

Extra Feature Story

California Supreme Court Overturns Same-sex Marriage Ban

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The California Supreme Court overturned a ban on same-sex marriages, declaring it unconstitutional and paving the way for the state to become the second to permit same-sex couples to marry.

In a 4-3 decision, the state's highest court said gay and lesbians have a constitutional right to marry.

"The California Constitution properly must be interpreted to guarantee this basic civil right to all Californians, whether gay or heterosexual, and to same-sex couples as well as to opposite-sex couples," Chief Justice Ronald George wrote in the majority opinion.

The current state law says that marriage is limited to a man and a woman. However, same-sex couples can form legal domestic partnerships, with nearly all of the benefits and burdens of marriage.

But the court declared that current law, which was enacted in 1977 and reaffirmed by a voter referendum in 2000, discriminates against people due to their sexual orientation.

This is the first time that sexual orientation has been put into the same legal category as racial or gender discrimination by a top court.

"In contrast to earlier times, our state now recognizes that an individual's capacity to establish a loving and long-term committed relationship with another person and responsibly to care for and raise children does not depend upon the individual's sexual orientation," George wrote.

Massachusetts is the only other state that allows same-sex couples to marry.

The case

The case in question began in February 2004 when the mayor of San Francisco, Gavin Newsom, called on the city clerk to issue marriage licenses to couples, opposite-sex or same-sex.

Nearly 4,000 same-sex couples were married before the state stopped the practice a month later amid legal challenges. By August 2004, the court annulled those marriages, declaring that the city mayor did not have the authority to super cede state law. But the court did not rule at that time on the legality of the law banning same-sex marriages.

The city of San Francisco and 23 same-sex couples from that city and Los Angeles eventually became the plaintiffs in the case before the California State Supreme Court.

The question before the court was whether the current laws violate parts of the state Constitution that protect equality and fundamental rights.

The decision doesn't go fully into effect for 30 days and it will be at least that long before California same-sex couples can marry.

And it could be overturned again in November when Californians will vote on an amendment to the state Constitution that would ban same-sex marriage.

Critics of the ruling

Critics of the ruling have asked the Supreme Court to postpone putting its decision into effect until after the fall election and potential amendment vote.

"The remedy is a constitutional amendment," Glen Lavy of the Alliance Defense Fund, told the Associated Press.

Twenty-six other states have passed constitutional amendments banning same-sex marriage.

Implications for the 2008 presidential election

Some political watchers believe that the California decision will have implications for the 2008 presidential election.

"The court has interjected itself into national politics and made same-sex marriage a major issue in the upcoming national election," Brian Brown, executive director of the National Organization for Marriage in California, which opposes same-sex marriage, told the New York Times.

All three major presidential candidates – Senator John McCain of Arizona, Senator Barack Obama of Illinois and Senator Hillary Clinton of New York – all oppose same-sex marriage.

McCain says marriage is "between a man and a woman" and opposes legal recognition of same-sex relationships. Obama and Clinton both support civil unions – many of the rights and responsibilities of nuptials -- without technically having a marriage.

The issue was used by Republicans in the 2004 election to garner support for GOP candidates but not everyone thinks it's the best issue to bring up again.

"At best, it doesn't move voters, and at worst for Republicans, it moves them against them," Matthew Dowd, chief strategist for President Bush's campaign in 2004 told the New York Times.

"Not so much on the issue, but it becomes, 'Why are we having a discussion on this issue when we should be talking about things that matter, like the economy, or health care, or the war?'"

--Compiled by Annie Schleicher for NewsHour Extra

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