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Gay Vows Up to Trenton

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New Jersey's high court stopped just short of legalizing gay marriage yesterday, ruling that same-sex couples deserve the same rights as heterosexual ones, but punting the specifics to the Legislature.

Lawmakers have six months to expand the definition of marriage to include gay and lesbian couples or to come up with another term that carries the same weight.

The ruling resembles a 1999 Vermont Supreme Court decision that resulted in "civil unions" for same-sex couples. The Vermont court allowed lawmakers to reserve the term *marriage* for the union of one man and one woman, but it required legislators to give gay and lesbian couples the same rights as married couples.

"Although we cannot find that a fundamental right to same-sex marriage exists in this state, the unequal dispensation of rights and benefits to committed same-sex partners can no longer be tolerated under our state constitution," Justice Barry T. Albin wrote for the New Jersey Supreme Court's majority.

All seven justices agreed that it was unconstitutional to deprive gay and lesbian couples of the benefits of marriage rights, but three, in a dissent led by retiring Chief Justice Deborah T. Poritz, argued that the couples were also entitled to its title.

"What we 'name' things matters, language matters," wrote Poritz, joined by Justice James R. Zazzali, who will succeed her as chief justice, and by Justice Virginia Long. "Labels set people apart as surely as physical separation on a bus or in school facilities."

Reaction was swift. Gay-marriage proponents said they would move immediately to have sympathetic legislators introduce a bill pushing for full marriage equality. Opponents said they would advocate for constitutional amendments limiting marriage to one man and one woman, or would push similar legislation.

Legislative leaders called the court's six-month deadline "unreasonable" and it was unclear whether lawmakers - all of whom face election next year - had the resolve to act.

Other states' courts have ruled that only the legislature can define marriage to include same-sex unions. No legislature has done so.

Meanwhile, 19 states have adopted constitutional amendments that ban same-sex marriage. Most others have statutory bans, but New Jersey and four other states have neither.

Groups on both sides said yesterday's ruling sent a mixed message.

"It's not like a victory. It's not like a loss. I guess you could call it a draw," said Len Deo, president of the New Jersey Family Policy Council, which opposes gay marriage. "It goes back to the Legislature, where, I think, it ultimately belongs."

Deo said he doubted legislators would move for full marriage.

"They're all up for reelection in 2007," he said.

John Tomicki, president of the New Jersey Coalition to Preserve and Protect Marriage, said he would join with others to push one constitutional amendment to ban same-sex marriage and another to limit the terms of Supreme Court justices to five years.

"It's beyond being an activist court," Tomicki said. "They are setting policy from the bench."

Others were more biting.

James Dobson, head of the national conservative religious group Focus on the Family, accused the justices of tinkering with "the future of the American family."

"The New Jersey Supreme Court has blatantly and arrogantly ordered the state Legislature to rip up what marriage has meant for thousands of years," Dobson said in a statement. "The justices have made clear their disdain and disrespect for the true decision makers in our democracy - the people - as well as for the institution of marriage."

David Buckel, lead counsel for Lambda Legal, the gay-rights group that argued the case before the Supreme Court, said the Legislature could take the "easy way" and expand the definition of marriage, or take a more difficult path and create an entirely new legal structure.

Either way, Buckel felt the court's ruling sent the wrong message. "Government is essentially saying there is a group of individuals that is inferior, and sends the message to the rest of society that they can view these individuals as inferior," Buckel said. "That's an invitation from the government to further bias and discriminate. That is not what New Jersey is all about."

Steven Goldstein, director of Garden State Equality, a gay-rights group, said the ruling was "a step forward only in that it takes the lesbian and gay community from third-class to second-class citizens."

Still, said Matt Foreman, executive director of the National Gay and Lesbian Task Force, a step forward is a step forward.

"The upside is that it's the first time that we have a state high court rule unanimously that denying same-sex couples the rights and obligations of marriage is unconstitutional," Foreman said.

His group's key task is to manage the coming election.

"We know there will be howling and fear-mongering and distortions of the opinion by the right in anticipation of the midterm elections," Foreman said. "They will without a doubt attempt to exploit this decision for partisan gain."

Alicia Heath-Toby, of Newark, N.J., has a personal view of the ruling. She and her partner, Sandra Toby-Heath, are among seven plaintiff couples in the lawsuit.

"I'm certainly excited by the unanimous decision that we deserved equal rights, but to do anything less than marriage is not equal," Heath-Toby said. For eight months, she had waited for the Supreme Court to decide. Now her focus - and that of the nation - shifts to the Legislature.

Last night, Senate President Richard J. Codey (D., Essex) and Assembly Speaker Joseph J. Roberts Jr. (D., Camden) expressed frustration at the task and the court-ordered deadline.

"Given the fact that it took the judicial system nearly four years to come up with a 4-3 split decision, we think the determination by only four justices that the entire Legislature is obligated to respond within 180 days is unreasonable," Codey and Roberts said in a statement.

They said they would not support or post for vote a constitutional amendment to overturn the decision, adding that the Legislature's path can't be determined without further discussion.

A handful of legislators called for movement on an existing Assembly bill that would define marriage as between one man and one woman.

Assemblyman Richard Merkt (R., Morris) said he would attempt to have all seven justices impeached.

"Neither the framers of New Jersey's 1947 constitution, nor the voters who ratified it, ever remotely contemplated the possibility of same-sex marriage," Merkt said in a statement.

Gov. Corzine commended the court and said he welcomed the legislative process that would implement its order.

New Jersey has always been considered a prime battleground for a gay-marriage case. Not only is it one of five states without a law or constitutional amendment banning same-sex marriage, but its high court is quite independent. Gay-marriage court cases are pending in California, Connecticut, Iowa and Maryland. Similar cases were dealt blows in courts in New York this summer and in Washington state.

Eight states will vote on marriage amendments in November: Arizona, Colorado, Idaho, South Carolina, South Dakota, Tennessee, Virginia and Wisconsin. Just one state - Massachusetts - permits same-sex couples to marry.

In a Rutgers-Eagleton poll of New Jerseyans in June, 50 percent said they favored allowing gay marriage. Forty-four percent said they were opposed. The difference was just within the margin of error of 3.5 percentage points.

Nathaniel Persily, a University of Pennsylvania law professor, said the Supreme Court decision smartly reflected the public's aversion to allowing gay couples to marry while delivering "a huge victory for gay rights."