



Marriage Defeat Creates Resolve

More resources, more commitment needed now, advocates say

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BY Duncan Osborne

While a state supreme court barred gay and lesbian couples from marriage for the second time in just three weeks, activists said that the decision should spur an increased effort to gain marriage rights for same sex partners in America.

“I think there’s disappointment that the majority declined to uphold the constitutional rights of this minority group,” said Jennifer C. Pizer, senior counsel at Lambda Legal and a lead attorney on the case. “That’s a disappointing abdication of a core judicial function...I think there is determination. There is hurt and disappointment and also determination that if the path will take longer, people will be walking it together.”

In a 5-4 decision, Washington’s Supreme Court ruled that the state’s 1998 Defense of Marriage Act, which bars gay marriage, did not violate Washington’s state constitution. The judges issued six different opinions, including two concurring and three dissents.

The case was a consolidation of two lawsuits brought by 19 gay and lesbian couples. They were represented by the American Civil Liberties Union, Lambda Legal, and the Northwest Women’s Law Center. Two lower state courts had ruled in favor of the couples, but the July 26 decision overturned those rulings. The Washington Supreme Court heard the case in March of 2005.

Josh Friedes, advocacy director at Equal Rights Washington, the statewide gay lobbying group, attended a July 26 press conference where advocates and couples involved in the case spoke out.

“The mood was somber but full of resolve,” Friedes said. “I think the overwhelming message was one of disappointment and one to continue to the struggle for marriage equality in Washington state.”

Washington’s state legislature currently has “modest Democratic majorities,” but it remains “a competitive state,” Friedes said. The legislature passed a law banning discrimination based on sexual orientation this year after a 29-year battle. An effort to repeal that law by referendum failed after opponents failed to gather sufficient signatures.

“The good thing is in Washington state support for marriage equality is growing and we have some wonderful leaders,” Friedes said. “We are saddened but our resolve remains unshaken.”

On July 6, New York’s Court of Appeals, the state’s highest court, employed the lowest legal standard to rule against gay couples that were seeking to marry. The Washington court used that standard as well.

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“Almost everyone in America agrees that marriage is important, it’s clear that marriage is a fundamental right under the Constitution, but somehow when it comes to gay couples the courts treat their exclusion from marriage as trivial and warranting only a very minimal review,” said Evan Wolfson, executive director of Freedom to Marry, a group that promotes same sex marriage. “It really begs the question if marriage is important why isn’t the denial of marriage important for these couples? Why doesn’t the state have to show a substantial and logical reason for withholding this fundamental right?”

As in Washington, advocates vowed to go to the New York state legislature to secure marriage for lesbian and gay couples following the July 6 defeat.

“After the New York ruling the tone could have been despondency from our movement, but instead I saw a real seriousness about now this is going to shift to Albany,” Wolfson said. “I think that was the right tone.”

Matt Foreman, executive director of the National Gay and Lesbian Task Force, said the fight for marriage would be long.

“This is a really long term struggle and we’re going to have these advances and setbacks along the way,” he said “We now have to go back to the legislature and push for marriage in New York and repeal of a DOMA in Washington state...Our opponents understand that this is not for the faint of heart and we have to communicate that to our community. This takes a long time particularly given the wealth and the venom of those opposed to us.”

A ruling from New Jersey’s highest court on a gay marriage suit there is expected at any time, according to Garden State Equality, that state’s gay lobbying group.

The California Court of Appeals is expected to rule in the next three months on a decision from a lower state court that favored gay marriage, according to Geoffrey Kors, executive director of Equality California, the statewide gay lobbying group. Any ruling there will certainly be appealed to California’s Supreme Court.

California may also take up a gay marriage bill when its legislature meets for its next session beginning on December 4. Such a bill passed last year, but Gov. Arnold Schwarzenegger vetoed it. The political landscape has shifted since then.

“We picked up seats in the June election so things look stronger,” Kors said. The vote in the legislature could help the lawsuit.

“In California the legislature has already found that marriage discrimination should end,” Kors said. “In California, we’re coming to the court with the legislature already saying it is against public policy of the state to discriminate.”

Some 8,000 lesbian and gay couples have married in Massachusetts since that state’s highest court legalized gay marriage in 2004. There is currently an effort to amend that state’s constitution to overturn that ruling, but it has been unsuccessful, to date.

“Clearly we’re disappointed,” said Lee Swislow, executive director of the Boston-based Gay & Lesbian Advocates & Defenders, which works throughout New England. “We’re still looking closely at the decision, to see what impact it has.

We will continue to fight for full marriage rights and for our families. It’s too important not to. I can only hope that it will motivate legislators to do what’s right.”