



## 2 Top Courts Rule Against Gay Marriage

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By MARK JOHNSON

The highest courts in two states dealt gay rights advocates dual setbacks Thursday, rejecting same-sex couples' bid to win marriage rights in New York and reinstating a constitutional amendment banning gay marriage in Georgia.

Activists had hoped to widen marriage rights for gays and lesbians beyond Massachusetts with a legal victory in liberal New York, but the Court of Appeals ruled 4-2 that the state's law allowing marriage only between a man and a woman was constitutional.

The decision comes two years after gay and lesbian couples, supported by gay-rights groups who saw a chance for a major court win in a populous state, sued for the right to wed.

"Clearly, in bringing the case and pushing it as hard as they did, it's pretty good evidence that they thought they had a substantial chance of victory," said Ohio State University law professor Marc Spindelman, who tracks lesbian and gay legal issues. "It's hard to read the decision as anything other than a rebuff of gay and lesbian couples."

In Georgia, where three-quarters of voters approved a ban on gay marriage when it was on the ballot in 2004, the top court reinstated the ban Thursday, ruling unanimously that it did not violate the state's single-subject rule for ballot measures. Lawyers for the plaintiffs had argued that the ballot language was misleading, asking voters to decide on same-sex marriage and civil unions, separate issues about which many people had different opinions.

The twin rulings, which came less than two hours apart, become part of the nationwide debate that has continued to evolve since a Massachusetts court ruling in late 2003 ushered in a spate of gay marriage controversies from Boston to San Francisco.

High courts in Washington state and New Jersey are deliberating cases in which same-sex couples argue they have the right to marry. A handful of other states have cases moving through lower courts.

Forty-five states have specifically barred same-sex marriage through statutes or constitutional amendments. Massachusetts is the only state that allows gay marriage, although Vermont and Connecticut allow same-sex civil unions that confer the same legal rights as heterosexual married couples.

"It's a sad day for New York families," said plaintiff Kathy Burke of Schenectady, N.Y., who is raising an 11-year-old son with her partner of seven years, Tonja Alvis. "My family deserves the same protections as my next door neighbors."

The New York court said any change in the state's law should come from the state Legislature, Judge Robert Smith wrote. The decision said lawmakers have a legitimate interest in protecting children by limiting marriage to heterosexual couples. It went on to say the law does not deny homosexual couples any "fundamental right" since same-sex marriages are not "deeply rooted in the nation's history and tradition."

Advocates from the ACLU, Lambda Legal and other advocacy groups marshaled forces for the New York court fight and sued two years ago. Forty-four couples acted as plaintiffs, including the brother of comedian Rosie O'Donnell - Assemblyman Daniel O'Donnell - and his longtime partner.

"There's no question they looked to New York as a place where they could win," said Mathew Staver, president of Liberty Counsel, a conservative legal group based in Florida. "It would have been a major victory for them. Instead it's a stunning

defeat for the same-sex marriage movement."

Matt Foreman, executive director of the Washington-based National Gay and Lesbian Task Force in Washington, acknowledged the sting of the New York decision but said the fight will continue.

"This is something that is going to work itself out over the next 10 or 15 years, ultimately through the U.S. Supreme Court or an act of Congress," he said.

Alan Van Capelle, executive director of the gay rights group Empire State Pride Agenda, said his organization would immediately launch a campaign to press the legislature to pass a gay marriage bill in 2007.

"New York is looked at as a place where marriage equality is possible and inevitable," he said. "This ruling doesn't change that. Those in the Legislature who have said they are our friends, it's now time for them to step up. We're going to hold their feet to the fire and hold them accountable."

New York Attorney General Eliot Spitzer, a Democrat leading in polls in the governor's race, has said he favors legalizing gay marriage and New York City Mayor Michael Bloomberg said he would personally campaign to change the law. Spitzer's office argued in court in support of outgoing Gov. George Pataki's contention that state law prohibits issuing marriage licenses to same-sex couples.

In her dissent, Chief Judge Judith Kaye said the court failed to uphold its responsibility to correct inequalities when it decided to simply leave the issue to lawmakers.

"This state has a proud tradition of affording equal rights to all New Yorkers. Sadly, the court today retreats from that proud tradition," she wrote. "I am confident that future generations will look back on today's decision as an unfortunate misstep."

Judge Albert Rosenblatt, whose daughter has advocated for same-sex couples in California, did not take part in the decision.