: In holding on to a more conservative, old-fashioned definition of marriage, we keep male and female in their places and don't upset the notions that afford men more power in our society. What gay marriage foes fear about same-sex relationships is that a man is either dominated (by another man) or replaced (by a woman). Either scenario terrifies those on Brown's side, who cling to historical roles for men

and women and dominant-submissive models for marriage.

The other big problem with same-sex marriage, according to Brown, is the idea that "mothers and fathers don't matter--that they don't give different things to children. People like me, children of divorce, it wasn't a good thing for you" to grow up in a home without a model of a male-female relationship, he said. Brown opined that, even if the biological father or mother of the child of a same-sex couple were part of the family's life, it would still be a bad thing.

Five of the seven couples involved in the Connecticut lawsuit have children. Some of them have given birth; others have adopted. Despite Connecticut's passage of a second-parent adoption statute two years ago, every couple in the suit with children has encountered problems in trying to keep them safe or live a normal life, because of the partners' inability to marry. Whether their medical care is being delayed because their moms have to explain themselves to an EMT, or they're being pulled aside and questioned by customs officials when trying to take a vacation, or, heaven forbid, they might have to one day deal with the hardship of losing a parent whose financial legacy is either wiped out or cut in half by federal regulations governing Social Security and retirement savings, it is worth wondering what effect legalizing same-sex marriage would have on a child. (The problem that opponents of same-sex marriage face when positing an argument such as Brown's is that same-sex couples already have children. Whether that arrangement is ideal or not, it is a reality.)

"Same-sex marriage proponents aren't being completely honest," Brown asserted. "They argue that it's about health benefits ... They wouldn't be fighting for this if it were. It is the most radical attempt to change marriage [that has been undertaken]."

Younger did not downplay the significance of the fight, or suggest that it was merely about health benefits or tax laws, although those concerns are very real. "This is one more urgent battle that needs to take place in quickly changing times," she said. "The more unstable the world becomes, the more there needs to be stability in the rights of individuals, and clarity in those rights. The basic core question is whether we're going to recognize and fight for the rights and equality of the everyday person."

Like many, Younger said she saw this battle as part of a continuum of civil-rights struggles.

In an opinion piece for The New York Times, Nathaniel Frank, a history professor at New School University, observed that both sides in this argument are talking past one another. He saw advocates for same-sex marriage making a very rights-based argument for equality, while their opponents put forward a very tradition-based argument for retaining the status quo. He suggested that, to advance their cause, marriage-rights advocates should talk more about the great social importance of the institution of marriage. They would then be in a prime position to argue that because marriage is so important, same-sex couples must be able to participate in the institution for the stability of both our society and their own relationships.

"Of course we're speaking past each other," Brown said. "Because the metaphysical framework [the other side is] operating on is wrong."

Peck and Conklin, unsurprisingly, see the matter differently. The Massachusetts high court did too, ruling that preventing same-sex couples from marrying was neither fair, nor was it somehow in the best interests of children. "I really believe that, if people could meet us and others, and really get to know us and our lives, they could be persuaded," Peck said. "Not all of

us have children, and we have a relationship that's not gender-restricted in our roles. But if people really knew us, they'd see that how we live is really how married people live. We support each other emotionally; we've been through the deaths of parents together; we've taken responsibility for the care of Carol's dad [who has Alzheimer's disease]. We do all of those things that married people of our age do."

As Conklin said: "We have a loving and caring relationship. That's what marriage should be. We have built a life that most people would like to have."

Over the next few years, Connecticut will have to decide whether it will honor relationships like Conklin and Peck's. The residents of the state will undoubtedly see the effect--or lack thereof--of the marriages performed in Massachusetts, as well as the outcomes of the inevitable court cases seeking recognition of those marriages in other states. Connecticut, like the country as a whole, will have to decide if the allegiance to one sort of tradition is strong enough to make it break with another tradition--that of expanding, not contracting, rights.

In terms of how the quest for marriage might play out in the Constitution State, check out these words from the person charged with opposing the lawsuit, Connecticut Attorney General Richard Blumenthal: "Whatever our own personal beliefs, we are bound by the laws adopted by our Legislature." In an opinion issued on May 17, he went on to say, "Unless and until such time as they are declared unconstitutional ... our marriage statutes enjoy a presumption of constitutionality."

Blumenthal, a four-term Democrat noted for his efforts on behalf of civil rights, also pointed out that "the Connecticut Constitution contains language similar to that relied upon, in part, by the Vermont Supreme Court in striking

down statutes in that state that limit the benefits of marriage to opposite sex couples." He also cited reasons why a Connecticut court might rule in the same way as Massachusetts. And this is the man who's supposed to argue against the seven couples seeking the right to marry.

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