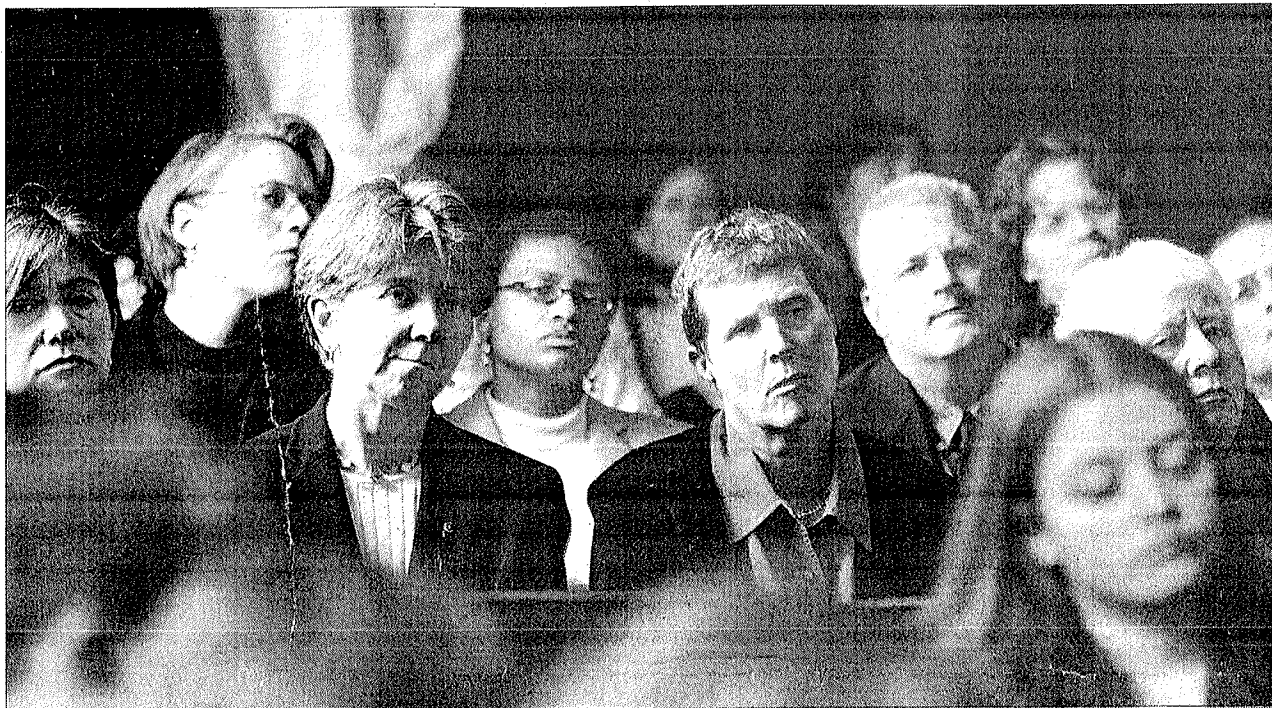


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Gay marriage case argued



AP Photo

Plaintiffs listen to oral arguments on their challenge to the state's ban on gay marriage at the Supreme Judicial Court in Boston Tuesday. In second row, from left, they are Julie and Hillary Goodridge of Boston, and Linda Davies and Gloria Bailey of Orleans. In third row, from left, are Heidi Norton and Gina Smith, both of Northampton, and Gary Chalmers and Richard Linnell, both of Whitinsville.

Suit opens in state high court amid lively debate

By KIMBERLY ASHTON
Staff Writer

BOSTON — As seven long-term gay couples looked on, the seven justices of the state's high court pelted the couples' lawyer with questions about the definition of marriage, the former ban on interracial marriage and the role of childbearing in marriage.

The Supreme Judicial Court heard arguments Tuesday in a potentially precedent-setting case: whether the state constitution gives gays and lesbians the right to marry. If the SJC rules in the plaintiffs' favor, Massachusetts would be the first state in the nation to allow gay marriage.

On hand for the lively hearing was a Northampton couple, Gina Smith and Heidi Norton, who are plaintiffs

in the case.

The justices interrupted each side's 15-minute presentation frequently and energetically with pointed questions. Their decision is expected this summer.

"To finally hear this discussed in court and to have the chance to have (the gay-marriage ban) changed is very thrilling," said Smith, who traveled to Boston with her partner of 13 years, Heidi Norton, for the oral arguments.

Like the other couples, Smith and Norton, both 38, applied for and were denied marriage licenses before joining the class-action suit in April 2001.

"Growing up hearing people talk about civil rights and that all should people should be treated the same, I

believed it. And I still believe it," said Smith, who is black and likens the issue to the quest for racial equality.

Norton said the issues raised by the state — procreation, child-rearing, partnership and stability — are the same ones her family deals with.

Norton and Smith have two children, Avery Nortonsmith, 6, and Quinn Nortonsmith, 3.

To win their case, the plaintiffs must prove beyond a reasonable doubt that the state has no rationale for prohibiting homosexual marriage.

"The plaintiffs stand before this court seeking nothing more and nothing less than the same respect under our laws and constitution as all other people enjoy — the same liberty —

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right to marry the person of their choice," said Mary Bonauto, the lawyer for the seven couples.

Bonauto, of Gay and Lesbian Advocates and Defenders, or GLAD, said she is not seeking to change the constitution, but simply to uphold it.

Assistant Attorney General Judith S. Yogman, representing the Department of Public Health, which issues marriage licenses, said the state has a "rational basis" to limit marriage to opposite-sex couples.

"The Legislature could conceivably believe that encouraging same-sex couples to marry would not be a beneficial thing in terms of child-rearing," Yogman said in what she called her strongest argument.

Yogman said the state could find that a family headed by a man and woman, with each making "unique contributions" to a child's development, is an "optimal setting" for the child.

But Justice John M. Greaney challenged her, saying the state already allows gay couples to adopt children.

Bonauto and Yogman disagreed on the purpose of marriage, with Yogman saying the institution exists to encourage childbearing, and Bonauto defining marriage as a loving partnership recognized by society.

Besides, Bonauto said, the Legislature has already implicitly stopped defining marriage as gender-based. Both partners now have equal, mutual obligations instead of each gender filling a particular role, she said.

As for childbearing, Chief Justice Margaret Marshall asked Yogman if the state should then order a couple married for 10 years to divorce if they haven't had children.

Of particular interest to the justices was Bonauto's correlation between the ban on gay marriage and the former ban on interracial marriage, first overturned in 1948 in California.

That court, Bonauto said in a news conference after the hearing, did "the right thing" even when an estimated 90 percent of the U.S. population opposed interracial marriage.

The U.S. Supreme Court ended the national ban on interracial marriage in a 1967 case, *Loving v. Virginia*.

"Wasn't *Loving* really based on the right of choice and that right not being encumbered or prohibited as a result of race? Isn't this the same thing?" Greaney asked Bonauto.

In the GLAD news conference, Bonauto said the court can do three things: Deny gays the right to marry, grant marriage licenses to gay couples, or reach a compromise, such as a civil-union law, as Vermont did. She said civil union is not ideal because it is not considered equal to marriage and "perpetuates the stigma of exclusion" gays now face.

The case has attracted attention nationwide, with a total of 26 parties filing briefs in support of both sides.

Many religious groups support the Attorney General's case, but Yogman said the state does not claim any religious basis for its argument.

Norton and Smith didn't bring their two young children to court, but said Avery is very supportive of their effort.

"He has a very sophisticated understanding of our relationship. Unfortunately, the state isn't there yet," Norton said.

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