

# The New York Times

## In Nebraska and Tennessee, More Setbacks to Gay Rights

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By Pam Belluck and Gretchen Ruethling

Opponents of same-sex marriage won victories yesterday in Nebraska and Tennessee, with courts in both states siding with efforts to amend state constitutions to prohibit such unions.

The Nebraska case could be particularly significant because advocates of same-sex marriage could decide to appeal to the United States Supreme Court. The amendment, passed by 70 percent of voters, was more far-reaching than most other marriage bans because it denied same-sex couples who were state employees domestic-partner benefits, visitation rights and other benefits. In May 2005, Judge Joseph F. Bataillon of Federal District Court ruled that the amendment went "far beyond merely defining marriage as between a man and a woman."

Judge Bataillon said it "imposes significant burdens on both the expressive and intimate associational rights" of gay men and lesbians "and creates a significant barrier to the plaintiffs' right to petition or to participate in the political process."

And Judge Bataillon added that the evidence suggested that the adoption of the amendment "was motivated, to some extent, by either irrational fear of or animus toward gays and lesbians."

The United States Court of Appeals for the Eighth Circuit disagreed, ruling unanimously that "laws limiting the state-recognized institution of marriage to heterosexual couples are rationally related to legitimate state interests and therefore do not violate the Constitution of the United States."

David Buckel, senior counsel at the Lambda Legal Defense and Education Fund, which helped challenge the amendment, said no decision had been made on an appeal.

"It will take a while to understand exactly what the court did here," Mr. Buckel said. "What struck me more than anything else was I couldn't find our case in the decision. The decision seems to be about marriage, but our case wasn't about marriage."

Mr. Buckel said the plaintiffs' case had focused on asking the court to set aside the amendment to give their clients time to press for legislation to allow domestic-partner benefits for same-sex couples.

Jon Bruning, the Nebraska attorney general, said, "Today the Eighth Circuit Court of Appeals affirmed Nebraskans' right to modify their Constitution as they see fit."

Opponents of same-sex marriage celebrated yesterday's rulings.

"We are pleased that this latest attempt by the homosexual agenda to radically redefine our culture has been stopped dead in its tracks," Mathew D. Staver, founder and chairman of Liberty Counsel, said in a statement. "For the past two weeks, the same-sex marriage movement has been rocked backward by stunning court decisions in favor of traditional marriage."

James Esseks, a litigation director for the A.C.L.U., acknowledged that the Nebraska decision might embolden other states to pass more restrictive laws.

"What's at stake here is the ability to participate in the political process equally and seek protections we think we ought to be able to have," Mr. Esseks said. "We were seeking some protection for families that may be short of nothing. Nebraska says you get nothing. That's astonishing."

*Monica Davey contributed reporting for this article.*