



Appeals court: gay-marriage stay in Florida to end Jan. 5; weddings could begin next day

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Donna Deptuch, left, attends a July 2014 rally outside the Miami-Dade Courthouse in Miami. LGBT activists stood alongside members of the Christian Coalition outside the courthouse while six same-sex couples inside asked a Miami-Dade judge to issue them marriage licenses.

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Miami



Same-sex couples in Florida could begin marrying shortly after the new year, after a federal appeals court ruled Wednesday that a stay in the state's gay-marriage ban case will be lifted at the end of the day Jan.5.

In a two-page ruling, a three-judge panel of the U.S. 11th Circuit Court of Appeals in Atlanta turned down a request by Florida's secretaries of health and management services and the clerk of the court in the Panhandle's Washington County to extend the stay. A federal judge based in Tallahassee ruled in August that the state's gay-marriage ban is unconstitutional, but stayed his decision until Jan.5 to give the state time to appeal.

"This is a clear victory for us because it finds the harm is being done to the people, not the state," said Howard Simon, executive director of the ACLU of Florida (<https://aclufl.org/>), which is representing same-sex couples from throughout Florida and gay-rights group SAVE (<http://www.savedade.org/>), who sued to have out-of-state same-sex marriages recognized in the Sunshine State.

"It means that relief is finally in sight for the same-sex married couples suffering under Florida's refusal to recognize their legal unions," SAVE Executive Director Tony Lima said in a statement.

On Aug.21, U.S. Judge Robert L. Hinkle of Tallahassee threw out the gay-marriage ban in Florida's constitution – which was approved by 62 percent of voters in 2008 – calling it "an obvious pretext for discrimination."

"Liberty, tolerance, and respect are not zero-sum concepts," Hinkle wrote at the time. "Those who enter opposite-sex marriages are harmed not at all when others, including these plaintiffs, are given the liberty to choose their own life partners and are shown the respect that comes with formal marriage." He stayed his decision to give Florida Attorney General Pam Bondi time to appeal.

Bondi then asked the appeals court – which has yet to set a date to hear the case – to keep the stay in place past Jan.5 until the court decides on the merits.

"We are reviewing the ruling," Bondi spokeswoman Jennifer Meale wrote Wednesday in an email to the Miami Herald.

John Stemberger, president of the Florida Family Policy Council, which supported the 2008 constitutional amendment, blasted the appeal court decision.

“The court today is wrong,” he said in a statement. “The court was also wrong years ago in Dred Scott when it ruled that blacks were not persons. The courts will never have the final word on an institution as fundamental to the human experience as marriage. You simply cannot build a civilization without natural marriage.”

Ron Saunders, attorney for Monroe County Court Clerk Amy Heavilin, said the office is ready to issue marriage licenses to same-sex couples.

“We’ve been ready,” Saunders said. “We’ve had to change the vows from husband and wife, made sure everyone knew the procedures. ... We’re ready to do whatever is legal.”

On July 17, Monroe Circuit Judge Luis Garcia ruled that Key West plaintiffs Aaron Huntsman and William Lee Jones should be allowed to wed. Their attorney, Bernadette Restivo, said Wednesday that Huntsman and Jones are “planning a Jan. 6 wedding in the heart of Key West.”

U.S. Rep. Debbie Wasserman Schultz, D-Weston, called Florida’s same-sex marriage ban “an incredible miscarriage of justice” and said in a statement that Wednesday’s ruling “is a very good sign that Florida’s same-sex marriage ban appears headed for the ash heap of history.”

Daniel Tilley, an LGBT rights attorney at the ACLU, said in a statement that the appeals court ruling “rejected the state’s argument that allowing same-sex couples to marry and have their marriages recognized will cause harm to the state and refused to make these families wait any longer.”

“The court effectively ruled that the state does not have a likelihood of succeeding in its appeal,” Tilley said. “The stories of the individuals represented in our case demonstrate that Florida’s ban on marriages for same-sex couples hurts Florida families, and we are hopeful that that harm will finally be coming to an end soon. We will continue to watch this issue and will provide the public with updates on when all loving couples who want to be married can be, and can have their marriages recognized in Florida.”

Said Miami Beach attorney Elizabeth Schwartz: “We’ll take marriage any way we can.”

Schwartz co-represents six same-sex couples and Equality Florida (<http://www.eqfl.org/>) Institute who successfully sued in Miami-Dade Circuit Court for the right to marry. “While this isn’t a final order in the federal case – both the federal appeal and the our state appeal will continue to proceed – this is a huge step forward for fair-minded Floridians. We expect marriage licenses to be issued to same-sex couples statewide Jan.6,” Schwartz said.

Jorge Isaias Diaz and partner Don Price Johnston of Miami, two plaintiffs in the Equality Florida case, say they’ll probably wed sometime after the stay is lifted.

Diaz, whose brother is former Miami Mayor Manny Diaz, said he would have no hard feelings if his case isn’t the one that breaks Florida’s gay-marriage ban. “The bottom line is that we achieved whatever we wanted to achieve, that is to get married,” he said. “I’m thrilled and I’m pleased because we did what we set out to do.”

This year, same-sex couples throughout Florida sued to dismantle the state’s gay-marriage ban. In addition to the cases in federal and Miami-Dade circuit courts, same-sex couples prevailed in Monroe and Palm Beach counties. Bondi filed state appeals in all cases. A Broward case, in which a lesbian won the right to divorce her same-sex domestic partner, was vacated on a legal technicality and will be retried.

After Bondi lost her bid to keep the federal stay in place, the national group Freedom to Marry (<http://www.freedomtomarry.org/>) said she could seek a stay from the U.S. Supreme Court, but that the high court is unlikely to do that because it has already denied similar requests for stay extensions in South Carolina, Alaska, Idaho, and Kansas.

So far this year, same-sex marriage became legal in 18 additional states, bringing the total to 35, plus Washington, D.C.

Wednesday’s decision in Atlanta was written by three 11th District judges: Frank M. Hull of Atlanta, Charles R. Wilson of Tampa and Adalberto Jordan of Miami. President Bill Clinton appointed Hull and Wilson to the 11th Circuit in 1997 and 1999, respectively. President Barack Obama appointed Jordan in 2012.

Miami federal appeals attorney Richard Klugh, who is not involved in the case, agreed with Simon, Tilley and Wasserman Schultz that the three judges’ ruling signals what could happen if and when the full 11th Circuit hears the case.

“At this point, at least, it’s a good indication the state has not established a strong likelihood of success. That is not surprising given the trend in the law nationally,” Klugh said. “It’s fair to say the court was not satisfied that the state’s position is likely to prevail.”