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Gay 'Marriage' Battle Expected to Return to California Ballot

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By Lisa Leff, Associated Press

San Francisco (AP) - Gay leaders say they are moving into campaign mode with an eye toward trying to repeal Proposition 8 at the ballot box as early as next year after the state Supreme Court upheld the voter-approved ban on same-sex marriages.

"So the court has said we have to go back," said Geoffrey Kors, executive director of the gay rights group Equality California. "We believe the political drive, the momentum, is there to do that."

The door to gay marriage in California -- opened with a 4-3 ruling by the same court last spring and closed by voters in November -- remains blocked for now as a result of Tuesday's 6-1 decision.

The court held that the ban, which passed with 52 percent of the vote, was a legal exercise of the virtually unfettered initiative power the California Constitution grants its citizens.

The court did refuse to nullify an estimated 18,000 marriages that took place before the ban was approved. For the couples involved, relief was mixed with a sense of being marginalized.

"It's a little strange to feel like we're part of a grandfathered minority," said Leanne Waldal, 38, wiping away tears after the ruling was announced. Waldal and her wife were married in Canada in 2007 and again in California in October. "I hoped they wouldn't invalidate our marriage, but I would rather be part of a full group."

Gay marriage opponents, who in recent months have seen four more states join Massachusetts in extending marriage rights to gays and lesbians, praised the ruling.

"The voters have decided this issue and their views should be respected," said Andrew P. Pugno, a lawyer for ProtectMarriage.com, the leading group behind the initiative.

Proposition 8 proponents do not plan to challenge the existing gay marriages that were protected by the court, Pugno said.

"We see it as really a minor point in ultimately the will of the people being upheld," he said.

President Barack Obama was scheduled to be in Los Angeles for a fundraiser Wednesday. Gay rights activists planned to use the visit to press the president to fulfill his campaign promise to work for the repeal of the federal Defense of Marriage Act, said Lorri Jean, director of the Los Angeles Gay and Lesbian Center.

Protests of the court's decision were held across the nation. In St. Louis, activists gathered in front of City Hall, its rotunda pillars draped in an expansive rainbow flag. Ed Reggi, who married his partner of 10 years this month in

Iowa, challenged the crowd of about 200 to speak out on the issue.

"Tell an old friend and a new stranger that we are gay, partnered, married, widowed and in mourning," said Reggi, 37. "Tell them how important marriage equality is to you."

In Los Angeles, about 100 people sat down in an intersection near the University of California, Los Angeles during rush hour and several hundred protesters gathered at a rally in West Hollywood where actress Drew Barrymore addressed the crowd.

"Children need families, people need to love and we need to move forward, not backward," Barrymore said. "What defines a family? We do!"

Proposition 8 superseded the Supreme Court's May 2008 ruling that legalized same-sex unions by amending the state constitution to outlaw them. In that decision, the court invalidated California's marriage statutes, holding that denying same-sex couples the right to wed amounted to state-sanctioned discrimination.

In a 136-page majority ruling written by Chief Justice Ronald George, the justices said it was not their job to address whether the ban was wise public policy, but only to decide whether it was constitutionally valid, while "setting aside our own personal beliefs and values."

Drawing on California's long history of citizen-initiative amendments, the court rejected arguments that the ban was such a fundamental change in the California Constitution that it first needed the Legislature's approval.

"The constitutions of a number of other states contain express provisions precluding the use of the initiative power to amend portions or specified provisions of those states' constitutions," George wrote. "In contrast, the California Constitution contains no comparable limitation."

Justice Carlos Moreno, who had been under consideration as Obama's nominee to the U.S. Supreme Court, was the lone dissenter.

He said denying same-sex couples the right to wed "strikes at the core of the promise of equality that underlies our California Constitution."

Theodore B. Olson and David Boies, two prominent litigators who opposed each other in the Bush v. Gore election challenge in 2000, are challenging Proposition 8 on those grounds in federal court.

The pair filed a lawsuit Friday on behalf of two gay men and two gay women, arguing that the marriage ban violates the U.S. constitutional guarantees of equal protection and due process.

Olson, a former U.S. solicitor general, said he hopes the case will wind up before the U.S. Supreme Court.

"This is a federal question," he said. "This is about the rights of individuals to be treated equally and not be stigmatized."

Meanwhile, gay rights groups are starting work gathering the 700,000 signatures required to place a repeal of Proposition 8 before voters in November 2010.

Both Equality California and the Courage Campaign, a political action group based in Los Angeles, said they had polled their members in recent days and found overwhelming support for going back to voters next year instead of waiting until 2012.

Associated Press writers Juliana Barbassa, Evelyn Nieves, Marcus Wohlsen and Paul Elias in San Francisco and Christina Hoag, Raquel Dillon and Special Correspondent Linda Deutsch in Los Angeles contributed to this report.

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