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Gay Couples Challenge State's Marriage Laws

POSTED: 3:58 pm EST March 21, 2006

NEW HAVEN, Conn. -- Jeffrey Busch and Stephen Davis of Wilton say the civil union that gives them the same legal rights as married couples in Connecticut also makes them feel inferior to heterosexuals.



Busch and Davis were among eight couples Tuesday challenging the state's ban on gay marriage in Superior court.

A bill that last year legalized civil unions but defined marriage as only between a man and a woman "is nothing less than the government's announcement that these are second-class citizens," Ben Klein, a senior attorney for Gay and Lesbian Advocates and Defenders, told Judge Patty Jenkins Pittman.

GLAD, which used a similar argument to win gay marriage in Massachusetts, filed suit on behalf of the couples in 2004.

Similar lawsuits are pending in several other states. In January, a Baltimore judge ruled that a law against gay marriage violates the Maryland Constitution's guarantee of equal rights.

The Connecticut couples are not challenging the civil union law, but say the state's refusal to issue the same marriage licenses to gay and heterosexual couples is unconstitutional.

Assistant Attorney General Jane Rosenberg defended that state, arguing that there is no fundamental right to marry under Connecticut law and that marriage has traditionally been defined as between a man and a woman.

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"What the plaintiffs are apparently seeking is for Connecticut to change the definition of marriage itself," she said.

She said it was reasonable for the state to create civil unions to give gay couples the legal rights of marriage while also dealing with administrative issues, such as federal Medicaid and Medicare programs, which do not recognize gay marriage.

Jenkins Pittman said she is struggling with whether giving gay couples the same legal rights as heterosexual couples but calling them something different is so harmful that it requires a court remedy.

Klein argued that the word marriage carries such weight in society that denying it to same-sex couples is harmful. He also argued that it is important for gay couples to be able to say they are married when they travel to other states and want to, for instance, visit their partners in the hospital.

"Marriage is privileged legal, cultural and social status," he said.

Jenkins Pittman also asked Rosenberg whether Connecticut's law preventing same-sex couples from marrying is any different from a Virginia law that prevented interracial couples from marrying until it was declared unconstitutional.

Rosenberg said the difference is that race is not an essential part of marriage but that the gender of the participants is.

Jenkins Pittman said she expects whoever loses to appeal. A spokeswoman for GLAD said the case will likely end up before the state Supreme Court in about a year.

The couples said Tuesday they are optimistic.

"Connecticut has done so much to allow us to be a family," Busch said. "I believe the courts will correct this injustice of not allowing us to marry."

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