

Emboldened, gay marriage activists eye 50 states

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November 11, 2013

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(RNS) The Supreme Court ruling that struck down parts of the Defense of Marriage Act in June opened the door to an explosion of activity by gay marriage proponents.

Today, they are waging their campaign on several fronts: filing lawsuits, encouraging public officials to defy state bans on gay marriage, and stepping up a push for state legislation.

Since June, couples have filed 23 lawsuits to end bans in 21 states; governors and state attorneys general in at least three states have refused to defend their state bans in court; and county clerks in four states have issued marriage licenses to gay couples despite laws against it. Gov. Pat Quinn of Illinois pledged to sign a bill allowing gay marriage later this month after both houses passed the bill.

Hawaii may beat Illinois. The state's Senate will address it this week after the House approved a bill legalizing gay marriage. Advocates are pushing for Oregon and Nevada to do the same next year.

The movement that had been gaining strength even before the high court's ruling is embracing many of the same strategies of the 1960s civil rights movement. Yet opponents see these efforts as "lawless" attempts to circumvent the will of the majority of the country, including many places that have voted for gay marriage bans.

The Supreme Court ruling invalidated a section of the 17-year-old DOMA that denied federal benefits, such as Social Security and joint tax filing, to married gay men and lesbians in the 14 states, and the District of Columbia, that allow gay marriage. That measure, the court declared, existed primarily "to demean those persons who are in a lawful same-sex marriage." The landmark decision emboldened activists to argue that if the federal government can't discriminate against married gay people, neither can the states.

The flurry of activity has given Patrick Bova and James Darby of Chicago hope that they might see what was once unimaginable in their 50 years as a couple: legal gay marriage in all 50 states.

Bova, 75, and Darby, 81, grew up in a time when gays and lesbians led closeted lives in fear of discrimination or violence. They marvel at the shifting attitudes.

"The notion that you can get married, and even adopt children, was so foreign to us," Bova says. "It never occurred to me that it was possible to do, and now it is."

Recent developments:

* On Oct. 21, New Jersey became the 14th state to allow gay marriage after a court ruled that a ban was unconstitutional. Republican Gov. Chris Christie dropped his opposition because he thought he would lose in the state Supreme Court, where the justices have ruled in favor of gay marriage in previous cases.

* On Oct. 17, Oregon's Department of Justice ruled that state agencies must recognize the unions of same-sex couples married legally in other states or countries, even though the state has a ban. That means treating gay married couples the same as straight couples for tax purposes and other state benefits, such as property rights and child custody. Activists hope to get a measure on the 2014 ballot to overturn the ban.

* Since August, some county clerks in Pennsylvania, North Carolina and New Mexico have challenged state laws banning gay marriage by issuing licenses to same-sex couples.

The number of Americans who favor same-sex marriage has been creeping up. A September poll by Bloomberg found that 55 percent of Americans support allowing gay and lesbian couples to marry. The national poll found 36 percent were opposed.

Statistician Nate Silver, famous for accurately predicting the 2012 presidential vote in all 50 states, used a statistical analysis to forecast that by 2016, 31 states would be likely to favor gay marriage in a referendum, and by 2020, only six states — all in the South — would still be likely to vote against it.

Opponents of gay marriage are not convinced.

Thirty-five states ban same-sex marriage, most through constitutional amendments, notes Peter Breen, senior counsel at the Thomas More Society, a Chicago law firm that advocates for traditional marriage.

Breen represents five county clerks defending the state's ban on gay marriage in a lawsuit filed by 25 same-sex couples. The clerks entered the case after Gov. Pat Quinn and Attorney General Lisa Madigan, both Democrats, refused to act.

California is an example of a liberal state that voted against gay marriage when it passed Prop 8 in 2008 with 52 percent of the vote. State courts overturned the law after a lawsuit by same-sex couples. The case reached the U.S. Supreme Court, which ruled in June that the private parties defending the ban did not have standing to do so. The high court's decision allowed gay marriage to resume in California but did not settle the question of whether states can impose such bans.

Breen says gay rights advocates are using the courts and county clerks to make an end run around voters who approved the bans.

"It's lawless," says John Eastman, chairman of the National Organization for Marriage. "The clerks in states like Pennsylvania and New Mexico are issuing licenses without the legal authority to do it. The advocates know that they lose if they put this to the vote of the people."

New Mexico, the only state that doesn't explicitly allow or ban gay marriage, entered the fray when Dona Ana County Clerk Lynn Ellins, a Democrat who supports gay marriage, began issuing marriage licenses to same-sex couples in August. Since then, seven other county clerks have issued licenses to more than 1,000 couples.

"I did it because it was the right thing to do," Ellis says.

In a suit brought by six same-sex couples who were denied marriage licenses, the state Supreme Court is considering whether licenses can legally be denied to gay couples. The court is also deciding whether the licenses already issued are valid. The justices did not say when they would issue a ruling.

Fifteen Republican lawmakers are defending the state's right to deny marriage licenses to same-sex couples after Democratic Attorney General Gary King and Republican Gov. Susana Martinez declined to do so.

Therese Councilor, 52, and Tanya Struble, 47, who live an hour north of Albuquerque in Jemez Springs, initially sought and were denied a marriage license, but over the summer, they were among the first to receive a license and get married.

Their wedding capped a love affair that began 23 years ago when the two met while putting on a product show for IBM.

They say they joined the lawsuit so that all same-sex couples in New Mexico have the right to marry.

Even conservative bastions in the South are seeing activity. Lawsuits challenging bans have been filed in Arkansas, Tennessee and North Carolina.

In the latter, Buncombe County Register of Deeds Drew Reisinger, a supporter of gay marriage, has accepted marriage applications from same-sex couples. He said he was moved to do so by the Supreme Court ruling. He was stopped by Democratic Attorney General Roy Cooper, who says the licenses were illegal because North Carolina voted last year for a constitutional amendment banning same-sex marriage. The ban passed with 61 percent of the vote.

Even so, things are happening a lot faster than Brenda Clark, 66, or her partner of 25 years, Carol McCrory, 69, thought possible.

"I thought I'd be 90 before I saw the laws change," says McCrory, a retired teacher. The Fairview, N.C., couple plan to marry in New York on Nov. 9.

Two years ago, they had T-shirts made to wear every time there is a development in the fight for gay marriage.

"Before I die," the shirts say. They've been donning the shirts a lot these days.