

Prop. 8 Supporters Prepare for Long Legal Battle

Supporters of California's Proposition 8 say they are gearing up for a long legal battle over marriage after a federal judge on Wednesday struck down the voter-approved ballot measure that banned same-sex unions in the state.

"We did anticipate that this would happen, but our resolve is greater," said California pastor Jim Garlow, who helped organize the -Yes on 8 campaign. "We have no intention of backing up on this issue because far too much is at stake."

In his decision Wednesday, U.S. District Chief Judge Vaughn R. Walker said Proposition 8 "both unconstitutionally burdens the exercise of the fundamental right to marry and creates an irrational classification on the basis of sexual orientation."

He declared the measure unconstitutional "because Proposition 8 prevents California from fulfilling its constitutional obligation to provide marriages on an equal basis."

He said the fact that 52 percent of California voters passed Proposition 8 was "irrelevant, as 'fundamental rights may not be submitted to [a] vote; they depend on the outcome of no elections.'"

Proposition 8 passed in November 2008, just months after the state Supreme Court legalized gay marriage the previous May.

The federal challenge to the measure was filed in 2009 on behalf of two homosexual couples who were represented by former Solicitor General Ted Olson, a conservative, and noted attorney David Boies, who opposed Olson in the legal challenge to President George W. Bush's election in 2000. Oral arguments were heard in June.

Traditional marriage advocates were watching the case closely, concerned that a ruling in favor of gay marriage could impact marriage amendments passed in 31 states and challenge the Defense of Marriage Act, which defines marriage as the union of one man and one woman.

"I've been convinced that Americans in the other 49 states were largely oblivious to the fact that what was happening here in this district court had national implications," Garlow said.

He said the ruling could open the door to more challenges to state marriage amendments and to calls for other forms of nontraditional marriage.

"The next court case could conceivably say that if three people wanted to marry or four people or five people or if someone wanted to marry their dog or their horse, they have a right to that because no longer do we have a right to 'discriminate' based on equal protection," Garlow said.

Proposition 8 advocates argue that same-sex marriage is not ideal for child rearing, but they say it also has serious implications on religious freedom.

"It's a chilling moment," said TheCall founder Lou Engle, who organized a prayer rally in support of Proposition 8 in September 2008. "Democracy is crumbling, and I believe, again, we're going to see the persecution of the church. ... Across the board, religious freedom now is being trumped by gender freedom."

Garlow said in several areas where gay marriage has been legalized, Christians have lost personal and religious liberties. He points to Swedish pastor Ake Green, who was jailed after preaching that homosexuality is a sin, and to a Christian camp in Ocean Grove, N.J., that lost a discrimination lawsuit filed after it refused to allow a lesbian couple to hold a commitment ceremony at its facility.

"If we lose on this one, we lose the capacity to be able to proclaim the gospel as we know it," Garlow said.

Before the decision was announced, both Proposition 8's supporters and opponents were poised to challenge the ruling. The case will head to the Ninth Circuit Court of Appeals and is expected to be appealed to the Supreme Court.

"It's not radical for more than 7 million Californians to protect marriage as they've always known it," said Brian Raum, senior legal counsel for the Alliance Defense Fund, which defended Proposition 8. "What would be radical would be to allow a handful of activists to gut the core of the American democratic system and, in addition, force the entire country to accept a system that intentionally denies children the mom and the dad they deserve."

Mary McAlister, senior litigation counsel at the Christian legal firm Liberty Counsel, expects the Supreme Court to overturn Walker's ruling. Her group represented the Campaign for California Families, which supported Yes on 8, and plans to file an amicus brief in the appeal.

"The way the [federal] court approached the due process clause and the equal protection clause here differs so much from the way the U.S. Supreme Court has said it needs to be addressed," she said.

She said Walker's ruling not only redefined marriage but also put sexual orientation on par with gender and race.

The case could take years to reach the Supreme Court, but conservative observers believe Wednesday's ruling could impact the upcoming midterm election. Garlow said voters with conservative moral values "are going to rise up and say enough is enough."

He and Engle are encouraging that kind of activism through Pray & Act, an initiative calling for 40 days of prayer and

fasting in the run up to Nov. 2. The effort begins Sept. 20 and ends with a webcast event at the Lincoln Memorial Oct. 30.

Garlow said he believes there is a 27-month window to “turn” the nation toward biblical values. “I’m not trying to deadline God, but my sensing is we have a short window left after which it will be too late to see America ever return to any sense of God-honoring truths,” he said. “That being the case, prayer and fasting is critical.”

Engle, too, is urging prayer and political activism. He believes the timing of TheCall Sacramento, being held Sept. 3-4, is strategic.

“God, in times of crisis, calls for solemn assemblies when there is no hope and there’s no remedy,” Engle said. “I think this is an incredible opportunity for people to gather from all over America to say: ‘God, we have no recourse ... We are coming to You for help in the time of trouble, to ask forgiveness for treating so lightly marriage in the church.’

“We [will] come together and ask God for some kind of sovereign intervention,” he added. “We need to pray for a great awakening.”