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Virginia judge strikes down gay marriage ban

by Richard Wolf by USA Today by Religion News Service

A federal judge in Virginia has struck down the state's prohibition on same-sex marriage, joining a growing list of state and federal courts that have granted gay and lesbian couples the right to marry following two landmark Supreme Court rulings in June.

U.S. District Court Judge Arenda Wright Allen blocked it from taking immediate effect until appeals are heard. As a result, gay marriages in Virginia cannot begin yet.

"Gay and lesbian individuals share the same capacity as heterosexual individuals to form, preserve and celebrate loving, intimate and lasting relationships," Wright Allen said. "Such relationships are created through the exercise of sacred, personal choices -- choices, like the choices made by every other citizen, that must be free from unwarranted government interference."

Her decision follows similar rulings in Oklahoma and Utah, more conservative states, where federal judges recently struck down gay marriage bans. Those cases are scheduled to be heard a week apart by a federal appeals court panel in April; the Virginia case now joins them in a race toward the Supreme Court.

And in recent days, Nevada state officials decided they could no longer defend the state's same-sex marriage ban, and a judge in Kentucky ruled that the state must recognize gay marriages from other states.

Seventeen states and the District of Columbia allow same-sex marriage. Since the high court last June restored gay marriage rights in California and struck down a portion of the federal Defense of Marriage Act, Hawaii and Illinois passed new laws, and state courts in New Jersey and New Mexico legalized the practice. Nearly four dozen lawsuits remain pending in 24 states.

Wright Allen's opinion, like others in recent months, made note of the high court's ruling last year that the federal law denying benefits to legally married same-sex couples violated the Constitution's guarantees of

equal protection and due process.

"The court is compelled to conclude that Virginia's marriage laws unconstitutionally deny Virginia's gay and lesbian citizens the fundamental freedom to choose to marry," Wright Allen wrote.

The judge referred liberally to Supreme Court cases in the past that struck down bans on interracial marriage, state sodomy laws and, just last year, a key section of the federal Defense of Marriage Act.

"Tradition is revered in the Commonwealth, and often rightly so," she said. "However, tradition alone cannot justify denying same-sex couples the right to marry any more than it could justify Virginia's ban on interracial marriage."

While gay rights groups heralded the ruling, it was criticized harshly by the National Organization for Marriage, which opposes same-sex unions.

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"This is another example of an Obama-appointed judge twisting the Constitution and the rule of law to impose her own views of marriage in defiance of the people of Virginia," said Brian Brown, the group's president. "We hope that the U.S. Supreme Court ends up reversing this terrible decision."

The Virginia ban, passed by voters in 2006, had suffered several blows in recent months. First came the decision by Theodore Olson and David Boies, high-powered litigators who successfully challenged California's Proposition 8 ban last year, to join the legal team representing two gay and lesbian couples.

Then came the announcement by newly elected state Attorney General Mark Herring, a Democrat, that Virginia would stop defending its law and join those seeking to defeat it.

Herring hailed Wright Allen's ruling Thursday night. "This decision is a victory for the Constitution and for treating everyone equally under the law," he said.

Stripped of the state's backing, the ban was left to be defended by lawyers for two local circuit court clerks whose jobs include issuing marriage licenses. They raised myriad issues, ranging from Virginia's 400-year tradition of heterosexual marriage and states' jurisdiction over domestic matters to the contention that marriage should be reserved for couples that can procreate.

"Marriage and procreation are fundamental to the very existence and survival of the race," said Austin Nimocks of the conservative Alliance Defending Freedom. "Every child has a mother and a father."

The couples at the center of the case are Tim Bostic, an English professor, and Tony London, a real estate agent, who filed the lawsuit in Norfolk last July, as well as Carol Schall, an autism researcher, and Mary Townley, who works with special needs youth. Schall and Townley, whose marriage in California isn't recognized by Virginia, have a teenage daughter.

[Richard Wolf writes for *USA Today*. Melanie Eversley contributed to this report.]

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