

Gay marriage amendment allowed on Nov. 7 ballot

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By Beth Rucker, Associated Press

NASHVILLE -- The Tennessee Supreme Court Friday rejected an effort to keep voters from deciding whether to amend the state constitution to ban same-sex marriage.

The court's unanimous ruling found that the American Civil Liberties Union didn't have standing to pursue its lawsuit claiming the state failed to notify the public about the amendment as required by the Tennessee Constitution.

Legal experts said the narrow basis of the ruling may leave room for another court challenge to the measure defining marriage as between one man and one woman.

"Plaintiffs failed to demonstrate a distinct, concrete injury in fact resulting from the alleged untimely publication of the Marriage Amendment," Chief Justice William M. Barker wrote in the court opinion.

Byron Babione, Alliance Defense Fund senior counsel, hailed the decision. Babione represented 90 Tennessee lawmakers hoping to keep the proposed constitutional amendment on the Nov. 7 ballot.

"The matter is best left to the voters since we live in a democratic society and have a democratic process. The real victory is that it's a victory for the voters of Tennessee," Babione said.

Melody Fowler-Green, staff attorney at the ACLU, said she was disappointed by the court ruling.

Matt Foreman, executive director of the National Gay and Lesbian Task Force, noted challenges to similar amendments in other states have been shot down.

"These amendments are putting a fundamental human right of a minority that the majority takes for granted up for a popular vote," he said. "That is immoral. It's not democracy. It's tyranny of the majority. If this were being done to any other minority in this country, there would be widespread outrage."

At issue in the case was Tennessee's lengthy procedure for amending the constitution, which requires approval by two successive General Assemblies and notification to the public between those two votes.

The state was required to notify the public about the proposed amendment at least six months before the Nov. 2, 2004, election for the state legislature. But the measure didn't pass until May 19, less than six months before the election. The official notice was given a month later in a half dozen newspapers.

State Attorney General Paul Summers argued that the state met the six-month requirement because it published the proposed amendment on the legislative Web site when it was introduced on March 17, 2004. He also said news stories covered the proposal.

Because the Supreme Court found the ACLU and other plaintiffs did not have standing to bring the suit, it did not rule on whether or not the state met the notification requirement.

To have standing, plaintiffs must prove the timing of notification -- whether it was done properly or not -- somehow caused them injury, said James F. Blumstein, Vanderbilt University professor of constitutional law and health law and policy.

"Courts do not hear abstract questions brought by people who do not have a particularized stake in the issue," he said.

Because the court did not decide on the merit of the lawsuit, another plaintiff with standing could challenge the

amendment on the notification issue, he said.

Babione said he believed the court's decision showed that no one would be able to prove they were injured by the timing of the notification.

"I wouldn't be concerned because I don't think that such a person exists," Babione said.

Chris Sanders, president of the Tennessee Equality Project, said the group would continue to lead its "Vote No on 1" campaign," urging Tennesseans to vote against the marriage amendment.

"We are preparing to fight it at the ballot if it indeed appears on the ballot through extensive voter canvassing and raising awareness about the issue," he said.

Sen. David Fowler, R-Signal Mountain, said the most important thing is that voters get the chance to decide the issue. Fowler, who was a sponsor of the proposal, is not seeking re-election and is now working executive director of the Family Action Council of Tennessee, an organization promoting the amendment's passage.

Tennessee already has a law banning gay marriage, but lawmakers who supported the amendment said they wanted to ensure judges couldn't rule that law unconstitutional.

There are currently 18 states with constitutional amendments against gay marriage. Between six and eight marriage amendments will be considered by voters this year, depending on the outcome of active challenges, according to the National Gay and Lesbian Task Force.

The case is ACLU v. Darnell.

Associated Press Writer Lucas L. Johnson II in Nashville contributed to this story.