

Coalition May Appeal D.C. Marriage Ruling to Supreme Court

Traditional marriage supporters may challenge an appeals court ruling Thursday blocking a public vote on same-sex marriage in the nation's capital.

In its 5-4 decision, the District of Columbia Court of Appeals ruled that the city's Elections Board acted appropriately when it decided that a referendum on the definition of marriage would violate a human rights law barring initiatives that would authorize discrimination. The district legalized same-sex marriage in December, and the law went into effect in March.

Attorneys for the Stand4Marriage D.C. Coalition, which challenged the elections board decision, say they may appeal Thursday's decision to the U.S. Supreme Court.

"This case involves the fundamental right of individual Americans to vote," said Byron Babione, senior legal counsel for the Alliance Defense Fund (ADF) and a member of its Marriage Litigation Center. "It is an extremely important issue and one which could be very attractive to the Supreme Court. We are weighing our options about whether to appeal, and we feel like our case would be very strong."

The appeals court ruling comes just a week after a U.S. District Court in Massachusetts ruled that portions of the federal Defense of Marriage Act (DOMA) are unconstitutional. DOMA defines marriage as the union of one man and one woman and prevents states from having to recognize gay marriages performed elsewhere.

In his decision, Judge Joseph Tauro said DOMA infringed on

states' rights to define marriage and award federal and state benefits such as Medicaid. "Congress undertook this classification for the one purpose that lies entirely outside of legislative bounds, to disadvantage a group of which it disapproves," Tauro wrote in his decision. "And such a classification the Constitution clearly will not permit."

Traditional marriage supporters expect the Justice Department to appeal the ruling but are skeptical of its defense. Many claim DOMA was not upheld in Massachusetts for the first time in its history because of weak representation under the Obama administration. President Obama has called DOMA "abhorrent" and has called for its repeal.

"Since they really are advocating for the repeal of DOMA, you have the wolves guarding the chicken house," said Harry Jackson Jr., chairman of Stand4Marriage DC. "And many, many people feel that's the problem. We're not expecting strong intervention from the Justice Department."

Attorneys at the Christian legal firm Liberty Counsel, which have argued in favor of traditional marriage in several national cases, say the Obama administration is intentionally sabotaging DOMA.

In a 2009 brief defending DOMA against a previous challenge, the Justice Department said the government "does not contend that there are legitimate government interests in 'creating a legal structure that promotes the raising of children by both of their biological parents' or that the government's interest in 'responsible procreation' justifies Congress's decision to define marriage as a union between one man and one woman." It pointed instead to research showing children raised by gay and lesbian parents are as likely to be well-adjusted as children raised by opposite-sex parents.

"Children fare best when raised with a mom and a dad," said Mathew D. Staver, founder of Liberty Counsel and dean of the

Liberty University School of Law. "Redefining marriage to something it was not intended to be weakens the family and is not in the best interest of children or society. ... The Obama administration must defend DOMA, not sabotage the law."

Jackson said gay marriage supporters may try to use the DOMA ruling to accelerate its repeal. He is urging traditional marriage advocates to contact their representatives in Congress and make marriage a campaign issue this November.

"What we're seeing is same-sex marriage activists pulling out all stops while they have a Congress in place who might vote against traditional marriage and a president who would sign a law to reverse DOMA," Jackson said. "I believe they're going to try to really move this [campaign to reverse DOMA] forward immediately. That would essentially, if passed, make same-sex marriage the law of the land nationally within a year and a half or two years of its passage."

Despite the setbacks for traditional marriage on Thursday, Argentina became the 10th nation to legalize gay marriage. Supporters are optimistic about the future of marriage.

Although gay marriage is legal in five states and the District of Columbia, all 31 states that have put the issue to a vote have upheld traditional marriage. And last week, Hawaii Gov. Linda Lingle vetoed a measure that would have conferred the legal rights of marriage to same-sex couples, which bill opponents say would have paved a road to gay marriage in the state.

"I think there are serious challenges to traditional marriage, but the people every time they've spoken they always have given me confidence that they move in the right direction," Staver said. "And despite the series of states where they had some victories about a year ago, the polls have not gone in their favor. So I think still more believe in marriage as one man and one woman, which is good."