

California court hands defeat to advocates of gay marriage

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By LISA LEFF, The Associated Press

SAN FRANCISCO - A state appeals court upheld California's ban on same-sex marriage Thursday, dealing a critical defeat to a movement hungry for a win after high courts in two other states upheld similar bans.

In reversing the March 2005 ruling of a San Francisco trial judge, the 1st District Court of Appeal agreed with the state's attorney general, who argued it is up to the Legislature, not the courts, to change the traditional definition of marriage as a union between a man and a woman.

"We conclude California's historical definition of marriage does not deprive individuals of a vested fundamental right," the court said in its 2-1 decision. "The time may come when California chooses to expand the definition of marriage to encompass same-sex unions. That change must come from democratic processes, however, not by judicial fiat."

The ruling does not guarantee, however, that same-sex couples will never be allowed to marry here. Gay marriage advocates plan to appeal to the state Supreme Court.

"This is a disappointing second round in what we've always known is a three-round fight," said San Francisco City Attorney Dennis Herrera, whose office challenged the existing marriage laws two years ago after the Supreme Court ordered city officials to stop granting marriage licenses to same-sex couples.

Opponents of gay marriage praised the decision — and the court for exercising judicial restraint.

"The really important issue here is that the court understood that marriage has a meaning, and that unless you redefine marriage all the arguments the other side have made are meaningless," said Glen Lavy, an Alliance Defense Fund attorney who asked the appeals court to overturn the lower court ruling.

In their ruling, the justices noted that the state has gone a long way toward promoting equality for same-sex couples through its strong domestic partner law, which gives registered couples the same rights as married spouses. They rejected arguments from gay marriage proponents that such a "separate, but equal" system was discriminatory.

"It is rational for the Legislature to preserve the opposite-sex definition of marriage, which has existed throughout history," Justice William McGuinness wrote on behalf of himself and

Associate Justice Joanne Parrilli. "The state may legitimately support these parallel institutions while also acknowledging their differences."

In a strongly worded dissent, however, Justice Anthony Kline scoffed at his colleagues' suggestion that same-sex couples should not be entitled to marry now because they had not been permitted in the past.

"The fact that same-sex couples have traditionally been prohibited from marrying is the reason this lawsuit was commenced," Kline wrote.

Since 2004, when Massachusetts became the first state to legalize gay marriage, advocates have seen California as one of their best hopes for expanding the marriage movement. The stakes here became even higher this summer after high court rulings in New York and Washington state upheld same-sex marriage bans in those states.

California is one of 26 states with statutes limiting marriage to a man and a woman, while another 19 states passed constitutional amendments barring gay marriage after Massachusetts gays won the right to wed. Connecticut and Vermont allow civil unions, which like California's domestic partnerships confer most of the state-governed legal rights of marriage.

Thursday's ruling came three months after the appeals court heard six hours of arguments in as many related cases - four of them filed by the city and lawyers for 20 couples seeking the right to wed, and two brought by groups that want to maintain the status quo barring same-sex unions.

The lawsuits arose out of the 2004 same-sex marriage spree that San Francisco Mayor Gavin Newsom ignited when he instructed city officials to issue marriage licenses to gay and lesbian couples. Hundreds of couples from across the country flocked to City Hall to marry, but groups opposed to gay marriage persuaded the state Supreme Court to invalidate the licenses.

In March 2005, San Francisco Superior Court Judge Richard Kramer ruled that the state's existing marriage laws violated the civil rights of gays and lesbians by denying them "the basic human right to marry a person of one's choice" and by discriminating on the basis of gender and sexual orientation.

Following Kramer's decision, the Legislature last year became the first lawmaking body in the nation to legalize gay marriage. Gov. Arnold Schwarzenegger vetoed the bill, saying it was up to voters or the courts, not lawmakers, to settle the contentious issue.

With a gubernatorial election next month, Thursday's ruling is sure to put the issue squarely back in the political arena. The bill's sponsor, Assemblyman Mark Leno, plans to reintroduce the measure to allow gay marriage at the end of the year.

"We see this as a bump in a long road to equality," said Matt Foreman, executive director of the National Gay and Lesbian Task Force in Washington, D.C. "Everyone has always known that the final decision rests with the California Supreme Court. It's disappointing, but it's just another bump in the road."

The cases are Marriage Cases, JCC 4365.