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January 16, 2014

HUFF POST POLITICS

Gay Marriage Rulings In Oklahoma And Utah Build Momentum

By BRADY McCOMBS and SEAN MURPHY 01/15/14 06:03 PM ET EST **AP**

OKLAHOMA CITY (AP) — In less than a month, two federal judges have struck down state bans on gay marriage for the same reason, concluding that they violate the Constitution's promise of equal treatment under the law.

Although that idea has been the heart of the gay marriage debate for years, the decisions in deeply conservative Oklahoma and Utah offer new momentum for litigants pressing the same argument in dozens of other cases across the country. And experts say the rulings could represent an emerging legal consensus that will carry the issue back to the Supreme Court.

The judge who issued Tuesday's decision in Oklahoma "isn't stepping out on his own," said Douglas NeJaime, a professor of law at the University of California, Irvine. "He's doing what a colleague in another court did not long ago."

The more judges who issue such rulings, the more authority other judges feel to render similar decisions, said NeJaime, who expects decisions soon from federal courts in Virginia and Pennsylvania.

An attorney for the plaintiffs in the Oklahoma case said the most important question is whether the Supreme Court agrees to decide the legality of gay marriage bans now or whether the justices bide their time.

"Will they take these two decisions or will they wait for more?" asked Don Holladay.

Litigants in more than three dozen cases are challenging gay marriage bans in 20 separate states.

A federal judge in Ohio last month ordered state authorities to recognize gay marriages on death certificates and signaled that although his ruling is a narrow one, it would undoubtedly incite more lawsuits challenging the state's ban.

Ian James, co-founder and executive director of FreedomOhio, a civil-rights group collecting signatures to put the issue before voters, has also been working on a lawsuit to have that state's gay marriage ban struck down.

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James and his husband, who were married in Toronto in 2003, started working on their lawsuit long before the rulings in Utah, Oklahoma and Ohio. But those decisions have given their work renewed inertia.

"Every step along the way actually helps to increase support because people just see the inequality and how we're treating people differently," he said.

Shannon Fauver, who represents two men seeking to have their marriage in Canada recognized in Kentucky, said the Oklahoma and Utah rulings do not directly affect the Kentucky cases, but he added: "Realistically, all the other judges are looking to see what's going on. It is a sea change that all the states are going this way."

The Supreme Court decision last summer to strike down part of the Defense of Marriage Act that defined marriage as between a man and a woman triggered the series of rulings we're now seeing, NeJaime said.

The judges in Utah and Oklahoma cited that decision heavily, essentially interpreting it to mean that same-sex bans are unconstitutional, he said.

Attorneys for same-sex couples have reminded federal judges that the high court said denying the right to marry "demeans" gay and lesbian couples and "humiliates" their children.

In the seven months since the landmark decision, the number of states allowing gay marriage has jumped from 12 to 17. In Utah and Oklahoma, the issue remains in limbo pending appeals.

Prior to Oklahoma's ruling this week, judges in New Mexico, Ohio and even heavily Mormon Utah all ruled in favor of same-sex marriage. Gay marriages in Utah have been put on hold pending a decision from the Denver-based 10th U.S. Circuit Court of Appeals.

The rulings in Utah and Oklahoma have added significance because they happened in states with histories of being strongly against gay marriage.

In 2004, Oklahoma's same-sex marriage ban was passed by 76 percent of voters and Utah's with 66 percent. Oklahoma also had a law that forbid state officials from recognizing adoptions by same-sex couples that were approved in other states. A higher court overturned that measure, NeJaime said.

"These decisions are coming out of states that didn't seem like they were in play long ago," NeJaime said. "It expands the movement in a lot of ways."

As gay-rights groups win cases around the country, the victories lead to more lawsuits, said Camilla Taylor, marriage project director at the national civil rights organization Lambda Legal. There are currently 43 gay marriage lawsuits active in courts, including 27 in the federal systems. A new one is filed almost weekly, she said.

The latest came from four couples in Arizona who filed a lawsuit Jan. 6 challenging the state's gay marriage ban two weeks after the Utah ruling.

A shift in public sentiment seems to be driving the movement. A third of Americans oppose gay marriage, down from 45 percent in 2011, an AP-GfK poll showed in October.

Twenty-seven states still have constitutional prohibitions on same-sex marriage. Another four — Indiana, Pennsylvania, West Virginia and Wyoming — forbid such marriages through state laws.

One scenario that could draw the interest of the Supreme Court justices is if federal appeals courts come out with different rulings on the issue, NeJaime said. The 10th U.S. Circuit Court of Appeals has a case pending out of Utah, and the 9th Circuit Court of Appeals has one out of Nevada.

If the Oklahoma case is appealed, the Denver-based court would get that case too. Appeals of possible rulings in Virginia and Pennsylvania would fall to other federal appeals courts.

Evan Wolfson, founder and president of New York-based Freedom to Marry, which seeks to have same-sex marriage bans struck down nationwide, does not expect the Oklahoma ruling to result in a shifting legal strategy or a flurry of new cases.

But, he said, it will strengthen the resolve of litigants, and it "reinforces rather than changes both the legal argument and the powerful moral argument."

McCombs reported from Salt Lake City.

Associated Press writers Brett Barrouquere in Louisville, Ky., and Amanda Lee Myers in Cincinnati contributed to this report.

Filed by Ashley Alman |

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Loyd Hawkins (Loyd_Hawkins)

29

SUPER USER · 1,026 Fans · The GOP is on a long downward spiral into oblivion

They are hearing arguments in federal courts in Michigan and Texas in the next couple of weeks. The judge here in Texas is widely expected to declare the state's ban unconstitutional. County clerks all over the state are getting ready for a flood of couples seeking marriage licenses.

15 JAN 6:11 PM

REPLY

FAVE

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Terry G. (gentryt9)

436 Fans

· Hate the religion, love the religious

26

That would be a beautiful sight to behold. They all are, but in Texas especially.

15 JAN 6:20 PM

REPLY

FAVE

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10 PEOPLE IN THE CONVERSATION

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KS F. (Logikologist)

133 Fans

44

The writing is on the wall and it's Faaaaaabolous!!

15 JAN 4:55 PM

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Robert C. (bearchao)

2,969 Fans

· Un-Holy Cow

10

Cheers!

15 JAN 5:10 PM

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Anne McCormick (Anne_Mccormick)

SUPER USER · 1,185 Fans

29

This is 2014! America should be long past this. The Netherlands, Canada, Belgium, Spain, South Africa, Norway, Sweden, Portugal, Iceland and Argentina all have no problem with same sex marriage. And guess what, all these countries are still around. No lightening bolts from on high have come down on the population of these countries. These countries long ago came to the conclusion that it is NOT the State's business what two consenting legally competent adults do behind closed doors. Nor is it the State's business who a legally competent adult decides to marry even if that person is of the same sex. We, in America, need to get with the program.

15 JAN 5:43 PM

REPLY

FAVE

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Roberto C. (Oak_of_Magellan)

316 Fans

13

And Brazil, Uruguay, Denmark, England and Wales.

15 JAN 5:52 PM

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John Jacob (John_J3)

1,099 Fans

· Better to have a bleeding heart than none at all

25

The common theme in all of these court decisions in favor of marriage equality is that a rational basis review of the anti-marriage laws/amendments finds no rational link between the exclusion of same-sex couples from civil marriage and any legitimate governmental interest. It's very simple and straightforward.

15 JAN 5:59 PM

REPLY

FAVE

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Gay D. (gaydood)

4,679 Fans

· VOTE OUT THE REPUBS !!!

9

yur so darn smart:)

15 JAN 6:06 PM

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**Jonathan B.** (jonathan_12)

12

SUPER USER · **546 Fans** · Proud participant in the Gay Agenda

Here are some questions for all of the people who claim the "will of the people" should decide whether marriage equality should or should not be a right:

If it should be left to the will of the people, why do so many of you support state constitutional bans on gay marriage? Should it not be decided by a simple majority vote if you truly believe what you claim to believe?

Why do so many of you support amending the U.S. constitution to ban gay marriage? Should it not be left to the will of the people of each state to decide?

Why are you not out railing against any constitutional amendment bannning it like you rail against its legal recognition? Should it not be left to a simple referendum in each state to decide?

"Why are you afraid to let the people decide" is the question people who believe it should be left to the people to vote on often ask of the gay community. Well I will answer that question with a question; Why are you all so afraid that you had to pass constitutional amendments banning it in 31 states? Shouldn't the people get to vote on it whenever they choose through a referendum?

I will tell you why, because you only want the people to decide if they agree with you.

15 JAN 5:50 PM

REPLY FAVE MORE

**Amalek A.** (Amalek)

11

POLITICAL PUNDIT · **3,786 Fans** · Reluctantly still here

Ask all these "let the people decide" people to decide what should happen if a community chooses to ban assault weapons.

Of course then the constitution should override the will of the people.

15 JAN 6:23 PM

REPLY FAVE MORE

**Dan W.** (Awake-and-Sing)

13

SUPER USER · **1,864 Fans** · named after a great play written by Clifford Odets

Love is sweeping the country.

15 JAN 5:12 PM

REPLY FAVE MORE

**Gay D.** (gaydood)

6

4,679 Fans · VOTE OUT THE REPUBS !!!

and HUGGGGS !

15 JAN 6:08 PM

REPLY FAVE MORE

William S. (KenInd)

12

1,407 Fans · We too shall get through this.....



I spent one unhappy semester in a US college that catered to evangelical church musicians. I went there awaiting my transfer to the University of Oxford. In those days, if you were not deferred, you went to Viet Nam. So I went there for a semester.

They were all conservative, and they were all as gay as a ship's kitten. I can name names. But I won't.

15 JAN 5:23 PM

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Amalek A. (Amalek)

POLITICAL PUNDIT · 3,786 Fans · Reluctantly still here

7

The best place to pick up gay men is an evangelical prayer circle.

15 JAN 6:27 PM

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Gerald W. (Derelict_outlaw)

413 Fans

12

Come out, come out, wherever you are, olly olly oxen free.

15 JAN 5:20 PM

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Gay D. (gaydood)

4,679 Fans · VOTE OUT THE REPUBS !!!

5

lol

15 JAN 6:07 PM

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Ross P. (holycowbatman)

1,078 Fans · ...Shift Happens...let's make it together...

8

Once a domino is tipped, it's hard to stop the rest from tipping as well. Even if you pull out some in the middle, the wind eventually tips them again. Time, patience, and a little bit of prevailing wind go a loooong way.

Just think of the marks below as the 17 states w/marriage equality on the left, Utah and OK on far right tipping in...only Texas remains standing on the far far right...with the rest caught in the middle. How long before the prevailing winds (and court cases) reach the remaining 31?

////////////////////

15 JAN 5:04 PM

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Nick Kelsier (Nick_Kelsier)

108 Fans

5

you forgot the Insanity twins there.

That would be the Carolinas.

15 JAN 5:44 PM

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**James T.** (snoopbuzz)

14

SUPER USER · 662 Fans · Left RNC because of TP

Love is patient and kind.
Love does not envy or boast
Love is not arrogant or rude.
Love does not insist on its own way.
Love is not irritable or resentful.
Love does not rejoice on wrongdoing but rejoices with the truth.
Love bears all things, Love believes all things, Love hopes all things.
And now that the dominos are all falling, they can positively say that Love endures all things.

15 JAN 5:32 PM

[REPLY](#) [FAVE](#) [MORE](#)**Amalek A.** (Amalek)

1

POLITICAL PUNDIT · 3,786 Fans · Reluctantly still here

You are not describing the love of my life, AKA the ball and chain.

15 JAN 6:26 PM

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