

## As defeats pile up, Mass. stays sole safe haven for gay marriage

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By Steve LeBlanc, Associated Press Writer

When Massachusetts started marrying gays and lesbians in 2004, activists giddily predicted the narrow court victory would speed same-sex nuptials nationwide, with state after state jumping on the gay wedding bandwagon.

Then the honeymoon ended.

More two years later and after recent court setbacks in New York and Washington state Massachusetts remains the nation's sole gay marriage safe haven.

"The twin rulings were dispiriting blows for activists who hoped the states could provide a new bulwark for same-sex marriage. Opponents of gay marriage said the decisions are further proof Massachusetts is out of step with the nation.

"We would rather have won than lost, but things are not as grim as people think," said Lee Swislow, executive director of Gay & Lesbian Advocates & Defenders. "We've had to remind ourselves of that."

On July 26, the state Supreme Court in Washington voted 5-4 to uphold a state ban on gay marriage, overruling two lower courts. Weeks earlier, New York's high court similarly ruled that a state law limiting marriage to between a man and a woman was constitutional.

Gay marriage supporters say they are hoping other pending court decisions may reverse the losing trend.

Top of the list is New Jersey, where the state's high court is weighing a challenge to the marriage laws brought by gay couples, similar to the challenge in Massachusetts. Activists have high hopes for the state, which they say has a fairly liberal court and strong anti-discrimination language in the constitution.

They're also keeping a close eye on Maryland, where gay couples are hoping to convince that state's high court to lift prohibitions on gay marriage.

The biggest battleground may be California, which also has pending court action. California lawmakers approved gay marriage in 2005, only to have the bill vetoed by Gov. Arnold Schwarzenegger.

**Matt Foreman, executive director of the National Gay and Lesbian Task Force, said there was a lot of "wishful thinking" in the heady days after Massachusetts' historic court ruling.**

**"Many people thought the Massachusetts breakthrough would lead to a wave of other states extending marriage equality to gay people, but that's not the way major changes happen in this country," he said. "It's going to take at least 25 years before there is significant protections for gay couples in most states."**

Foes of gay marriage also see the Massachusetts decision as a breakthrough of sorts one that has galvanized backers of traditional marriage and fueled the push for new laws and constitutional amendments banning gay marriage.

"Suddenly people realized that this is not some kind of abstract hypothetical threat, but it was one that was very real," said Peter Sprigg, vice president for policy for the Family Research Council in Washington D.C. "Massachusetts is standing out more and more like an anomaly."

"The best hope of opponents, Sprigg said, "would be an amendment to the US Constitution. In July, the US House fell 46

votes short of the two-thirds majority needed to advance a constitutional amendment banning gay marriage.”

“Short of that,” he said, “foes will continue to work state by state to protect traditional marriage.”

The national gay marriage map is a patchwork of court rulings, pending cases, state laws and voter-approved constitutional amendments with the overwhelming majority supporting a traditional view of marriage. Voters have approved constitutional amendments banning gay marriage in 19 states and as many as 45 states have either amendments or laws outlawing same-sex weddings.

Only two states recognize civil unions for same sex couples, Vermont and Connecticut.

The intensity of opposition to gay marriage has rattled some in the gay community.

“I couldn't say we fully anticipated the epidemic of anti-gay discriminatory bills that would be passed, but I can't say it was completely a surprise,” said Swislow.

Despite the string of defeats nationwide, gay activists are convinced time and the tide of public opinion are on their side, she said.

“Fundamentally when most people really think about it and they meet same-sex couples, they think it's the right thing to do,” Swislow said.

Opponents of gay marriage believe that after the shock of the Massachusetts ruling, the pendulum is swinging back in favor of the one man-one woman view of marriage. They say they are buoyed by the recent victories, but aren't taking anything for granted.

Kristian Mineau, president of the Massachusetts Family Institute, which is pushing a state constitutional amendment to undo the 2004 court ruling, predicted the nation will eventually settle on the one man-one woman standard.

He also said he doesn't relish the fight.

“I never asked for this battle. No one on our side looked for this, it was thrust on us,” he said, warning that gay marriage could give way to polygamy and a further fracturing of the definition of marriage.

“If we do not prevail, this thing is going to leapfrog across the country,” he said.

“Ultimately the question of gay marriage could land before the US Supreme Court,” said Chicago-Kent College of Law Professor Vincent Samar, who teaches courses on sexual orientation and the law.

“One possible route is if a couple married in Massachusetts moves to another state and challenges that state's ban on gay marriage under the “full faith and credit” clause of the Constitution. That state could point to the 1996 federal Defense of Marriage Act which allows states to disregard gay marriages performed in other states.

“The gay couple could then argue the 1996 federal law violates the Constitution's 14th amendment guaranteeing equal protection under the law. At that point the Supreme Court may have to step in,” Samar said.

David B. Cruz, a professor of constitutional law at the University of Southern California, said it took nearly 20 years for the nation to outlaw bans on interracial marriage beginning with a California court ruling in 1948 and ending with a US Supreme Court decision in 1967.

“Thirty years from now Massachusetts may well be seen as the California court in the interracial marriage decision in 1948,” he said.

**“Given that kind of precedent for social change, Foreman said, gay marriage is making swift progress.**

**"Six years ago civil unions were a revolutionary idea in Vermont," he said.**

**"Now civil unions is the fall back position."**