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For Gay Rights Movement, A Key Setback

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By PATRICK HEALY

When Massachusetts became the first state to legalize gay marriage in November 2003, gay rights advocates imagined a chain reaction that would shake marriage laws until same-sex couples across the nation had the legal right to wed.

Nowhere did gay marriage seem like a natural fit more than New York, where the Stonewall uprising of 1969 provided inspiration for the gay rights movement and where a history of spirited progressivism had led some gay couples to envision their own weddings someday.

Yesterday's court ruling against gay marriage was more than a legal rebuke, then — it came as a shocking insult to gay rights groups. Leaders said they were stunned by both the rejection and the decision's language, which they saw as expressing more concern for the children of heterosexual couples than for the children of gay couples. They also took exception to the ruling's description of homosexuality as a preference rather than an orientation.

"I never would have dreamed that New York's highest court would be so callous and insulting to gay people — not in New York — to have a legal decision that treats us as if we are alien beings," said Matt Foreman, executive director of the National Gay and Lesbian Task Force.

The New York ruling came the same day that the Georgia Supreme Court reinstated a ban on gay marriage.

The New York decision thrusts several challenges before gay activists: Do they continue waging legal battles when more courts seem skeptical about forcing gay marriage on the public? Should the cause turn toward more modest goals like supporting civil unions and domestic-partner benefits, like the law that Connecticut passed last year?

For now, at least, so-called marriage equality is the fight that both sides want to wage, and opponents are predicting that New York will be remembered as the beginning of the end of gay marriage.

"When people look back and write the history of this issue, they will view the New York decision as the Gettysburg in this big contest," said Monte Stewart, president of the Marriage Law Foundation.

Public opinion polls show that many Americans oppose gay marriage, and it is an issue that even separates some gay people, who see the marriage debate as a distraction from such pressing concerns as increasing federal and state support for AIDS research. The debate, in turn, has helped intensify gay marriage's effectiveness as a political weapon, which was widely noted last month when Republicans in the United States Senate were defeated in a vote on their proposed constitutional amendment banning gay unions. The House may take up the issue soon.

Gay supporters who saw hopeful tidings nearly three years ago in the Massachusetts ruling had not believed that a stinging new defeat could happen here.

"The New York Court of Appeals has a long tradition of protecting equal rights for New Yorkers, but today the court let us

down," said Christine C. Quinn, the first openly gay speaker of the City Council in New York.

Before the decision, some gay leaders predicted that it would take only a decade for several states to legalize gay marriage and the United States Supreme Court to set a single standard of civil marriage for all states by allowing gays to wed everywhere. Yesterday, some of those leaders said they were dispirited enough to wonder if it would take two decades or more to reach that goal. Not knowing seemed to hurt the most.

"New York just reminded us that we'll have to go through a long period of conflict and confusion before we make it to the other side," said Shannon Minter, legal director of the National Center for Lesbian Rights, who will make arguments in a gay marriage case in California on Monday.

Both sides agreed that the legal analysis in the New York decision would be read by, and perhaps influence, judges in other states who are considering similar cases. A ruling in a New Jersey case is expected by August, and another decision is forthcoming in a case in Washington State. Four other states — California, Connecticut, Iowa and Maryland — have court cases pending.

Opponents of gay marriage immediately hailed the New York decision as a sign that the legal and political campaign toward gay marriage nationwide had stalled. More than 40 states have laws that restrict marriage to a man and woman, and no high court or state legislature has granted gays a right to marry anywhere except Massachusetts.

Mr. Stewart, of the Marriage Law Foundation, said he was particularly pleased by the "superb and straightforward legal analysis" of the New York decision. He argued that it would provide a foundation for jurists in other states to restrict civil marriage to a man and a woman.

Specifically, Mr. Stewart praised Judge Robert S. Smith for refusing to use the racist legacy of miscegenation laws as a justification for extending marriage rights to same-sex couples. Too often, Mr. Stewart said, trial court judges and politicians are cowed by the premise that barring their unions would be the same as barring people of different races to marry.

"It's going to carry a lot of intellectual clout with other judges around the country," Mr. Stewart said.

David S. Buckel, senior counsel and director of the Marriage Project at the Lambda Legal Defense and Education Fund, which is pressing court cases to legalize gay marriage, acknowledged that the New York decision "will certainly be an opinion that other states will look at."

Yet Mr. Buckel and other supporters of gay marriage said parts of the ruling could shock judges and other Americans into seeing gay marriage in a favorable light. In particular, they noted one section suggesting heterosexual couples need marriage to be preserved as a way to shore up their faulty relationships and protect their children who might suffer in broken-home situations.

"It's a mess of a decision that in the end makes a very weak argument: That you can justify barring same-sex couples from marrying because of the unstable relationships of heterosexual couples," Mr. Buckel said.

With the New York case out of the way, the New Jersey case is taking on particular prominence, given that some legal analysts say that the New Jersey Supreme Court has a history as an assertive force for social change. Seven long-time couples sued in 2002 for the right to marry; five of the couples have children.

Joe Solmonese, the president of the Human Rights Campaign, a gay support group, said he was surprised that the New York decision connected the rights and responsibilities of marriage to child-bearing.

He also said he found Judge Smith's use of the phrase "sexual preference" to describe homosexuality — instead of "sexual orientation" — to be provocative, and he predicted that many readers of the opinion would view the decision as

retrograde.

"If nothing else, this ruling will cause people — gay and straight alike — to reflect on this judge's unusual view of gay marriage and then come to their own conclusions," Mr. Solmonese said.

Gay leaders also pointed out that more corporate leaders are standing by their side. Yesterday, The Boston Globe reported that 165 business and civic leaders in Massachusetts were mobilizing to protect gay marriage by fighting a proposed constitutional amendment there. That amendment could go before voters in 2008, raising the possibility that the number of states permitting gay marriage could go back to zero.

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