

Native American Tribe Approves Same-Sex Marriage

A Native American tribe in Oklahoma has voted to allow same-sex marriage, joining a small group of prominent tribes changing their law in light of the U.S. Supreme Court's landmark 2015 decision making the practice legal in all states.

The same-sex case known as *Obergefell v. Hodges* has rippled through the 567 federally recognized Indian Nations. As sovereign entities, they are not necessarily bound by the Supreme Court decision, leaving many in the precarious position of trying to decide whether to make the hot-button issue part of their traditional law.

"Tribes don't have to follow *Obergefell*. Tribes should, unless they have a good reason not to," said Robert Clinton, a professor specializing in tribal law at Arizona State University's Sandra Day O'Connor College of Law.

Unofficial results of Monday's special election in the Osage Nation in northern Oklahoma showed 52 percent approved a referendum amending the definition of marriage in the tribe's legal code to include same-sex couples, officials said this week.

The vote allows the tribe's judicial branch to issue marriage licenses to gay and lesbian couples. The Osage Nation has more than 20,000 citizens and is one of Oklahoma's larger tribes.

"I know that for a lot of people it was a controversial issue, but for me, it was not," said Osage legislator Alice Buffalohead, the measure's author.

Formal opposition to the measure did not emerge, but some in the tribe felt allowing gay marriage would undermine the

tribe's cultural heritage.

The Osage join a handful of other prominent tribes that conduct or recognize same-sex marriages, including the Cherokee Nation and the Cheyenne and Arapaho Tribes. Most of those tribes adopted the measure around the time of the Supreme Court decision or afterward.

Legal experts said gay marriage was also being considered by a number of other tribes.

The Osage vote was about two years in the making, with the measure to make the change in tribal law coming a few months before the 2015 Supreme Court decision and winding its way through the tribal government before it was put up for a referendum.

Legally, the U.S. Constitution's Bill of Rights bind states and the federal government, sometimes both, but not American Indian tribes. The Indian Civil Rights Act of 1968 demands that tribes generally afford similar rights to the extent not inconsistent with their cultural identity or political integrity.

Many tribes do not issue marriage certificates, relying on states or the U.S. Bureau of Indian Affairs to provide the documents.

Henry Gray, an Osage college student behind the Osage Citizens for Marriage Equality Facebook activist group, said the vote in the Osage Nation this week would help lesbian, gay, bisexual and transgender people know that the tribe accepts them.

"I have a lot of family and friends who identify as LGBT and there are still more who are afraid to come out, so getting that passed was pretty personal," he said. {eo}