



Written by [Raven Clabough](#) on October 14, 2014

Judge Overturns Alaska's Ban on Same-Sex Marriage

A federal judge in Alaska has struck down the state's first-in-the-nation ban on same-sex marriages after five homosexual and lesbian couples brought a lawsuit asking the state to overturn the constitutional amendment that defined marriage as being between one man and one woman.



The Associated Press writes,

The lawsuit filed in May sought to bar enforcement of the ban. It also called for barring enforcement of any state laws that refuse to recognize same-sex marriages legally performed in other states or countries or that prevent unmarried gay couples from marrying.

After hearing arguments on Friday afternoon, Judge Timothy Burgess of the Federal District Court in Alaska released a 25-page decision on Sunday. He wrote,

Refusing the rights and responsibilities afforded by legal marriage sends the public a government-sponsored message that same-sex couples and their familial relationships do not warrant the status, benefits and dignity given to couples of the opposite sex.

The judge's decision in favor of Matthew Hamby and Christopher Shelden, as well as four other homosexual and lesbian couples, pointed to previous Supreme Court decisions as indications that "rights not explicitly mentioned in the Bill of Rights can be protected by substantive due process." He compared his decision to a ruling by the high court permitting interracial marriage. He wrote,

Rather, the decision hinged on the determination that the freedom to marry, without an additional descriptor, "resides with the individual and cannot be infringed by the State." In this way, the Supreme Court found interracial marriage "to be an aspect of liberty protected against state interference by the substantive component of due process."

Burgess emphasized that his role was not to determine the popularity of same-sex marriage, but to decide whether Hamby and Shelden had been treated unfairly by Alaska's same-sex marriage ban in violation of the Fourteenth Amendment. He observed,

For many years, there have been powerful voices condemning homosexual conduct as immoral, but the Court's obligation in this case is not to determine or mandate a particular moral code, but rather to define the liberty of all. Alaska's laws prohibiting same-sex marriage "usurp, disregard, and disrespect" the fundamental right of all homosexuals to choose who [sic] to marry; a right of liberty, privacy and association freely given to heterosexuals.

Alaska maintains the option to appeal to the Ninth Circuit Court, though it will not likely have success in doing so as that court has already ruled against Idaho and Nevada in similar cases.

The ruling by Judge Burgess follows a groundbreaking decision by the Supreme Court on October 6 not



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to review pending same-sex marriage cases.

NBC News observed, “By rejecting appeals in cases involving Virginia, Oklahoma, Utah, Wisconsin and Indiana, the top court left intact lower-court rulings that declared the bans in those states unconstitutional.” The Supreme Court decision immediately ended delays on same sex-marriages in those states.

That same decision had a direct impact on Colorado, Kansas, North Carolina, South Carolina, West Virginia, and Wyoming because those states were bound by the same rulings that were put on hold pending the Supreme Court review.

In West Virginia, for example, Attorney General Patrick Morrisey announced last week that his office will stop defending the state’s ban on same-sex marriage, citing the Supreme Court’s decision not to hear appeals in other marriage cases.

“By refusing to consider the appeal, the Supreme Court has caused the Appeals Court’s decision to become final and binding on West Virginia,” Morrisey [said in a statement](#). “While we will take steps to seek to end the litigation, the conclusion of the lawsuit cannot and will not alone effectuate the Fourth Circuit’s mandate.”

West Virginia Gov. Earl Ray Tomblin (D) said he directed all state agencies to uphold the marriage decision.

“As the attorney general stated today, recent rulings by several federal courts, combined with the refusal of the U.S. Supreme Court to hear this issue, make it clear that laws banning same-sex marriage have been declared unconstitutional,” he said in a statement. “I do not plan to take any action that would seek to overturn the courts’ decisions.”

Tomblin urged residents in West Virginia to respect the decision, asserting that the state is “known for its kindness and hospitality,” and said he hoped residents would “uphold our statewide tradition of treating one another with respect.”

Still, the Supreme Court’s actions do not set a legal precedent and lower courts are still free to rule for or against same-sex marriage, observed NBC News.

On October 10, the Kansas Supreme Court ordered a clerk to stop issuing same-sex marriage licenses per the request of the Kansas attorney general.

That followed an October 8 order from District Court Judge Kevin Moriarty to begin issuing licenses, pointing to other federal courts that struck down similar bans on gay marriage. The U.S. Supreme Court’s [refusal to take up gay marriage challenges](#) Monday cleared the way for same-sex marriage in 11 states.

The Kansas Supreme Court agreed to temporarily stay that order, saying it did so “in the interest of statewide consistency.”

And despite some of the success that same-sex marriage is having in court, Congress could still take action. The National Organization for Marriage issued a statement following the Supreme Court’s actions calling on Congress to “move forward immediately to send a federal marriage amendment to the states for ratification.”

Reactions to the Supreme Court’s decision not to review the cases have varied.

Some see it as an opportunity to put the power back in the hands of the people. “The court’s decision



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not to take up this issue now means that the marriage battle will continue,” said Byron Babione, senior counsel at the Alliance Defending Freedom, which has been active in defending prohibitions against same-sex marriage. “The people should decide this issue, not the courts.”

Others have regarded the actions by the Supreme Court as irresponsible. Ed Whelan, lawyer and a prominent conservative legal analyst, wrote that “the court’s denial of review in all the pending cases strikes me as grossly irresponsible, as a huge abdication of duty on the part of at least six justices.”

But the Supreme Court’s decision not to hear the same-sex marriage cases is not the first major one regarding the issue. In June 2013, the high court struck down part of the Defense of Marriage Act, which had denied federal recognition of same-sex marriages performed in states where it was legal. Although that decision did address the constitutionality of state bans, a number of federal court decisions determined that the Supreme Court’s ruling should ultimately compel federal judges to maintain the legality of same-sex marriage.



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