

Virginia bishops vow to defend voter-approved ban on same-sex marriage

Maria-Pia Negro Catholic News Service | Jan. 29, 2014
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Virginia Catholic bishops said they are disappointed that Attorney General Mark Herring will not defend Virginia's constitutional amendment defining marriage as "the union of one man and one woman" in upcoming lawsuits at federal district courts.

The Virginia Catholic Conference, the bishops' public policy arm, has encouraged constituents to call Herring's office.

Arlington Bishop Paul Loverde and Richmond Bishop Francis DiLorenzo issued a joint statement vowing to continue their defense of traditional marriage shortly after the attorney general announced Jan. 23 that he would side with plaintiffs in lawsuits challenging the Virginia Constitution brought by same-sex couples.

In 2006, Virginia voters approved a constitutional amendment to ban same-sex marriage. The ballot initiative passed 57 percent to 43 percent.

"No politician should be able to reverse the people's decision," Loverde and DiLorenzo said in their joint statement. "We call on the attorney general to do the job he was elected to perform, which is to defend the state laws he agrees with, as well as those state laws with which he personally disagrees."

Oral arguments were scheduled to begin Thursday in one of the lawsuits, *Bostic v. Rainey*. The plaintiffs argue that the ban stigmatizes gay men and lesbians because it denies them the same definition of marriage that opposite-sex couples have.

As attorney general, Herring was obligated to represent the state on the defendant's behalf.

Instead, he will side with the plaintiffs, saying that the amendment was unconstitutional because "marriage is a fundamental right being denied to some Virginians, and the ban unlawfully discriminates on the basis of both sexual orientation and gender."

Herring's decision drew divided responses. Proponents of striking down the ban applauded Herring while others expressed outrage, comparing the decision to forfeiting his oath to uphold Virginia's constitution.

Siding with the plaintiffs has ethical implications, said Robert Destro, director of the Interdisciplinary Program in Law and Religion at The Catholic University of America's Columbus School of Law in Washington.

"If he can't represent the commonwealth because he has a conflict of interest, he should withdraw from the case," he said. "What he is doing is ensuring that the state loses. This is going to cost the state of Virginia a fortune."

Even if Herring does not represent Virginia in the courts, the state is still entitled to effective representation, Destro said. A bipartisan group of 32 delegates asked Gov. Terry McAuliffe for a special counsel to defend the state in court.

"For Mr. Herring to choose to leave Virginians without a voice in court to defend the voter-approved marriage amendment is appalling," said Delegate Bob Marshall in a Jan. 24 news release. "Apparently it is unconstitutional for Virginia's citizens to disagree with Mr. Herring."

The governor declined to appoint a special counsel, according to a *Washington Post* article Monday.

In a letter to the delegates, McAuliffe said in the current court case, the ban "is being vigorously and appropriately defended" by the offices of court clerk in Norfolk and in Prince William County.

Herring's announcement comes soon after federal judges struck down gay marriage bans in Utah and Oklahoma, and months after the Supreme Court struck down the Defense of Marriage Act that defined marriage between one man and one woman.

In a Jan. 16 blog, San Francisco Archbishop Salvatore Cordileone, chairman of the U.S. Conference of Catholic Bishops' Subcommittee for the Promotion and Defense of Marriage, said that recent challenges to state laws in federal courts have made it clear that "the marriage debate we are having in this country is not about access to the right of marriage, but the very meaning of marriage."

The Virginia Catholic Conference sent an e-alert Monday asking constituents to call, or email Herring to voice their opinions over his refusal to defend the state's marriage laws.

"This is the will of the people, and one elected official should not be able to reverse the people's decision," said Jeff Caruso, the conference's director.

Caruso said the Catholic conference was considering filing amicus briefs for the two federal court lawsuits that challenge Virginia's marriage law. He added that the agency will oppose legislative attempts to redefine marriage in the constitution.

Reaction to Herring's decision included a column written in Spanish for the *Arlington Catholic Herald*, the diocesan newspaper, by Fr. Jose Hoyos, director of the diocese's Spanish Apostolate.

The priest encouraged all baptized Catholics to defend the sacrament of marriage. In it, he quoted Pope Francis saying that this union is "a sign and presence of God's own love, and of the acknowledgment and acceptance of the goodness of sexual differentiation, whereby spouses can become one flesh and are enabled to give birth to a new life."

The Virginia bishops have long supported the marriage amendment, issuing a pastoral letter prior to the 2006 elections where they explained church teachings on marriage, calling it "the building block of the family and society."

[Maria-Pia Negro is a staff writer at the *Arlington Catholic Herald*, newspaper of the diocese of Arlington, Va.]

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