

# national news

**A** decision in *Baehr vs. Miike*, the landmark legal case in which the State of Hawaii was forced to prove a "compelling" state interest in restricting legal marriage to heterosexual couples, may come down before year's end.

The nonjury trial began Sept. 10 and ended with closing arguments on Sept. 20.

In defending its same-sex marriage ban, the state attempted to convince Circuit Judge Kevin Chang that it had sufficient reason to deny marriage licenses to one gay and two lesbian couples in 1990. The couples in turn sued the state, claiming sex discrimination and a violation of the state's guarantee of equal protection.

In May 1993, the state Supreme Court agreed, and declared as unconstitutional the state's refusal to issue marriage licenses to same-sex couples. It ordered Hawaii to show a compelling state interest for continuing that discrimination.

According to The Associated Press, state officials decided focusing on the welfare of children was the best legal argument "to justify awarding marriage licenses selectively, although only one of the three plaintiff couples has raised a child."

Critics of the ban have said the state's argument implies that marriages are licensed for the purpose of procreation. In 1984, the Hawaii Legislature removed the ability to have children from the criteria for a marriage license, saying the requirement discriminated against the elderly and the handicapped.

In addition, critics say the state doesn't discourage children being raised by nonbiological parents in a variety of other child-rearing arrangements, including adoption, step-parenting and single parenting.

During the trial last month, state Deputy Attorney General Rick Eichor presented four witnesses, all of whom tried to make the case that children were best raised by biological parents, one man and one woman.

The state's lead witness was Dr. Kyle D. Pruett of Yale University's School of Medicine and Yale Child Study Center.

Pruett, a psychiatrist, testified that "optimum development is best served for most children by being raised by intact families by their mothers and fathers."

He testified that "in terms of probabilities," same-sex marriages would provide "a more burdened nurturing domain."

He added that biological parents "have an instant kind of feeling for the child and are willing to do anything for that baby."

Plaintiffs' co-counsel Evan Wolfson, senior staff attorney with the New York City-based Lambda Legal Defense and Education Fund, cross-examined Pruett, getting the witness to admit that same-sex couples are as capable as heterosexuals of being good parents, that gay men and lesbians should be allowed to adopt and provide foster care

## The world is watching

*Millions await a decision in the Hawaii same-sex marriage case—yea or nay, more controversy is certain*

by Inga Sorensen

for children, and that a parent's sexual orientation does not disqualify her or him from being a good, fit and loving parent.

State witness Pennsylvania State University professor David J. Eggebeen, a sociologist, testified that 98 percent of people who get married want children, a statistic that state lawyers use to justify Hawaii's ban on same-sex marriages.

"It's clear that marriage represents the gateway to becoming a parent," he testified.

Under cross-examination, however, Eggebeen said there was no reason why same-sex couples who do not want children should be barred from marriage, and he admitted he knew of no studies claiming same-sex couples cannot raise a healthy child.

A third state witness, Dr. Richard Williams, a Brigham Young University expert on scientific research methods, testified about supposed methodology flaws in nine national studies in which researchers found no evidence that children of lesbian mothers developed differently than children of heterosexual mothers.

On cross-examination by Wolfson, Williams admitted he felt homosexuality was "morally wrong" and that any sexual activity outside the bonds of marriage was a sin. Williams said he did not believe in the theory of evolution, nor does he support the Equal Rights Amendment.

The state's fourth and final witness, Honolulu psychologist Thomas Merrill, echoed the state's main argument—that biological mothers and fathers are the best parents for children. He also testified that there isn't enough data to say whether children raised by gay men and lesbians will do as well as those raised by heterosexuals.

Counsel for the plaintiffs responded by asking whether the lack of data involving children raised by interracial couples should justify banning those marriages.

Merrill replied, "No."



Genora Darcel and Nina Baehr

**T**o counter the state's strategy, plaintiffs' attorneys presented nationally known child development experts who testified that lesbian and gay parents raise their children just as capably as heterosexual parents.

One of those witnesses was Pepper Schwartz, an author and sociology professor at the University of Washington. She discussed at length her 1983 book *American Couples*, which reported on 12,000 married and co-

habiting couples, 1,000 gay male couples and 800 lesbian couples from the late 1970s to the early 1980s.

Schwartz, who holds master's and doctorate degree from Yale University, told the judge that "marriage as an institution buffers you as a couple... married couples have an advantage that keeps them together longer than any of the other three categories of couples. Marriage has protective qualities."

She also testified she felt marriage for lesbian and gay couples would strengthen gay and lesbian relationships, "which ultimately will be good for society."

During cross-examination, the state maintained that Schwartz's own data proved same-sex couples are more likely to break up, and thus create more unstable homes for children.

Schwartz dismissed that interpretation, saying her findings indicate that it is the institution of marriage—or lack of marriage—which accounts for variations in break-up rates, not the sexual orientation of the couples.

Other plaintiff witnesses included child psychologist Charlotte J. Patterson, an expert in the development of children raised by lesbians and gay men or same-sex couples; Honolulu pediatrician Robert Bidwell, who stated he felt that children in gay and lesbian homes gain specific benefits from their households, learning about diversity and gaining strength from the struggles of being different; and psychology professor David

Brodzinsky of Rutgers University, who has previously provided testimony for such high-profile cases as the Baby M surrogate mother case and the Baby Jessica adoption case.

Brodzinsky said he found the argument that same-gender households are less than "optimum" because one parent is adoptive rather than biological to be "offensive."

He said that his own clinical experience and the research literature indicates that gay men and lesbians parent just as well as heterosexuals.

Brodzinsky also testified that the children of same-gender couples are being "punished" by the state's refusal to give their households the support of legal marriage.

Eichor, meanwhile, suggested that it was the gay and lesbian parents who "punished" the children by living with their same-gender partners instead of marrying their children's biological parents.

Plaintiffs' co-counsel Dan Foley responded by saying forced marriages have been shown to be harmful for all parties involved, including children.

**D**uring closing arguments on Sept. 20, Eichor stated that legalizing lesbian and gay marriage in Hawaii would invite demands that the state also license bigamy, polygamy and "consensual incest."

"There are a whole host of human relationships that would flow from allowing marriage based simply on love," he told the judge. "If you are going to allow love to be the simple basis for your marriage law, then you've got to be ready to accept polygamous marriages, consensual incestual marriages."

Citing the testimony of witnesses called by both sides, Eichor said Hawaii's marriage law is intended to promote a positive environment for the procreation and rearing of children who will thrive best when raised by their biological parents.

Foley, meanwhile, argued that being gay or lesbian is not, in itself, a factor in determining the quality of parenting.

"The indisputable evidence is that gay and lesbian parents are as fit and loving as are heterosexual parents," Foley said.

He said expert witnesses called by both sides agreed that marriage increases the stability of the family and gives the relationship a positive social status.

Both sides may contribute additional written materials through Oct. 25. Outside parties may file briefs through Oct. 11.

Whatever the outcome of the trial the fight will return to the Hawaii Supreme Court, because both sides have vowed to appeal.

*Baehr vs. Miike* was the stimulus for legislation against legal recognition of gay and lesbian marriages, including the federal Defense of Marriage Act signed into law in the wee hours on Saturday, Sept. 21, by President Clinton.

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