

Uncivil Union

Lambda Legal is fighting to make sure New Jersey delivers what its Supreme Court has already mandated: equality for same-sex couples.

By Hayley Gorenberg, Lambda Legal Deputy Legal Director



Sarah and Suyin Lael, plaintiffs in Lambda Legal's lawsuit for marriage equality

What does it mean to be in a civil union, the “all-but-married” legal status New Jersey’s legislators gave same-sex couples after the state’s supreme court unanimously ruled in 2006 that barring same-sex couples from the rights, benefits and responsibilities of marriage was unconstitutional?

For Cindy Meneghin, a director of web services for Montclair State University who lives in Morris County, it has meant fear and confusion. In August 2009, Meneghin’s doctor, concerned she had appendicitis, urged her to report to a hospital immediately.

“At the emergency room, I tried to let everyone know that Maureen was my partner in a civil union and that she had the right to see me and speak for me,” Meneghin recalls. She was met with blank stares. One nurse had no idea what Meneghin was talking about. “I told her that in New Jersey, people in civil unions are supposed to be treated the same as people in marriages.” Nonetheless, Meneghin says, the nurse kept repeating, “But it’s not marriage, right?” For Meneghin and Kilian, together for 35 years, civil unions simply don’t offer the security marriage would. “We feel at the mercy or whim of whoever wants to deal with us.”

THE STATE OF THE UNION

On March 18, Lambda Legal announced our return to the New Jersey Supreme Court to finish the fight we started in 2002, and to fulfill the objective the court ordered in our case, *Lewis v. Harris*: equal rights for New Jersey’s same-sex couples. In our landmark case, the court ordered the state legislature to act within 180 days to create the remedy. But instead of simply dropping marriage discrimination, the legislature created a legal experiment dubbed “civil unions.”

Civil unions are an experiment that other states, since the New Jersey ruling, have dismissed as unable to provide equality, except for Hawaii, where a constitutional amendment bars marriage equality, and where the legislature recently approved civil unions for same-sex and straight couples. Two states that offered civil unions when we initiated *Lewis* have done away with them in favor of freedom to marry, finding that civil union wasn’t adequate, didn’t work to fully protect families and was far from equal. Connecticut’s Supreme Court overturned civil union in 2008 and ordered the freedom to marry, a decision later embraced by the legislature. Vermont’s legislature voted to scrap civil union and embrace marriage in 2009.

As New Jersey embarked on its civil union experiment, the legislature created a control on the test: the “Civil Union Review Commission,” which would determine whether its newly fabricated separate status for lesbians and gay men comported with the

court's ruling. The thirteen-member Commission included stakeholders from around the state and designees from state government: representatives from the Division on Civil Rights, the Office of the Attorney General, the Department of Human Services, the Department of Banking and Insurance, the Department of Health and Senior Services and the Department of Children and Families. The commission held hearings around the state, amassed 885 pages of transcripts and recorded 150 witnesses, from New Jersey residents with civil unions, to children whose parents are limited to civil union status to medical, therapeutic, and legal experts about the harms inflicted by the inadequacy of civil union. The commission decided unanimously that civil unions had failed, and the legislature eventually took the matter up after a hard-fought battle by the state-wide advocacy group Garden State Equality. But in January 2010, the legislature voted down the clear solution: marriage equality.

THE BATTLE CONTINUES

The unequal status of civil union invades many dimensions of our plaintiffs' private and public lives. New Jerseyans in civil unions are outed during jury duty, because they can't honestly answer the question "Are you single or married?" without disclosing their status, designated by the state for lesbians and gay men only. In workplaces with benefits plans built around married spouses, their different, nonmarital status invites unequal pay for the same work. Former plaintiff Diane Marini, whose partner of fourteen years, Marilyn Maneely, succumbed to amyotrophic lateral sclerosis (commonly known as Lou Gehrig's disease) over the course of the case, speaks about how the lack of full rights and recognition for their relationship kept Marini from carrying out one of Maneely's final wishes: that her body be donated to science.

"One time someone in our daughter Zenzali's seventh grade class started presenting information about

equality and civil unions in class," says Sarah Lael, a elementary school speech and language therapist from Middlesex County who, with civil union partner Suyin Lael, is also a plaintiff in the suit. "When the class started to discuss it, the teacher cut discussion off and explained that not everyone was mature enough to discuss the topic. Kids at

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that age obviously understand what a marriage is and what it means. It sent the message to our daughter that there is something illicit, inappropriate, and even shameful about her parents."

For the Laels, civil union status has also brought frustration and injustice in the workplace. When Suyin Lael tried to obtain supplemental disability insurance with hospital coverage for Sarah as part of her employer's plan, she was told she could get coverage for

their children only. The provider "did not recognize civil unions," Suyin Lael says, "because they have offices in New Jersey and Pennsylvania and follow Pennsylvania law only. They said this even though the employee handbook says they should follow the policy and laws of each state." The Laels were able to secure primary coverage through Sarah Lael's workers' union, "but only after we explained what a civil union is and that it should be treated the same as a marriage," Suyin Lael says. Even with coverage in place, their worries aren't over. "At one point I had to have a medical procedure, and it worried me that someone would say I wasn't covered for it. We also worry about what would happen if we changed employers or had to deal with another company."

The families who returned to the New Jersey Supreme Court in March, the plaintiffs in *Lewis v. Harris*, have walked a long and painful road. Same-sex couples in New Jersey shouldn't have to wait any longer. As a matter of both justice and dignity, we are asking the Court to enforce its order, and fulfill the constitutional command of equality. **L**

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A history of Lambda Legal's suit for marriage equality in New Jersey

2002: Lambda Legal files historic lawsuit in New Jersey state court seeking marriage equality for gay and lesbian couples in New Jersey.

2003: Lambda Legal argues the case in court in June. In November, the trial court upholds the exclusion from marriage.

2004: Lambda Legal argues appeal.

2005: Appellate division affirms lower court, 2-1.

2006: Lambda Legal presents oral argument to the New Jersey Supreme Court in February. In October, the seven justices unanimously rule that denying same-sex couples the rights and

benefits different-sex couples obtain through marriage is unconstitutional and directs state legislature to take action within 180 days. In December, New Jersey Legislature passes civil union bill; Lambda Legal moves forward with "Civil Union Watch" to reach the goal of marriage equality.

2008: New Jersey Civil Union Review Commission, appointed by the legislature, concludes that civil unions are insufficient and do not provide equality.

2010: New Jersey Senate votes down a marriage equality bill in January. In March, Lambda Legal files motion to reactivate the case.