

Lesbian Listed as 'Father' on Baby's Birth Certificate—Another First in US Gay Rights

Last month a baby in Tennessee made history: Emilia Maria Jesty was the first child born in the state to have a woman listed on the birth certificate as her “father.”

The marital status of the baby's parents was the subject of a flurry of court filings up to a few days before her birth. Valeria Tanco and Sophy Jesty were wed in New York, a state that recognizes **gay marriage**, and moved to Tennessee, which does not.

They are among scores of same-sex couples who, working with advocacy groups, have filed lawsuits to expand gay marriage rights following a major U.S. Supreme Court decision last June allowing federal tax and other benefits for same-sex married couples.

Depending on the pace of rulings, as early as next year Tanco and Jesty's case or a similar challenge could reach the Supreme Court. Since the court's June decision in *U.S. v. Windsor*, about 50 such cases have been filed, in nearly all 33 states that prohibit gay marriage.

So far, the eight federal judges who have ruled citing *Windsor* have sided with the same-sex couples, saying the states may not treat same-sex couples differently from opposite-sex ones. All of those cases are on appeal.

On Thursday, the 10th U.S. Circuit Court of Appeals will begin hearing cases involving Utah and Oklahoma. In May, the 4th Circuit will hear a dispute from Virginia.

As Tanco approached her due date, a Nashville federal judge in mid-March issued a preliminary injunction forcing Tennessee to honor their marriage. The state appealed to the 6th Circuit.

It is possible a ruling against the couple could void Emilia's birth certificate and require that it be reissued with only Tanco listed. A spokeswoman for Tennessee Attorney General Robert Cooper declined to comment, as did a spokesman for the state Health Department, which oversees birth certificates.

But for now, says Jesty, "It gives me strength."

Urban and Rural Couples

About half of the cases were brought by **gay rights** advocacy groups that do not charge the plaintiffs, and many of the lawyers in the other cases are working for free. As part of their legal and public relations strategy, organizations such as the American Civil Liberties Union, Lambda Legal and the National Center for Lesbian Rights look for a broad mix: Same-sex couples from both urban and rural America, in an array of vocations and facing problems such as those arising from care of their children or an ill partner.

State attorneys general typically defend the state laws, although private lawyers have become involved too. Lawyers from the Alliance Defending Freedom, an Arizona-based Christian organization, are assisting in the defense of state bans in Oklahoma and Virginia and have submitted "friend of the court" briefs in other cases, including the Tennessee dispute.

Greg Scott, an Alliance spokesman, said his group seeks to counter sympathetic "micro" narratives with a "macro" argument. "What we argue is that marriage has a particular role in society as a whole," and that has historically meant only unions between a man and a woman.

Most new challenges seek a broad constitutional right to **same-**

sex marriage. But a handful, including the Tanco case, take a more incremental approach, arguing only that states must recognize marriages from other states. Gay rights groups say the narrower argument could sway judges in more conservative states and potentially the Supreme Court, which ruled 5-4 in Windsor.

A Volunteer in Knoxville

Tanco and Jesty became the lead plaintiffs in a lawsuit after they were approached last August by Regina Lambert, a Knoxville lawyer who had been volunteering for the National Center for Lesbian Rights.

The advocacy group relies on a network of lawyers and other volunteers to help find plaintiffs. During a series of conference calls, Lambert and other lawyers decided to bring one of the narrower cases in Tennessee, a largely conservative state. The group separately has filed broader based lawsuits in Idaho, Wyoming and Florida.

Lambert, who teaches at the University of Tennessee law school, thought of Tanco and Jesty. She had met the couple through a friend and knew they presented a good set of facts. Even though they had a legal New York marriage, they were not entitled in Tennessee to spousal benefits.

"You want someone who is in a stable, good relationship," Lambert said. "I liked the fact that they were homeowners, too." She thought the couple would also connect with the public because they were "likeable" and professors of veterinary medicine at the University of Tennessee. At that point she did not even realize Tanco was pregnant.

Lambert learned that when she invited the couple over to her house in August to broach the idea of the lawsuit. Tanco had become pregnant through artificial insemination about two months earlier.

The couple asked for time to think. Tanco was ready to say yes right away, but Jesty hesitated. She was not sure she wanted the attention that would come from a lawsuit. But two days later they called Lambert and agreed to sign on. "This was an opportunity to make a difference," Jesty said. "How do you turn away from something like that?"

In October, they filed suit in federal court in Nashville. Two other couples, gay men, are part of the lawsuit.

The pregnancy turned out to boost their case in court, at least for now. By mid-March, the court had yet to rule, and the couple's lawyers requested a status report. Judge Aleta Trauger issued a preliminary order requiring Tennessee to recognize the marriages of the couples pending a final decision. She noted that under existing Tennessee law, Jesty would not be recognized as a parent to Tanco's child and would be unable to make certain medical decisions.

The state appealed. Two days later, on March 27, just after 4 p.m., Emilia was born, weighing eight pounds, five ounces.

Following the usual routine, a hospital employee visited Tanco's room the next day to fill out the birth certificate. Tanco said Jesty's name should be on it with hers.

At first there was confusion over whether that was possible. Lambert worked the phones. After several hours and many calls between the hospital in Knoxville and the health department in Nashville, hospital officials produced the birth certificate.

A health department spokesman said in an email that officials were not aware of any previous Tennessee case in which the names of same-sex parents were listed on the birth certificate.

The document now sits on a desk in the couple's study. "It might be something that needs to get framed," said Jesty.

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