

NLWJC - Kagan

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Gay/Lesbian - Same Sex Marriage

Richard Socarides 06/05/98 11:16:27 AM

Record Type: Record

To: Elena Kagan/OPD/EOP, Robert N. Weiner/WHO/EOP

cc:

Subject: NC7132: Current status of Hawaii marriage case

----- Forwarded by Richard Socarides/WHO/EOP on 06/05/98 11:19 AM -----



rwockner @ netcom.com

06/05/98 09:58:00 AM

Record Type: Record

To: Stuart D. Rosenstein, Richard Socarides

cc:

Subject: NC7132: Current status of Hawaii marriage case

Subject: SA 722: CURRENT STATUS OF HAWAII`I MARRIAGE

Date: Wed, 03 Jun 1998 08:01:29 -1000

From: Martin Rice <lambda@aloha.net>

Aloha kakahiaka `oe ...

Will try to be as brief with this as possible as to your request as to the status of marriage in Hawai`i.

On December 4, 1996, Judge Kevin Chang ruled that the State of Hawai`i did not present compelling reasons to deny three same-sex couples marriage licenses, and ordered the state to execute his opinion that those licenses be issued immediately.

Not surprisingly, the State appealed Judge Chang's decision, and in doing so, also requested a stay of execution of Judge Chang's order, which was granted, until that time that the State's appeal is ruled upon by the Hawai`i Supreme Court, the final authority in this matter at this level.

So, technically, Hawai`i does recognize that the marriage laws apply to all couples, but the State is not, at this time, required to issue licenses to same-sex couples (yet more discrimination perpetrated by the State).

There is no timetable for the next ruling from the Hawai`i Supreme Court. They could rule today that they've heard and read sufficient evidence to issue their opinion, and do so, or they could say that they want to hear

more arguments, in which case, the State and the plaintiffs would be given a year to prepare their briefs. So the ruling from the Hawai`i Supreme Court could come today, or a year from whenever.

Against this backdrop, our opponents have been successful in getting two damaging questions placed on the November ballot. One calls for a Constitutional Convention (Hawai`i's Constitution could be rewritten at this convention to only recognize opposite-sex marriage) and the other calls for a Constitutional Amendment (giving the Legislature the power to define marriage in terms of one man and one woman).

Our community is in the process of mobilizing to defeat both of these ballot questions.

Hope this helps.

A hui hou,

Martin

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Gay/lesbian - same-sex marriage



Last-minute MARRIAGE PREPARATIONS

Will Hawaii be ringing its wedding bells for gay marriages this year? **BY JOHN GALLAGHER**

Last year Hawaii presented lesbians and gay men with the kind of Christmas gift activists once never dreamed they would receive: a court ruling clearing the way for same-sex marriage. This holiday season gay men and lesbians could get an even bigger gift from the Aloha State—the out-and-out ability to get married.

“People should expect a decision in our favor,” says Daniel Foley, the attorney who brought the suit by three couples against Hawaii’s ban on same-sex unions. “Even the legislature and our opponents agree that the court is likely to rule in favor of the couples.”

The Hawaii supreme court heard the case, an appeal of a lower-court ruling, in June. Unlike other courts that have spe-

cific sessions during which to rule, the supreme court has no deadline to meet for its ruling. However, most observers and participants believe the ruling will come in the near future.

“We’re very hopeful that the court is going to rule soon on the last stage of the case,” says Evan Wolfson, head of the Marriage Project at Lambda Legal Defense and Education Fund and cocounsel on the case. “‘Soon’ could mean December and possibly earlier—but almost certainly this winter.”

To overturn the lower-court ruling that opened the way for gay marriage, the supreme court would in essence have to reverse its own opinion. In 1993 the justices indicated that the plaintiffs had established a strong case for gender

discrimination in current marriage laws. The state had unsuccessfully argued that same-sex unions would be harmful to children, but in its appeal the state “is not appealing any of the findings of fact” from last year’s decision, says Foley.

Once the state supreme court does rule, says Foley, “then we have marriage.” Opponents of gay marriage have few ways of preventing it from taking place. The legislature failed this year to revise the state constitution to ban same-sex unions outright. The best chance anti-gay-marriage forces have now is campaigning for a constitutional convention. A case considering a ballot measure calling for one is moving through the courts.

However, even if it is approved, ►

“The decision will certainly allow people to come to Hawaii and get married.”

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the convention could not be held quickly enough to stop marriages from taking place altogether. The earliest that Hawaiians could vote on the convention would be November 1998. Foley says timing presents an interesting challenge for any future ban on same-sex unions. "It will be a question of whether you can invalidate marriages and divest people of their rights," he says. By then, he adds, the idea of gay marriage will have become less controversial: "You'll have marriage, the sky won't fall, straight people will still procreate, and the race will not become extinct. The only immediate impact will be increased tourist revenues. Straight people not that comfortable with the idea will think their world is no worse and maybe better with a little more money in the coffers."

Still, a ruling for same-sex marriage will present activists with the challenge of preserving the right permanently. "While the decision will certainly allow people to come to Hawaii and get married, for us it means looking very seriously at engaging in a campaign to protect the constitution on which the court case is based," says Donna Red Wing, national field director of the Human Rights Campaign, a national gay lobbying group.

The problem will not be confined to Hawaii. "People will come back from Hawaii legally married and face discrimination," says Wolfson. "They will have to protect their family. As waves of litigation move forward, there will be another wave of backlashes in legislatures and tremendous opportunities for further dialogue with nongay people."

Mainland conservatives are already capitalizing on the specter of same-sex marriage to galvanize supporters and raise money. A letter from the Rev. Jerry Falwell warned recipients that "legalizing homosexual 'marriages' has long been the number one priority of organizing homosexuals. Now they are counting on liberal judges to force their perversion on America!" Falwell urged readers to write their senators to demand an amendment to the U.S. Constitution upholding "traditional" marriages.

Wolfson says gay men and lesbians should prepare now for an expected victory. "We shouldn't be sitting around waiting to unwrap our packages," he says. "There are plenty of grinchers getting ready to take them away." ■

Internet link Find more on this topic at www.advocate.com

Gay/Lesbian —

Same-sex marriage

Richard Socarides 09/22/97 08:29:38 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: Re: NC4733: Deb Price 

Well, like, what do we do when a legally married same-sex couple file a joint US tax return, or file for any federal benefit that legally married people would otherwise be entitled to under federal law. Do we even know what all these benefits are? In other words, I don't think anyone has given any thought to how we should enforce, and just as importantly what do we say about the enforcement, of the Defense of Marriage Act. I just think we ought to be thinking about it, or ask someone to think about it.

Gay/Urban -
same-sex marriage

Richard Socarides 09/09/97 05:44:52 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: NC4733: Deb Price

If same-sex marriage soon becomes legal in Hawaii, as this writer suggests, we will quickly have to deal with a whole series of legal/policy questions that I don't think we are really now prepared for.

----- Forwarded by Richard Socarides/WHO/EOP on 09/09/97 05:43 PM -----



Wockner @ cris.com
09/09/97 01:06:00 AM

Record Type: Record

To: Stuart D. Rosenstein, Richard Socarides

cc:

Subject: NC4733: Deb Price

Deb Price column
September 8, 1997

SAME-SEX UNION COMING
Deb Price

From its perch atop Hawai'i's judicial branch, the state's farsighted Supreme Court can, no doubt, see just how close same-sex marriage is to becoming a reality.

That legal miracle is probably only months away. It's absolutely critical that it occur before November 1998, when Hawai'i's voters will be asked whether to amend their constitution to let lawmakers block same-sex marriage.

Dan Foley, attorney for the three same-sex couples suing for marriage licenses, expects the Hawai'i Supreme Court to announce soon whether it will hold oral arguments. "Once we get (a court) order, we can expect a (final) decision within a number of months," Foley predicts. "We're just waiting.

"I don't think there's any question -- when the decision comes down -- what it will be," Foley adds with well-placed confidence. "Everybody knows there's really nothing to decide because the state abysmally failed to meet its burden."

In a preliminary ruling, the Hawai'i Supreme Court declared in 1993 that

refusing to grant marriage licenses to same-sex couples is sex discrimination, which Hawai`i's constitution prohibits. The court's conclusion rested on a simple fact. No one, regardless of sexual orientation, is allowed to marry someone of the same sex.

A three-member majority of Hawai`i's top court sent the case back to a lower court, demanding the state prove a "compelling" reason for the discrimination. The state's attempts have failed miserably. As a result, Judge Kevin Chang ruled in favor of same-sex marriage last December, and the case is now back before the Hawai`i Supreme Court.

After flailing about trying to concoct a believable "compelling" reason, the state has switched its chief argument. Gone almost entirely is the "children would suffer" claim, which the state's own witnesses demolished during an embarrassing two-week trial a year ago. The state has turned to mainland hired guns for legal help. But, having already had all its arguments shot down, the state has been reduced to begging the Hawai`i Supreme Court to say its ruling of "sex discrimination" was wrong in the first place.

That's a sign of total desperation because all three justices who gave us that decision are still on the court. And three votes are all we need on the five-member court to legalize same-sex marriage.

The historic 1993 decision was written by Justice Steven Levinson. It was supported by Ronald Moon, now chief justice, and Paula Nakayama. A more recent appointee, Justice Mario Ramil, is an unknown on gay issues but is considered a pro-consumer, pro-worker, progressive Democrat. Chief Justice Moon will appoint someone to cast the fifth vote. (Justice Robert Klein won't participate because he heard the case as a lower court judge.)

If the court doesn't rule soon, the November 1998 vote on amending the constitution could be devastating.

Polls show most Hawai`i voters oppose same-sex marriage but are evenly split over amending the constitution. But if gay couples start legally marrying before the election, voters will actually face a very different issue: Should citizens lose rights they already have? That would make it much more likely that same-sex marriage would win not only in the courts but also at the ballot box.

In July, the Hawai`i Supreme Court rejected the state's plea for it to intentionally delay its ruling until after the November 1998 vote. It's a positive sign that the court rebuffed the state's insulting suggestion that, instead of protecting rights, it should wait to see if those rights are amended out of existence.

Meanwhile, two Hawai`i federal cases bear watching. The first questions whether the state's new "reciprocal beneficiaries" law -- giving many marriage-like benefits to partners who can't legally marry -- covers private employers' health plans. The other will decide whether Hawai`i must vote again on whether to hold a constitutional convention, a potential nightmare.

Marriage can be the union of a man and woman, a man and man or a woman and woman. That's already the emotional reality. Count on the Hawai`i Supreme Court to make it a legal reality as well.

Deb Price writes on gay issue for The Detroit News