

State Courts Deal Blows to Gay Marriage

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By Jessica Azulay

Proponents of same-sex-marriage suffered two state-level setbacks Thursday with courts validating bans on the unions in both New York and Georgia.

The Empire State's highest court ruled that it is not unconstitutional to prohibit same-sex marriage, and in Georgia, the state supreme court reinstated a ban on gay and lesbian unions that a lower court had struck down.

As previously reported by *The NewStandard*, dozens of same-sex couples had launched various challenges to New York's policy of only sanctioning unions between heterosexual partners. The four cases before the New York Court of Appeals involved 44 gay and lesbian couples who had unsuccessfully attempted to obtain marriage licenses.

In ruling against the couples, the court said the state legislature could constitutionally promote marriage between different-sex couples and not same-sex unions because such discrimination would not be irrational, as the plaintiffs claimed.

"The Legislature could rationally decide that, for the welfare of children, it is more important to promote stability, and to avoid instability, in opposite-sex than in same-sex relationships," wrote Judge Robert S. Smith for the court's 4–2 majority.

Smith further wrote that since heterosexual intercourse "has a natural tendency to lead to the birth of children" and "homosexual intercourse does not," it is more likely that opposite-sex parents would be in unstable relationships. Therefore, the legislature "could choose to offer an inducement – in the form of marriage and its attendant benefits – to opposite-sex couples who make a solemn, long-term commitment to each other."

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The court said the legislature could rationally decide that "this rationale for marriage does not apply with comparable force to same-sex couples" who "become parents by adoption, or by artificial insemination or other technological marvels, but they do not become parents as a result of accident or impulse."

The court said it would also be rational for the legislature to defer to "common sense" in believing "it is better, other things being equal, for children to grow up with both a mother and a father," even while acknowledging scientific research that challenges the assumption.

"Plaintiffs seem to assume that they have demonstrated the irrationality of the view that opposite-sex marriages offer advantages to children by showing there is no scientific evidence to support it," wrote the court. "In the absence of conclusive scientific evidence, the legislature could rationally proceed on the common sense premise that children will do best with a mother and father in the home."

Gay and lesbian rights activists lambasted the ruling Thursday and vowed to take the issue to state lawmakers, who the court said should decide the issue.

Calling the decision "tortured and intellectually strained" Matt Foreman, executive director of the National Gay and Lesbian Task Force, asked New York lawmakers to "end the immoral discrimination gay families face by being denied the freedom to marry."

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"We call upon state leaders – including Attorney General and Democratic gubernatorial candidate Eliot Spitzer and State Assembly Speaker Sheldon Silver – to pledge today that they will do everything possible to enact a marriage-equality law when the Legislature comes back into session in January, 2007," he said.

Also Thursday, Georgia's Supreme Court turned back a challenge to a state constitutional amendment banning same-sex matrimony and the recognition of same-sex unions as entitled to the benefits of marriage. The amendment was passed by voters in 2004.

As reported by *TNS* in May, Superior Court Judge Constance C. Russell had struck down the amendment, saying it violated a state law protecting voters from being compelled to vote for measures they disapprove of in order to pass measures they support.

The multiple-subject rule says that each amendment must be voted on separately. Russell said the amendment violated that rule by combining the ban on same-sex marriage with the prohibition on recognizing any same-sex union with benefits similar to marriage.

But the unanimous state supreme court disagreed, saying that the amendment had one single objective: "reserving marriage and its attendant benefits to unions of man and woman."